The Ontario Securities Commission

OSC Bulletin

May 20, 2011

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

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May 20, 2011

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

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Ontario Securities Commission
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Edward P. Kerwin	—	EPK
Vern Krishna	—	VK
Christopher Portner	—	CP
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

May 25, May 27-31 and June 3, 2011 10:00 a.m. May 26, 2011 2:00 p.m.	**Nelson Financial Group Ltd., Nelson Investment Group Ltd., Marc D. Boutet, Stephanie Lockman Sobol, Paul Manuel Torres, H.W. Peter Knoll** s. 127 J. Waechter/S. Chandra in attendance for Staff Panel: JEAT/MCH
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: VK/CWMS
May 26, 2011 10:00 a.m.	**CI Financial Corp.** s. 21.7 S. Angus/E. O'Donovan in attendance for Staff Panel: MGC/SA
May 31, 2011 11:00 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: CP
June 1, 2011 10:00 a.m.	**An Application by The Special Committee of Directors of the Vengrowth Funds** s. 127 S. Angus/S. O'Hearn in attendance for Staff Panel: JEAT/MGC
June 1-2, 2011 10:00 a.m.	**Hector Wong** s. 21.7 A. Heydon in attendance for Staff Panel: EPK/PLK
June 6 and June 8-9, 2011 10:00 a.m.	**Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins** s. 127 C. Rossi in attendance for Staff Panel: CP/CWMS
June 6, June 8-10, and June 15-16, 2011 10:00 a.m. June 7, 2011 2:00 p.m.	**Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt** s. 127 M. Vaillancourt in attendance for Staff Panel: JDC/MCH
June 6, 2011 11:00 a.m. 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.	**York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott Bassingdale** s. 127 H. Craig/C. Watson in attendance for Staff Panel: VK/EPK

June 7, 2011 2:30 p.m.	**Peter Sbaraglia** s. 127 S. Horgan/P. Foy in attendance for Staff Panel: CP
June 10, 2011 10:00 a.m.	**QuantFX Asset Management Inc., Vadim Tsatskin, Lucien Shtromvaser and Rostislav Zemlinsky** s. 127 C. Rossi in attendance for Staff Panel: MGC
June 14 and June 17, 2011 10:00 a.m.	**Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Networth Financial Group Inc., and Networth Marketing Solutions** s. 127 and 127.1 H. Daley in attendance for Staff Panel: JDC/MCH
June 20 and June 22-30, 2011 10:00 a.m.	**Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk** s. 37, 127 and 127.1 C. Price in attendance for Staff Panel: JDC/MCH
June 22, 2011 10:00 a.m.	**Energy Syndications Inc., Green Syndications Inc., Syndications Canada Inc., Land Syndications Inc. and Douglas Chaddock** s. 127 C. Johnson in attendance for Staff Panel: JEAT
June 28, 2011 10:00 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 C.Perschy in attendance for Staff Panel: CP
June 29, 2011 3:00 p.m.	**Bernard Boily** s. 127 and 127.1 M. Vaillancourt/U. Sheikh in attendance for Staff Panel: VK
July 11, 2011 10:00 a.m.	**Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff** s. 127 H. Craig in attendance for Staff Panel: TBA

July 11, 2011
10:00 a.m.

Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Vadim Tsatskin, Michael Schaumer, Elliot Feder, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff

s. 37, 127 and 127.1

H. Craig in attendance for Staff

Panel: TBA

July 15, 2011
10:00 a.m.

Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, and Danny De Melo

s. 127

A. Clark in attendance for Staff

Panel: TBA

July 15, 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

s. 127

H. Craig/C. Rossi in attendance for Staff

Panel: TBA

July 20, 2011
10:00 a.m.

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"

s. 127

B. Shulman in attendance for Staff

Panel: JEAT

July 20, 2011
11:00 a.m.

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: JEAT

July 26, 2011
11:00 a.m.

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)

s. 127

S. Chandra in attendance for Staff

Panel: TBA

July 29, 2011
10:00 a.m.

North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

August 10, 2011
10:00 a.m.

Ciccone Group, Medra Corporation, 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vince Ciccone, Darryl Brubacher, Andrew J. Martin., Steve Haney, Klaudiusz Malinowski and Ben Giangrosso

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

September 6-12, September 14-26 and September 28, 2011 10:00 a.m.	**Anthony Ianno and Saverio Manzo** s. 127 and 127.1 A. Clark in attendance for Staff Panel: EPK/PLK
September 8, 2011 10:00 a.m.	**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** s. 127 J. Feasby in attendance for Staff Panel: JEAT
September 14-23, September 28 – October 4, 2011 10:00 a.m.	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: VK/MCH
October 3-7 and October 12-21, 2011 10:00 a.m.	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127 C. Price in attendance for Staff Panel: TBA
October 12-24 and October 26-27, 2011 10:00 a.m.	**Helen Kuszper and Paul Kuszper** s. 127 and 127.1 U. Sheikh in attendance for Staff Panel: JDC/CWMS
October 17-24 and October 26-31, 2011 10:00 a.m.	**Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, John Colonna, Pasquale Schiavone, and Shafi Khan** s. 127(7) and 127(8) C. Johnson in attendance for Staff Panel: EPK/MCH
October 31, 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: TBA
November 7, November 9-21, November 23 – December 2, 2011 10:00 a.m.	**Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc.** s. 37, 127 and 127.1 D. Ferris in attendance for Staff Panel: EPK/PLK
November 14-21 and November 23-28, 2011 10:00 a.m.	**Shaun Gerard McErlean, Securus Capital Inc., and Acquiesce Investments** s. 127 M. Britton in attendance for Staff Panel: TBA
December 1-5 and December 7-15, 2011 10:00 a.m.	**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)** s. 127 S. Chandra in attendance for Staff Panel: TBA

December 5 and December 7-16, 2011 10:00 a.m.	**L. Jeffrey Pogachar, Paola Lombardi, Alan S. Price, New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., 2126375 Ontario Inc., 2108375 Ontario Inc., 2126533 Ontario Inc., 2152042 Ontario Inc., 2100228 Ontario Inc., and 2173817 Ontario Inc.** s. 127 M. Britton in attendance for Staff Panel: EPK/PLK
January 18-30, 2012 10:00 a.m.	**Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Vadim Tsatskin, Michael Schaumer, Elliot Feder, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff** s. 37, 127 and 127.1 H. Craig in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 K. Daniels in attendance for Staff Panel: TBA
TBA	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric** s. 127 and 127(1) D. Ferris in attendance for Staff Panel: TBA
TBA	**Goldpoint Resources Corporation, 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** s. 127(1) and 127(5) C. Watson in attendance for Staff Panel: TBA
TBA	**Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale** s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	**Lyndz Pharmaceuticals Inc., James Marketing Ltd., Michael Eatch and Rickey McKenzie** s. 127(1) and (5) J. Feasby/C. Rossi in attendance for Staff Panel: TBA

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

s. 127 (1)

M. Britton in attendance for Staff

Panel: TBA

TBA **Shane Suman and Monie Rahman**

s. 127 and 127(1)

C. Price in attendance for Staff

Panel: TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA **Abel Da Silva**

s. 127

C. Watson in attendance for Staff

Panel: TBA

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

s. 127

T. Center in attendance for Staff

Panel: TBA

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

s. 127

T. Center/D. Campbell in attendance for Staff

Panel: TBA

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

s. 127

A. Perschy/C. Rossi in attendance for Staff

Panel: TBA

TBA **Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group**

s. 127 and 127.1

H. Craig in attendance for Staff

Panel: TBA

TBA

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

s. 127

T. Center in attendance for Staff

Panel: TBA

TBA

Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.

s. 127

S. Horgan in attendance for Staff

Panel: TBA

TBA

Rezwealth Financial Services Inc., Pamela Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc., Sylvan Blackett, 1778445 Ontario Inc. and Willoughby Smith

s. 127(1) and (5)

A. Heydon in attendance for Staff

Panel: TBA

TBA

Simply Wealth Financial Group Inc., Naida Allarde, Bernardo Giangrosso, K&S Global Wealth Creative Strategies Inc., Kevin Persaud, Maxine Lobban and Wayne Lobban

s. 127 and 127.1

C. Johnson in attendance for Staff

Panel: TBA

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

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

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

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

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

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

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

1.1.2 OSC Staff Notice 51-718 – Key Considerations Relating to an Auditor's Involvement with Interim Financial Reports

OSC Staff Notice 51-718 – *Key Considerations Relating to an Auditor's Involvement with Interim Financial Reports* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

Ontario Securities Commission

OSC Staff Notice 51-718 - Key Considerations Relating to an Auditor's Involvement with Interim Financial Reports

May 2011

Introduction

Ontario Securities Commission (OSC) staff recently reviewed a sample of issuers to assess their compliance with the provisions relating to an auditor's involvement with interim financial reports as set out in subsection 4.3(3) of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102). While NI 51-102 does not require an issuer to engage its auditor to review its interim financial report, it does however require an issuer to disclose in an accompanying notice if an interim review has not been performed by its auditor. We found a significant level of non-compliance with this disclosure requirement and in these cases, issuers were requested to refile their interim financial statements with the required disclosure.

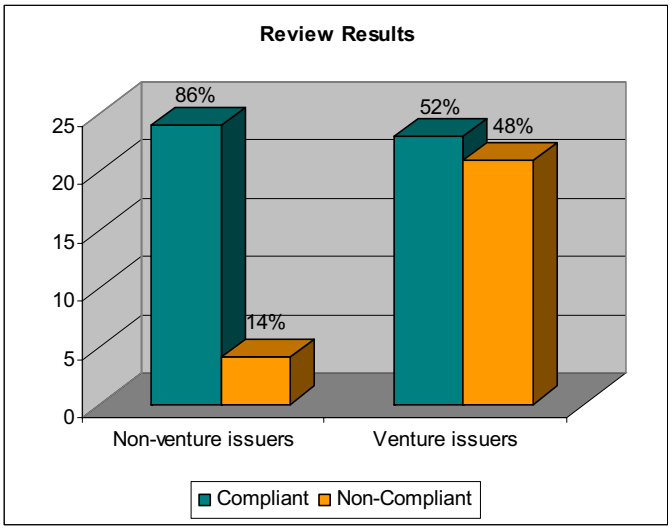
The purpose of this notice is to summarize the results of our review and to clarify the securities law requirements relating to an auditor's involvement with interim financial reports. As well, we have provided further guidance on the review requirements for an issuer's first interim financial report prepared following its transition to International Financial Reporting Standards (IFRS). Issuers and their advisors should take this notice into account when assessing the extent to which future disclosure meets the requirements of securities legislation and their investors' need for transparent disclosure. Investors need to be properly informed about an auditor's level of involvement with an issuer's interim financial report given that auditor involvement levels will continue to vary amongst issuers.

Investor impact

When an issuer has not engaged its auditor to perform a review, it is critical that the issuer clearly disclose this fact in a notice accompanying its interim financial report. This disclosure is important as it alerts investors and other users of the financial statements that the issuer's auditor did not complete a review of the interim financial report. With this disclosure, users of financial statements are able to determine the amount of reliance they may place on an issuer's interim financial report when deciding to buy or sell investments throughout the year.

Review results

We reviewed a sample of 72 issuers, comprised of 28 non-venture and 44 venture issuers, where it appeared that the interim financial statements had been reviewed by its auditor. We asked these issuers to confirm that their interim financial statements had been reviewed in accordance with securities legislation and Section 7050 *auditor review of interim financial statements* (Section 7050) of the Canadian Institute of Chartered Accountants Handbook (the Handbook).

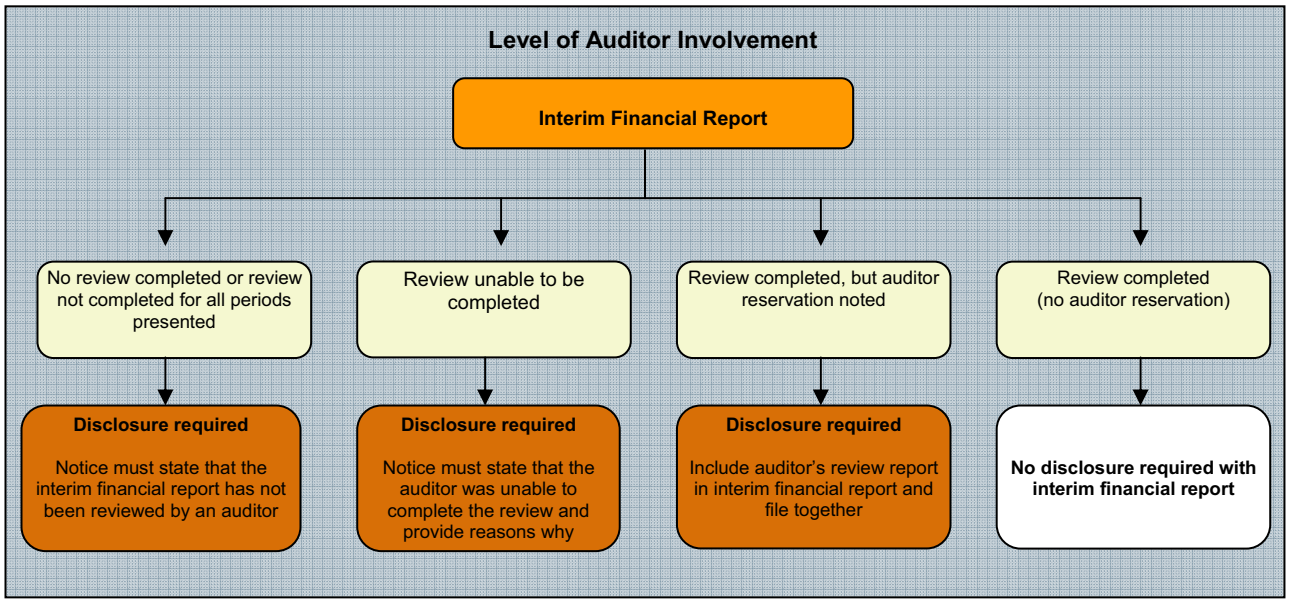


Overall, we found that 35% of the issuers reviewed, consisting of four non-venture and 21 venture issuers, did not comply with the disclosure requirements relating to an auditor's involvement

with interim financial statements. Specifically, 48% of venture issuers and 14% of non-venture issuers selected, confirmed that an auditor did not perform a review of its interim financial statements and yet these statements were not accompanied by a notice indicating that fact. Given the importance of this information to investors, we requested that these issuers refile their third quarter interim financial statements with the disclosure that its previously filed interim financial statements were not reviewed by its auditor. The reasons cited for non-compliance by issuers included a general lack of awareness about their disclosure obligations or confusion about what would constitute a review under securities legislation and Section 7050 of the Handbook. To improve the level of compliance going forward, we have highlighted below the relevant securities law requirements relating to an auditor's involvement with interim financial reports.

Continuous disclosure obligations

An issuer is not required to engage its auditor to review its interim financial report for the purposes of fulfilling its continuous disclosure obligations under NI 51-102. As depicted in the chart below however, subsection 4.3(3) of NI 51-102 requires a reporting issuer to disclose if an auditor has not performed a review of the interim financial report, to disclose if an auditor was unable to complete a review and why, and to file a written report from the auditor if the auditor has performed a review and expressed a reservation in the auditor's interim review report.



As the white box in the chart shows, the only time that disclosure is not required is when an auditor has performed a review and has not expressed a reservation in the auditor's interim review report. The term "*review*" refers to a review engagement where the auditor reports to the issuer's audit committee on the results of a review of the issuer's interim financial report for all of the periods presented in the report and in accordance with Section 7050 of the Handbook. (If a reporting issuer's financial statements are audited in accordance with auditing standards other than Canadian generally accepted auditing standards, the corresponding review standards should be applied.) Where an auditor has been retained to perform limited review procedures or to review only certain components of an issuer's interim financial report, this would not constitute a "review" and we would require

disclosure of a notice indicating that the interim financial report has not been reviewed by the auditor. While NI 51-102 does not prescribe the format of this notice, issuers typically provide this disclosure on a separate page appearing immediately before the interim financial report.

Review of the first IFRS interim financial report

Issuers should note that we did not make any changes to the requirements for the level of auditor involvement with issuers' interim financial reports as part of our IFRS-related rule amendments to NI 51-102. However, if an issuer engages its external auditor to review its first IFRS interim financial report, we remind issuers and their auditors that all financial statements and notes presented are subject to that review. Therefore, for the first IFRS interim financial report this review will have to include, in addition to the current and comparative period results, the opening IFRS statement of financial position and all IFRS 1 *First-time Adoption of International Financial Reporting Standards* reconciliations presented in the notes. To the extent a review of all components of the interim financial report is not completed, the interim financial report will need to be accompanied by a notice indicating that it has not been reviewed by the issuer's auditor. Issuers should consider the extra time that may be needed by its auditor to review the additional information in the first IFRS interim financial report when coordinating the timing of the review.

Future action

We will continue to monitor issuers' compliance with the disclosure requirements relating to the auditor's involvement with interim financial reports as part of our overall continuous disclosure review program. We urge issuers and their audit committee members to consult with their auditor to confirm the scope of the auditor's review engagement, to establish whether the review of the interim financial report will be completed in accordance with Section 7050 of the Handbook and to determine whether a notice is required to be attached to its interim financial report. Auditors may also wish to consider how an issuer is communicating their level of involvement with the interim financial report given that an omission of disclosure implies that the report has been reviewed when a review engagement may not have been performed. We believe that investors need to be able to discern the level of auditor involvement in an issuer's interim financial report when making investment decisions, and as such, staff will continue to request re-filings of this report when an issuer has not met its disclosure obligations in this area.

Questions

Questions may be referred to:

Kelly Gorman
Deputy Director, Corporate Finance
E-mail: kgorman@osc.gov.on.ca
Phone: 416-593-8251

Shaifali Joshi
Accountant, Corporate Finance
E-mail: sjoshi@osc.gov.on.ca
Phone: 416-595-8904

1.1.3 Investment Funds Practitioner – May, 2011

The Investment Funds Practitioner, May, 2011 from the Investment Funds Branch, Ontario Securities Commission is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the newsletter.

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OSC

The Investment Funds Practitioner

From the Investment Funds Branch, Ontario Securities Commission

What is the Investment Funds Practitioner

The Practitioner is an overview of recent issues arising from applications for discretionary relief, prospectuses, and continuous disclosure documents that investment funds file with the OSC. It is intended to assist investment fund managers and their staff or advisors who regularly prepare public disclosure documents and applications for exemptive relief on behalf of investment funds.

The Practitioner is also intended to make you more broadly aware of some of the issues we have raised in connection with our reviews of documents filed with us and how we have resolved them. We hope that fund managers and their advisors will find this information useful and that the Practitioner can serve as a useful resource when preparing applications and disclosure documents.

The information contained in the Practitioner is based on particular factual circumstances. Outcomes may differ as facts change or as regulatory approaches evolve. We will continue to assess each case on its own merits.

The Practitioner has been prepared by staff of the Investment Funds Branch and the views it expresses do not necessarily reflect the views of the Commission or the Canadian Securities Administrators.

Request for Feedback

This is the fifth edition of the Practitioner. Previous editions of the Practitioner are available on the OSC website www.osc.gov.on.ca under Investment Funds – Related Information.[1] We welcome your feedback and any suggestions for topics that you would like us to cover in future editions. Please forward your comments by email to investmentfunds@osc.gov.on.ca.

[1] At http://www.osc.gov.on.ca/en/About_if_index.htm or http://www.osc.gov.on.ca/en/InvestmentFunds_index.htm

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Applications for Relief

Requirement to Calculate Daily NAV

We have seen a number of applications for exemptive relief from the requirement to calculate daily the net asset value (NAV) of an investment fund that uses specified derivatives. Subsection 14.2(3) of NI 81-106 requires that the NAV of an investment fund using specified derivatives be calculated at least once every business day (referred to as the NAV calculation requirement). Some investment funds that use specified derivatives wish to calculate NAV weekly or bi-weekly on the basis that the costs of calculating NAV daily outweigh the benefits to securityholders, given that such investment funds are not in continuous distribution and are listed on an exchange.

Generally, we are of the view that the typical cost of calculating NAV on a daily basis does not create a significant burden. Our view is that, for investment funds listed on an exchange, the NAV calculation requirement promotes effective portfolio management practices and enables market price discovery. Furthermore, it ensures market transparency and provides a fair representation of the investment fund's value which can be used if an investment fund's own securities trade infrequently, or in the event that trading in those securities is halted.

In reviewing these applications, we may ask how the investment fund will manage its portfolio on an ongoing basis without the benefit of a daily NAV, whether the nature of the portfolio assets affects the investment fund's ability to calculate NAV daily, and for submissions on the additional cost to the investment fund of calculating a daily NAV.

Split Shares – Relief from s. 119

Historically, we have granted relief to split share companies from section 119 of the *Securities Act* (Ontario), a front-running prohibition which prevents someone with knowledge of the investment program of a mutual fund from trading ahead. Filers believed that sales and purchases of portfolio securities between the split share company and its related dealers (referred to as principal sales and purchases) were caught under s. 119.

Staff have reconsidered the applicability of s. 119 and determined that it may be more appropriate for applications relating to principal sales and purchases to be made under section 13.5(2) of National Instrument 31-103 *Registration Requirements and Exemptions* (formerly section 118 of the Act), which prohibits self-dealing.

While relief from s. 119 was given to split share companies in the past, these types of issuers should consider whether they are instead caught under s. 13.5(2) of NI 31-103.

Split Shares – Secondary Offerings

Generally, split share companies offer monthly retractions at a price computed by reference to the value of a proportionate share of the net assets of the fund. Accordingly, they qualify as mutual funds under applicable securities legislation and are subject to the provisions of NI 81-102. However, a split share company differs from a conventional mutual fund as: (i) it will not be in continuous distribution; and (ii) its capital and preferred shares are listed on an exchange. Routinely, split share companies receive relief from mutual fund requirements and restrictions on investments, calculation and payment of redemptions, preparation of compliance reports, and setting the record date for payment of distributions.

When split share companies engage in a secondary offering of shares, they often request relief from the same provisions in NI 81-102 again. Filers should consider whether this is necessary, as the relief was granted to the issuer itself, not to a particular class of shares. For most aspects of the relief, the original representations should still be valid. New relief may be needed for the calculation and payment of the redemption price of shares (sections 10.3 and 10.4(1) of NI 81-102), if the split share company is offering a new class of shares not contemplated in the original exemption.

Prospectuses

Publication of Staff Notice

The OSC issued OSC Staff Notice 81-714 *Compliance with Form 41-101F2 - Information Required in an Investment Fund Prospectus* on March 4, 2011. The Notice sets out the views of staff on certain disclosure required by Form 41-101F2 and the types of comments staff will generally raise in the course of a review of an investment fund long form prospectus.

Forward Fees

When the use of forward agreements is a material feature of a fund, we have been raising comments to request the disclosure of fees and any other costs associated with the forward agreements. One filer submitted that full, true and plain disclosure would be provided without the disclosure of such fees, and that this information was proprietary; however, the forward agreement fees, generally, have been material enough to persuade staff that this information is key to investors. Filers have shown the fees as a percentage of the forward agreement and have disclosed either the maximum percentage or a range.

PIFs for CCO

The prospectus rules require that a personal information form (PIF) be provided for every director or executive officer of the manager (and issuer, if applicable). In our view, the chief compliance officer of the manager is an individual who falls within the definition of "executive officer" as defined in the prospectus rules and a PIF must be provided for this individual.

Use of Short Form Prospectus

We have noted a number of issuers who make one or more subsequent offerings within a year of filing a long form prospectus in connection with their initial public offering. We remind filers that a new reporting issuer is not qualified to use a short form prospectus unless it can rely on the exemption in section 2.7 of NI 44-101 *Short Form Prospectus Distributions*. One criterion of using the short form is that a new reporting issuer must have a final prospectus that includes "comparative annual financial statements for its most recently completed financial year" (section 2.7(1)(b)).

We remind filers that the short form prospectus regime incorporates by reference a reporting issuer's continuous disclosure record; accordingly, a fund must have an established continuous disclosure record before it can file a short form prospectus. If a new fund has not yet completed a financial year, staff's view is that the fund's continuous disclosure record is not comprehensive enough because it does not have comparative annual financial statements[2] and, therefore, it cannot rely on the new reporting issuer exemption to use the short form prospectus.

One filer thought that it could rely on the new reporting issuer exemption because its final prospectus included an audited opening balance sheet and it intended to include unaudited interim financial statements in its short form prospectus. Staff were of the view that the combination of these documents could not replace audited "annual financial statements" because: (i) an opening balance sheet, although audited, does not reflect the results of a completed financial year since there have not yet been any operations of the fund; and (ii) while interim financial statements capture the recent operations of the fund, they are not accompanied by an auditor's report. In this case, staff asked the filer to use the long form prospectus.

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[2] In the case of a fund with a final prospectus that incorporates audited annual financial statements for the first completed financial year, staff have not taken issue when that fund relies on the new reporting issuer exemption, even though the financial statements are not comparative. While the inclusion of comparative figures in the financial statements is a requirement, they cannot be provided if the fund has only been in operation for one year.

Relief from 90-Day Filing Requirement

The simplified prospectus and long form prospectus rules both require a final prospectus to be filed no more than 90 days after the preliminary prospectus.[3] If an exemption from this requirement is granted, the prospectus rules state that the exemption may be evidenced by the issuance of a receipt for the final prospectus.[4]

Recently, one family of funds submitted an application for this relief and then immediately filed the final prospectus before receiving confirmation from staff that the application had been processed and approved. The Filer thought that the submission of the application, filing of final materials, and the issuance of a receipt would take place in quick succession.

While relief from the 90-day filing requirement may be evidenced by receipt, the application process must still be observed. This involves the review and consideration of the application by staff; a recommendation being made to the decision maker; and the signing of an approval letter if the decision maker agrees to the relief. Once these steps have been completed, final materials can be filed for staff's review.

Continuous Disclosure

Review of NI 81-107 Related Disclosure

As noted in the fourth edition of the Practitioner, Investment Funds staff reviewed, on an issue-oriented basis, a sample of investment funds to evaluate compliance with the disclosure obligations introduced in NI 81-107. Our review concluded in 2010 and resulted in the publication of OSC Staff Notice 81-713 *Focussed Disclosure Review of National Instrument 81-107 Independent Review Committee for Investment Funds*. The Notice summarizes the findings from our review and was published on March 25, 2011.

Public Inquiries and FAQs

Definition of Index Participation Unit

We have received a number of inquiries seeking staff's views on what constitutes a "widely quoted market index" for the purposes of the definition of "index participation unit" in NI 81-102. In particular, we have been asked whether an index that tracks the price of a commodity or the price of options on a commodity could be considered a "market index".

Staff are generally of the view that the term "market index" should be interpreted in a manner that is consistent with the investment restrictions set out in NI 81-102. As a result, an index, which provides exposure to asset classes or strategies that a mutual fund would not be able to engage in directly, would not generally qualify as a "market index".

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[3] The 90-day filing requirement is found in section 2.1(2) of NI 81-101 for a simplified prospectus and 2.3(1) of NI 41-101 for a long form prospectus.

[4] Evidence of exemption can be found in section 6.2 of NI 81-101 or 19.3 of NI 41-101.

On this basis, staff would not generally consider an index that tracks the price of a commodity to be a "market index". The same conclusion would apply to an index that purports to track the performance of hedge funds, real property, or that incorporates leverage or shorting strategies.

We note that over the past few years there has been a proliferation in the number of product offerings from index providers. We also recognize that there is an interest on the part of exchange traded fund providers to differentiate themselves in the market by branching out beyond the traditional indices. Staff caution filers and their advisors that, while an index provider may label something as an "index" and that index may appear to be widely quoted, it still may not qualify as a "market index" under NI 81-102.

Additionally, we note that the prospectus for certain exchange traded funds includes disclosure stating that the fund qualifies as an IPU for the purposes of NI 81-102. Mutual fund managers and portfolio managers, however, should conduct their own analysis of whether that fund is an IPU and should not rely solely on the disclosure provided by the exchange traded fund.

Point of Sale FAQs

Stage 1 of the Point of Sale (POS) project was completed on January 1, 2011 when amendments to NI 81-101 came into force. NI 81-101 contains the requirements to produce and file the Fund Facts document and for it to be made available on the mutual fund's or mutual fund manager's website. Since the amendments to NI 81-101 came into force, we have received inquiries about the content of and filing deadlines for the Fund Facts document. Below is a brief summary of these inquiries and our responses.

1. Transition period

Q. *When must a mutual fund file a Fund Facts document and post it to the mutual fund's or mutual fund manager's website?*

A. No later than July 8, 2011, every class or series of mutual fund must file and post the Fund Facts to the mutual fund's or mutual fund manager's website.

2. Filing fees

Q. *Please confirm whether there are additional filing or regulatory fees for the Fund Facts document.*

A. We can confirm that CDS will not apply any fees to file the Fund Facts on SEDAR. We can also confirm that there are no regulatory fees to file the Fund Facts in Ontario.

3. Frequency of filing

Q. *How frequently does the Fund Facts document need to be filed?*

A. After the initial filing of a Fund Facts, the document must be re-filed along with the renewal simplified prospectus (SP). It must also be filed upon the occurrence of a material change that relates to the information contained in

the Fund Facts. A change to the investment mix of the fund is not likely to be considered a material change so there will generally not be any requirement to file an amendment simply to update the Top 10 investments list or the portfolio breakdown chart. A change to the fund's investment objectives, however, would generally result in such a requirement.

4. Fund Facts format

Q. *Please confirm whether the Fund Facts document filed by a mutual fund must follow the template in Appendix A to Companion Policy 81-101CP.*

A. Form 81-101F3 *Contents of Fund Facts Document* sets out requirements for content, order and headings but it does not specify or mandate a specific format other than a requirement to use tables in certain areas. The sample Fund Facts that was published as Appendix A to Companion Policy 81-101CP was intended to be an illustration of what a Fund Facts document might look like, but there is no requirement for mutual funds to use that exact layout. Provided that the document follows the mandated order for content, is written in plain language and uses a font that is legible, mutual funds will have flexibility in terms of the format of the Fund Facts. Given that the Fund Facts may be disseminated in an electronic format, the information must be presented in a way that enables it to be printed in a readable format.

5. Disclosure of past performance

Q. *Please confirm whether past performance information for mutual funds not in distribution for a full calendar year may be disclosed in the "Year-by-year returns" chart of the Fund Facts document.*

A. The Year-by-year return chart requires a mutual fund to have completed a calendar year (January 1 to December 31) before including performance in the Fund Facts. A mutual fund that completes a calendar year following the filing of a Fund Facts, but before renewal, may amend the Fund Facts to include the relevant past performance information.

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

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

On May 12, 2011, the Government's Bill 173 (*Better Tomorrow for Ontario Act (Budget Measures), 2011*) received Royal Assent. Amendments to the *Securities Act* and the *Commodity Futures Act* were included in Bill 173.

An explanation of these amendments is provided in Chapter 9.

Questions may be referred to:

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1.1.5 OSC Staff Notice 34-701 – Publication of Decisions of the Director on Registration Matters under Part XI of the Securities Act (Ontario) ("Opportunities to be Heard")

OSC STAFF NOTICE 34-701:
PUBLICATION OF DECISIONS OF THE DIRECTOR
ON REGISTRATION MATTERS UNDER PART XI OF
THE SECURITIES ACT (ONTARIO) ("OPPORTUNITIES TO BE HEARD")

The mandate of the Ontario Securities Commission (the **OSC**) is to protect investors from unfair, improper and fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets. Staff of the OSC is committed to dealing with its stakeholders, including investors, issuers, and securities professionals, in a transparent manner as an effective means of furthering its mandate.

Under Part XI of the *Securities Act* (Ontario) (the **Act**), the Director is responsible for making decisions concerning the registration status of individuals and firms who are required to be registered under the Act (**registrants**). The Director is an administrative official, and is defined in subsection 1(1) of the Act as the Executive Director of the Commission, a Director or Deputy Director of the Commission, or a person employed by the Commission in a position designated by the Executive Director as a Director.

If staff has recommended to the Director that certain regulatory actions be taken with regards to the registration status of a registrant (for example, a suspension of their registration or the imposition of terms and conditions), staff will send the registrant written notice setting out its recommendation. Section 31 of the Act then gives the registrant the right to be heard by the Director before a decision is made concerning staff's recommendation. When a registrant exercises this right, the resulting administrative proceeding is referred to as an "opportunity to be heard", or an "OTBH".

An OTBH may take the form of an exchange of written submissions, or an in-person appearance before the Director. During the OTBH process, whether in writing or in person, staff makes submissions to the Director to support its recommendation, and the registrant has the opportunity to challenge that recommendation by making their own submissions.

The result of an OTBH is a written decision of the Director setting out the facts of the case, the applicable law, the Director's decision, and the reasons for the decision. Director's decisions are published on the OSC's website and in the OSC Bulletin.

The OSC historically only published Director decisions for contested OTBHs. Registrants should be advised that staff will now also publish the following types of Director decisions:

- decisions approving joint recommendations to settle an OTBH where the recommendation is that the registrant be suspended;
- decisions approving joint recommendations to settle an OTBH where the recommendation is that terms and conditions requiring strict supervision be imposed;
- decisions to suspend a registrant where an OTBH has not been requested; and
- decisions to impose terms and conditions requiring strict supervision where an OTBH has not been requested.

Strict supervision requires a registrant's sponsoring firm to pre-approve trades for suitability and to file monthly reports regarding the registrant's business activities with the OSC.

In staff's view, the increased transparency resulting from the publication of decisions of the Director as described above will provide enhanced investor protection since important information regarding registrant conduct will be communicated to the public in a timely manner.

Questions

If you have any questions regarding the contents of this notice, please refer them to any of the following:

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May 20, 2011

1.2 Notices of Hearing

1.2.1 CI Financial Corp. – s. 21.7

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

AND

IN THE MATTER OF
CI FINANCIAL CORP.

AND

IN THE MATTER OF
DECISIONS OF THE TORONTO STOCK EXCHANGE

NOTICE OF HEARING
(Section 21.7 of the Act)

TAKE NOTICE THAT the Ontario Securities Commission will hold a hearing pursuant to section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, to consider the Application made by CI Financial Corp. for a review of decisions of the Toronto Stock Exchange made April 20 and 29, 2011;

AND TAKE FURTHER NOTICE THAT the hearing will be held on May 26, 2011 at 10:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

Dated at Toronto this 11th day of May, 2011

"John Stevenson"
Secretary to the Commission

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

AND

IN THE MATTER OF
CI FINANCIAL CORP.

AND

IN THE MATTER OF
DECISIONS OF THE TORONTO STOCK EXCHANGE

REQUEST FOR HEARING AND REVIEW

May 9, 2011

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TO: THE ONTARIO SECURITIES COMMISSION

P.O. Box 55, l9th Floor
20 Queen Street West
Toronto, ON M5H 3S8

AND TO: THE TORONTO STOCK EXCHANGE

The Exchange Tower, 3rd Floor
130 King Street West
Toronto, ON M5X 1 J2

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

AND

IN THE MATTER OF
CI FINANCIAL CORP.

AND

IN THE MATTER OF
DECISIONS OF THE TORONTO STOCK EXCHANGE

REQUEST FOR HEARING AND REVIEW

CI FINANCIAL CORP. (“CI”") REQUESTS A HEARING AND REVIEW by the Ontario Securities Commission (the "Commission"), pursuant to section 21.7 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 as amended (the "Act") of two decisions made by the Listings Committee of the Toronto Stock Exchange (the "TSX") on April 20, 2011 and April 29, 2011 (the “Decisions”), requiring CI to submit a resolution ratifying the continuation of CI’s Shareholder Rights Plan Agreement (the “Plan”) to a vote of all shareholders rather than a vote of just the Independent Shareholders (as that term is defined in the Plan), at such time as the Commission may advise, at the 17th Floor Hearing Room, 20 Queen Street West, Toronto, Ontario.

CI is directly affected by the Decisions.

CI REQUESTS:

1. A hearing date that permits a decision to be made on or before May 26, 2011, as CI and its shareholders may be irreparably harmed by a later hearing date;

2. An Order pursuant to ss. 8(3) and 21.7 of the Act setting aside the Decisions;

3. An Order pursuant to s. 8(3) of the Act upholding the specific terms of section 5.19 of the Plan and confirming that only the Independent Shareholders of CI are entitled to vote on a resolution ratifying the continued existence of the Plan at CI’s 2011 Annual General Meeting; and

4. Such further and other relief as counsel may advise and the Commission may deem just.

THE GROUNDS FOR REVIEW ARE AS FOLLOWS:

Background

1. CI is a diversified wealth management firm and one of Canada’s largest investment fund companies. It became a public company in June 1994, listing on the Toronto Stock Exchange under the symbol CIX.

2. The Bank of Nova Scotia (the “Bank”) is CI’s most significant shareholder, and owns approximately 36.3% of CI’s issued and outstanding common shares.

3. At a special meeting on December 19, 2008, CI’s shareholders (including the Bank) voted overwhelmingly in favour of the Plan.

4. The purpose of the Plan is to ensure, to the extent possible, that all shareholders of the Corporation are treated fairly in connection with any take-over offer for the common shares of CI or other change of control, and to ensure that the board of directors of CI from time to time is provided with sufficient time to evaluate unsolicited take-over bids and to explore and develop alternatives to maximize shareholder value.

5. The Plan was filed with the TSX as required by s. 635 of the TSX Company Manual, and by letter dated October 27, 2008, the TSX consented to the implementation of the Plan and agreed to list the rights referred to in the Plan, subject to ratification of the Plan by CI’s securityholders, which as noted above was obtained on December 19, 2008.

6. The Plan has a fixed term and will expire in 2014. Moreover, the Plan will expire at the termination of CI's 2011 annual general meeting (scheduled to be held on June 1, 2011) unless its continued existence is ratified by the shareholders in accordance with the Plan's terms. This is described in s. 5.19 of the Plan, which reads as follows.

> **5.19 Shareholder Review**
>
> If required by the rules and regulations of any stock exchange on which the Common Shares are then listed, at or prior to the annual meeting of the shareholders of the Corporation in 2011, provided that a Flip-in Event has not occurred prior to such time, the Board shall submit a resolution ratifying the continued existence of this Agreement to all holders of Common Shares for their consideration and, if thought advisable, approval. If such approval is not required by the rules and regulations of any stock exchange on which the Common Shares are then listed, at or prior to the annual meeting of the shareholders of the Corporation in 2011, provided that a Flip-in Event has not occurred prior to such time, the Board shall submit a resolution ratifying the continued existence of this Agreement to the Independent Shareholders for their consideration and, if thought advisable, approval. Unless the majority of the votes cast by all holders of Common Shares or the Independent Shareholders, as applicable, who vote in respect of such resolution are voted in favour of the continued existence of this Agreement, the Board shall, immediately upon the confirmation by the Chairman of such shareholders' meeting of the results of the votes on such resolution and without further formality, be deemed to elect to redeem the Rights at the Redemption Price.

7. Section 5.19 requires the Board of CI to submit a resolution ratifying the continued existence of the Plan to a vote of the Independent Shareholders, in the absence of rules and regulations of the TSX requiring otherwise. The term Independent Shareholders is defined in s. 1(z) of the Plan as follows.

> (z) **"Independent Shareholders"** shall mean holders of outstanding Common Shares of the Corporation excluding (i) any Acquiring Person, or (ii) any Person (other than a Person referred to in clause 1.1(d)(B) who at the relevant time is deemed not to Beneficially Own Common Shares) that is making or has announced a current intention to make a Take-over Bid for Common Shares (including a Permitted Bid or a Competing Permitted Bid) but excluding any such Person if the Take-over Bid so announced or made by such Person has been withdrawn, terminated or expired, or (iii) any Grandfathered Person, or (iv) any Affiliate or Associate of such Acquiring Person, Grandfathered Person or a Person referred to in clause (ii), or (iv) any Person acting jointly or in concert with such Acquiring Person, Grandfathered Person or a Person referred to in clause (ii), or (v) a Person who is a trustee of any employee benefit plan, share purchase plan, deferred profit sharing plan or any similar plan or trust for the benefit of employees of the Corporation or a Subsidiary of the Corporation, unless the beneficiaries of the plan or trust direct the manner in which the Common Shares are to be voted or direct whether the Common Shares are to be tendered to a Take-over Bid.

8. Many senior issuers listed on the TSX have shareholder rights plans with sections substantially the same as to s. 519 of the Plan. Sections such as these have been a feature of shareholder rights plans in TSX-listed companies for at least 10 years.

The Bank

9. The Bank is a "Grandfathered Person" under the terms of the Plan. "Grandfathered Persons" are defined (*inter alia*) as shareholders holding 20% or more of the issued and outstanding common shares of CI as of the date of the Plan (being January 1, 2009) and are exempted from the operation of the Plan notwithstanding the fact that on implementation of the Plan their interest exceeded the ownership threshold included in the definition of Acquiring Person.

10. The TSX rules acknowledge in clause 636(b) of the Company Manual that there will be circumstances in which a particular security holder will be "grandfathered" and in such circumstances require an additional separate vote of security holders, excluding the exempted security holder for the implementation of a shareholder rights plan. This additional separate vote was held on December 19, 2008 on the adoption of the Plan.

11. Prior to voting to adopt the Plan in 2008, the Bank knew or ought to have known that as a Grandfathered Person it would not be an Independent Shareholder and it would have no right to vote on the continued existence of the Plan in 2011 or on other fundamental matters regarding the Plan such as amendments (section 5.4(b) of the Plan) or early termination of the Plan (section 5.1(b) of the Plan).

12. Non-independent shareholders, including the Bank are prevented from voting on the continued existence of the Plan because their interests are very different than the interests of other shareholders as regards the Plan. The Persons excluded from the definition of Independent Shareholder are parties that intend or have the ability to effect a change of control of the issuer and as such their interests cannot be reconciled with the shareholder value maximization interests of the other shareholders.

13. Recently, the Bank became the sole shareholder of one of CI's competitors, DundeeWealth Inc. and as such cannot be considered to have interests that are aligned with the Independent Shareholders of CI.

14. On April 1, 2011, the Bank complained to the TSX that the Bank did not have the right to vote on the continued existence of CI's Plan at the 2011 annual general meeting, and asked the TSX to intervene.

The Decisions

15. On April 1, 2011, the Bank through its counsel asked the TSX to require CI to permit the Bank to vote on whether the Plan should be continued.

16. CI's submissions to the TSX were delivered through CI's counsel on April 5, 2011.

17. The Bank made a further submission dated April 7, 2011.

18. CI then made a further submission to the TSX dated April 8, 2011.

19. On April 20, 2011, the TSX advised CI and its counsel, by telephone that the Listings Committee was acceding to the Bank's request.

20. On April 21, 2011, CI (through its counsel) received a letter from the TSX, advising that the TSX had determined to accept the continued existence of the Plan following CI's 2011 annual general meeting subject to the following conditions:

1. Approval by the shareholders of CI of the continued existence of the plan, by:

   (a) a majority of votes cast in favour of the Plan at the 2011 AGM; and

   (b) a majority of votes cast in favour of the Plan at the 2011 AGM, without giving effect to any votes cast (i) by any shareholder that, directly or indirectly, on its own or in concert with others, holds or exercises control over more than 20% of the outstanding voting shares of CI if any; and (ii) by the associates, affiliates and insiders of any referred to in (i) above.

2. If the Plan is not approved in accordance with condition (1) above, it must be rescinded or otherwise cancelled and be of no further effect immediately after the 2011 AGM.

21. On April 25, 2011, CI requested the Listings Committee to reconsider its decision and made submissions in support of that request.

22. On April 29, 2011, the TSX advised CI that the decision had been reconsidered and had been upheld.

23. On May 2, 2011, CI received a letter from the TSX, advising that the Listing Committee with the additional participation of the Senior Vice President of the TSX reconsidered the earlier decision of the Listing Committee made on April 20, 2011 and that the original decision had been upheld.

The Decisions should be Set Aside

24. The Decisions are a "direction, decision, order or ruling" made by a "recognized stock exchange" pursuant to s. 21.7(1) of the Act and subject to review by the Commission.

25. Under ss. 21.7(2) and 8(3) the Commission has the power to set aside the Decisions.

26. The TSX erred in purporting to require CI to submit a resolution ratifying the continuation of the Plan to a vote of all shareholders rather than a vote of just the Independent Shareholders. The Decisions were made without jurisdiction. Although there are rules and regulations of the TSX regarding a company's adoption of a shareholder rights plan (all of which were complied with in this case), there are no rules or regulations of the TSX regarding the matter of shareholder approval for the continued existence of a previously-adopted shareholder rights plan.

27. Further and in the alternative, the Decisions were made without due consideration for the plain language of the Plan, and without due consideration for the purpose and intent of the Plan.

28. The Commission should set aside the Decisions because: (i) the TSX lacked jurisdiction to make such Decisions; (ii) even if the TSX did have jurisdiction to make such Decisions, the TSX proceeded on incorrect principles; (iii) the TSX made an error in law; (iv) the TSX overlooked material evidence; (v) there is new and compelling evidence before the Commission; and (vi) the public interest requires that the Plan and agreements like it are respected.

Urgency of the Situation

29. The urgency to this situation is of the Bank's doing. After voting in favour of the Plan, the Bank then waited more than two years to bring any complaint about the Plan's terms to the TSX.

30. The latest date on which CI's annual general meeting can be held is June 22, 2011. Section 94 of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16 as amended, provides that an annual meeting shall be held no later than 15 months after the last annual meeting. The last annual general meeting of CI took place on March 25, 2010.

31. The 2011 annual general meeting was originally scheduled for June 22, 2011. On April 13, 2011, the Board of Directors of CI determined that it would be appropriate to hold the meeting on June 1, 2011 in order to accommodate some other matters on the company's schedule and to ensure that certain directors could attend the meeting, including the Lead Director who is to be the Chair of the meeting. The General Counsel of the Bank was advised of this change by e-mail on April 15, 2011.

32. Delaying the annual general meeting would be detrimental to CI and its shareholders.

33. The Central Depositary for Securities (CDS) will collect and tabulate proxies on May 27th for submission. The determination of this Commission may impact voting.

34. The TSX has determined that if the Plan is not approved at the 2011 annual general meeting in accordance with the conditions that the TSX has imposed, the Plan must be rescinded or otherwise cancelled and be of no further effect immediately after the 2011 annual general meeting.

35. Should the Bank's vote cause the Plan to not be approved in accordance with the TSX's conditions, the Bank or other parties might then immediately enter into transactions that would otherwise have been prevented by the Plan. This could include the Bank or other parties acquiring de facto control over CI, leaving other shareholders in a vulnerable position. Should it subsequently be determined that the TSX's decision was in error, these transactions may be impossible to undo and the harm to CI's shareholders may be irreparable.

36. CI also relies on such further or other grounds as counsel may advise and the Commission may allow.

CI INTENDS TO RELY ON, among other things, the evidence of Sheila Murray, to be filed before the hearing of this matter, and on such other evidence as counsel may advise and the Commission may allow.

May 9, 2011

Stockwoods LLP
Barristers
77 King Street West
Suite 4130
Toronto, ON M5K 1H1

Paul Le Vay (LSUC #28314E)
Johanna Braden (LSUC #40775L)
Owen Rees (LSUC #47910J)

Lawyers for CI Financial Corp.

TO: THE ONTARIO SECURITIES COMMISSION

P.O. Box 55, l9th Floor
20 Queen Street West
Toronto, ON M5H 3S8

AND TO: THE TORONTO STOCK EXCHANGE

The Exchange Tower, 3rd Floor
130 King Street West
Toronto, ON M5X 1 J2

1.2.2 Nelson Financial Group Ltd. et al. – ss. 127(1). 127.1

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

NOTICE OF HEARING
(Subsections 127(1) and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on Monday, May 16, 2011 at 4:45 p.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the settlement agreement dated May 11, 2011 between Staff of the Commission and Paul Manuel Torres;

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

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

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

"John Stevenson"
Secretary to the Commission

1.2.3 Nelson Financial Group Ltd. et al. – ss. 127(1), 127.1

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

NOTICE OF HEARING
(Subsections 127(1) and 127.1)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on Monday, May 16, 2011 at 8:30 a.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the settlement agreement dated May 12, 2011 between Staff of the Commission and Nelson Investment Group Ltd. and Marc D. Boutet;

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

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

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

"Christos Grivas"
Per: John Stevenson
Secretary to the Commission

1.2.4 Nelson Financial Group Ltd. et al. – s. 127(1)

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

NOTICE OF HEARING
(Subsection 127(1))

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 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 May 18, 2011 at 10:00 a.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the settlement agreement dated May 16, 2011 between Staff of the Commission and Stephanie Lockman Sobol;

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

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

DATED at Toronto this 16th day of May, 2011.

"John Stevenson"
Secretary to the Commission

1.2.5 Firestar Capital Management Corp. et al. – s. 127

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

AND

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

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to Section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), at the offices of the Commission located at 20 Queen Street West, Toronto, 17th Floor, on May 17, 2011 at 2:00 p.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the settlement agreement entered into between the Commission and Michael Ciavarella;

BY REASON OF the allegations set out in the Statement of Allegations of Staff of the Commission dated December 21, 2004 and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 16th day of May, 2011.

"John Stevenson"
Secretary to the Commission

1.3 News Releases

1.3.1 OSC Panel Finds Lyndz Pharmaceuticals Inc., James Marketing Ltd., Michael Eatch and Rickey McKenzie in Breach of Ontario Securities Act

FOR IMMEDIATE RELEASE
May 17, 2011

OSC PANEL FINDS
LYNDZ PHARMACEUTICALS INC.,JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE
IN BREACH OF ONTARIO SECURITIES ACT

TORONTO – In a decision released today, an Ontario Securities Commission (OSC) panel found, among other things, that Lyndz Pharmaceuticals Inc. ("Lyndz"), James Marketing Ltd. ("James Marketing"), Michael Eatch ("Eatch") and Rickey McKenzie ("McKenzie") committed fraud through an investment scheme operating out of the Toronto area.

The panel also found that the Respondents distributed the shares of Lyndz without having filed a prospectus and without the benefit of a prospectus exemption under Ontario securities law.

In its decision, the panel found that:

> "this case involves an investment scheme in which the Respondents distributed securities to investors based on the premise that their funds would be invested in the development of Lyndz' proposed pharmaceutical business and humanitarian projects in developing nations. That premise was misleading and false and as a result of the Respondents' activities, Lyndz' investors were deprived of their funds. Investor funds were diverted by the Respondents to their personal benefit rather than being invested in a pharmaceutical business."

The initial phase of the illegal distribution, involving only Eatch and Lyndz and spanning 1999-2004, raised approximately $400,000 from investors in Ontario and other provinces. The second phase, involving all Respondents and spanning 2005-2008, raised approximately $1,700,000 from investors in the UK. The fraud finding applies only to the conduct after December 31, 2005.

A sanctions and costs hearing will be scheduled. A copy of the Reasons and Decision in this matter is available on the OSC website at www.osc.gov.on.ca.

The mandate of the OSC is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. Investors are urged to check the registration of any person or company offering an investment opportunity and to review the OSC's investor materials available at www.osc.gov.on.ca.

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For investor inquiries:

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

1.4 Notices from the Office of the Secretary

1.4.1 CI Financial Corp.

FOR IMMEDIATE RELEASE
May 12, 2011

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

AND

IN THE MATTER OF
CI FINANCIAL CORP.

AND

IN THE MATTER OF
DECISIONS OF THE
TORONTO STOCK EXCHANGE

TORONTO – On May 11, 2011, the Commission issued a Notice of Hearing pursuant to section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, to consider the Application made by CI Financial Corp. for a review of decisions of the Toronto Stock Exchange made April 20 and 29, 2011.

The hearing will be held at the Commission's offices at 20 Queen Street West, 17th Floor in Hearing Room A, Toronto, Ontario commencing on Thursday, May 26, 2011 at 10:00 a.m.

A copy of the Notice of Hearing dated May 11, 2011 and the Request for Hearing and Review dated May 9, 2011 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.2 Nelson Financial Group Ltd. et al.

FOR IMMEDIATE RELEASE
May 12, 2011

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Paul Manuel Torres. The hearing will be held on May 16, 2011 at 4:45 p.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated May 12, 2011 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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1.4.3 Richvale Resource Corporation et al.

FOR IMMEDIATE RELEASE
May 12, 2011

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing with respect to Staff's Allegations is adjourned to October 17, 2011 at 10:00 a.m. or such further or other dates prior thereto as may be agreed to by the parties and fixed by the Office of the Secretary.

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

OFFICE OF THE SECRETARY
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1.4.4 Nelson Financial Group Ltd. et al.

FOR IMMEDIATE RELEASE
May 13, 2011

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Nelson Investment Group Ltd. and Marc D. Boutet. The hearing will be held on May 16, 2011 at 8:30 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated May 13, 2011 is available at **www.osc.gov.on.ca**.

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1.4.5 Nelson Financial Group Ltd. et al.

FOR IMMEDIATE RELEASE
May 16, 2011

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Nelson Investment Group Ltd. and Marc D. Boutet.

A copy of the Order dated May 16, 2011 and Settlement Agreement dated May 12, 2011 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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SECRETARY

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1.4.6 Nelson Financial Group Ltd. et al.

FOR IMMEDIATE RELEASE
May 16, 2011

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing is adjourned to May 25, 2011 at 10:00 a.m., or such other date as the Secretary's Office may advise and the parties agree to.

A copy of the Order dated May 16, 2011 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.7 Oversea Chinese Fund Limited Partnership et al.

FOR IMMEDIATE RELEASE
May 16, 2011

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

AND

IN THE MATTER OF
OVERSEA CHINESE FUND LIMITED PARTNERSHIP, WEIZHEN TANG AND ASSOCIATES INC., WEIZHEN TANG CORP. AND WEIZHEN TANG

TORONTO – The Commission issued an Order in the above named which provides that the Temporary Order is extended until November 1, 2011; and the Hearing in this matter is adjourned to October 31, 2011 at 10:00 a.m.

A copy of the Order dated May 16, 2011 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.8 Nelson Financial Group Ltd. et al.

FOR IMMEDIATE RELEASE
May 16, 2011

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD., NELSON INVESTMENT GROUP LTD., MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL, PAUL MANUEL TORRES, H. W. PETER KNOLL

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Stephanie Lockman Sobol. The hearing will be held on May 18, 2011 at 10:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated May 16, 2011 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.9 Firestar Capital Management Corp. et al.

FOR IMMEDIATE RELEASE
May 16, 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 Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Michael Ciavarella. The hearing will be held on May 17, 2011 at 2:00 p.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated May 16, 2011 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.10 Nelson Financial Group Ltd. et al.

FOR IMMEDIATE RELEASE
May 16, 2011

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Paul Manuel Torres.

A copy of the Order dated May 16, 2011 and Settlement Agreement dated May 11, 2011 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.11 Lyndz Pharmaceuticals Inc. et al.

FOR IMMEDIATE RELEASE
May 17, 2011

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

AND

IN THE MATTER OF
LYNDZ PHARMACEUTICALS INC.,
JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE

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

A copy of the Reasons and Decision dated May 16, 2011 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.12 Sextant Capital Management Inc. et al.

FOR IMMEDIATE RELEASE
May 18, 2011

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

AND

IN THE MATTER OF
SEXTANT CAPITAL MANAGEMENT INC.,
SEXTANT CAPITAL GP INC., OTTO SPORK,
KONSTANTINOS EKONOMIDIS,
ROBERT LEVACK AND NATALIE SPORK

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

A copy of the Reasons for Decision dated May 17, 2011 and the Mid-hearing Ruling (Admissibility of Compelled Testimony) dated October 18, 2010 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.13 Nelson Financial Group Ltd. et al.

FOR IMMEDIATE RELEASE
May 18, 2011

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Stephanie Lockman Sobol.

A copy of the Order dated May 18, 2011 and Settlement Agreement of May 16, 2011 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Brompton Equity Split Corp. et al.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of fund merger pursuant to an amalgamation under paragraph 5.5(1)(b) of NI 81-102 – Approval required because amalgamation does not meet all criteria for pre-approval outlined in section 5.6 of NI 81-102 – Current prospectus and financial statements of continuing fund not delivered to shareholders because prospectus-level disclosure contained in the Circular sent to shareholders – Continuing fund will have the same investment objectives, investment strategies, management fees, portfolio investment manager and at the effective date of the amalgamation, the same portfolio assets as existing fund – Amalgamation does not technically constitute a wind-up of the existing fund – Proxy circular includes disclosure about the amalgamation and prospectus-like disclosure about the continuing fund.

Applicable Legislative Provisions

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

May 6, 2011

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

AND

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

AND

IN THE MATTER OF
BROMPTON EQUITY SPLIT CORP. AND
DIVIDEND GROWTH SPLIT CORP.

AND

IN THE MATTER OF
BROMPTON FUNDS MANAGEMENT LIMITED
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of Brompton Equity Split Corp. ("**BE**") and Dividend Growth Split Corp. ("**DGS**") for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption from requirements contained in subsection 5.6(1) of National Instrument 81-102 *Mutual Funds* ("**NI 81-102**") for the proposed amalgamation (the "**Amalgamation**") of BE and DGS (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 Filer has provided notice that subsection 4.7(1) of Multinational Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in the jurisdictions of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

Defined terms contained 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:

The Filer

1. The Filer is the manager of both BE and DGS. The Filer was formed pursuant to the *Business Corporations Act* (Ontario) (the "**OBCA**") by articles of amalgamation dated September 28, 2010. The Filer performs management and administrative services for BE and DGS pursuant to management agreements. Its head office is at Suite 2930, Bay Wellington Tower, Brookfield Place, 181 Bay Street, Toronto, Ontario M5J 2T3.

2. The Filer is not in default of securities legislation in any jurisdiction.

BE and DGS

3. BE and DGS are mutual fund corporations incorporated under the OBCA, are reporting issuers in each of the provinces and territories of Canada and are not in default of securities legislation in any jurisdiction.

4. While BE and DGS are technically considered to be mutual funds under the securities legislation of certain provinces of Canada, BE and DGS are not conventional mutual funds and have obtained exemptions from certain requirements of NI 81-102 and National Instrument 81-106 *Investment Fund Continuous Disclosure* ("**NI 81-106**").

5. The head office of BE and DGS is located at Suite 2930, Bay Wellington Tower, Brookfield Place, 181 Bay Street, Toronto, Ontario M5J 2T3.

6. The authorized share capital of BE and DGS consists of an unlimited number of preferred shares (the "**Preferred Shares**"), an unlimited number of class A shares (the "**Class A Shares**") and an unlimited number of class J shares (the "**Class J Shares**") (for the purposes of this decision, the term "**Shareholders**" means the holders of Preferred Shares and Class A Shares in either BE or DGS, as applicable). The Preferred Shares and Class A Shares of BE and DGS are listed for trading on the Toronto Stock Exchange.

7. BE filed a final prospectus dated March 29, 2004 for the initial issuance of its Preferred Shares and Class A Shares. DGS filed a final prospectus dated November 20, 2007 for the initial issuance of its Preferred Shares and Class A Shares.

8. BE and DGS' initial public offerings were conducted through the full service investment dealer channel and their shares were issued through and are held in the book based system of CDS Clearing and Depository Services Inc. BE and DGS are not, nor have they ever been, in continuous distribution.

9. BE has retained Highstreet Asset Management Inc. ("**Highstreet**") as portfolio manager pursuant to a portfolio manager agreement to make all investment decisions for BE and to write call options and put options in accordance with the investment objectives, investment strategy, investment criteria and investment restrictions of BE. DGS has retained Highstreet as options advisor pursuant to an options advisory agreement to rebalance the portfolio and to write call options and put options in accordance with the investment objectives, investment guidelines and investment restrictions of DGS. Highstreet's principal office is located at Suite 350, 244 Pall Mall Street, London, Ontario N6A 5P6.

10. The investment objectives of BE and DGS are to: (i) provide holders of Preferred Shares with fixed cumulative preferential quarterly cash distributions in the amount of $0.13125 per Preferred Share; (ii) provide holders of Class A Shares with regular monthly cash distributions; (iii) return the original issue price to holders of Preferred Shares on the maturity date; and (iv) in the case of BE, return at least the original issue price to holders of Class A Shares on the maturity date and, in the case of DGS, provide holders of Class A Shares with the opportunity for growth in net asset value ("**NAV**") per Class A Share. The valuation procedures and fee structures of BE and DGS are substantially similar.

11. BE's portfolio consists primarily of Canadian common stocks listed on the Toronto Stock Exchange. DGS' portfolio consists of common stocks in large-capitalization Canadian companies.

12. BE and DGS are subject to certain investment restrictions that, among other things, limit the equity securities and other securities that BE and DGS may acquire for their portfolios. BE and DGS' investment restrictions may not be changed without the approval of the respective holders of Preferred Shares and Class A Shares, each voting separately as a class, by an extraordinary resolution, at a meeting called for such purpose.

13. BE and DGS have adopted the standard investment restrictions and practices set forth in NI 81-102 (as it may be amended from time to time).

The Amalgamation

14. Subject to regulatory approval, the Amalgamation is expected to occur on or about May 18, 2011.

15. Under the Amalgamation, each Preferred Share of BE will be exchanged for one Preferred Share of DGS. Class A Shares of BE will be exchanged for Class A Shares of DGS at an exchange ratio based on the relative NAV per Class A Share of BE and DGS as determined immediately prior to the effective date of the Amalgamation. Class J Shares of BE will be exchanged for Class J Shares in DGS.

16. The Amalgamation will be a tax-deferred transaction under subsection 87(1) of the *Income Tax Act* (Canada).

17. As a result of the Amalgamation, BE and DGS will amalgamate to form one continuing corporation which will be named Dividend Growth Split Corp.

18. Upon the Amalgamation, the portfolio assets of BE will become the portfolio assets of DGS in compliance with NI 81-102 and currently, or will at the effective date of the Amalgamation, qualify for

inclusion in DGS' portfolio consistent with DGS' investment objectives.

19. The Board of Directors of BE and DGS have approved the Amalgamation, subject to regulatory approval.

20. The independent review committees of BE and DGS have approved the Amalgamation, subject to regulatory approval.

21. At special meetings held on April 8, 2011, shareholders of BE and DGS approved the Amalgamation in accordance with subsections 5.1(f) or (g) of NI 81-102. Each class of shares voted separately.

22. The Filer intends to offer Shareholders of BE who do not wish to participate in the Amalgamation with the opportunity to redeem at NAV per Class A Share or NAV per Preferred Share plus accrued dividends immediately prior to the effective date of the Amalgamation (the "**Special Redemption**").

23. A notice of meeting, a management information circular (the "**Circular**") and a proxy in connection with the Amalgamation was mailed to the Shareholders of BE and DGS on March 18, 2011. The Circular contains a description of the proposed Amalgamation, information about BE and DGS and the income tax considerations for Shareholders of BE and DGS. The Circular discloses that Shareholders of BE and DGS may obtain in respect of DGS, at no cost, an annual information form, the most recent annual and interim financial statements, and the most recent management report of fund performance that have been made public by contacting the Filer or by accessing the websites of BE, DGS or the System for Electronic Document Analysis and Retrieval ("**SEDAR**").

24. BE and DGS will comply with Part 11 of NI 81-106 in deciding to proceed with the Amalgamation. Copies of the press release and material change reports for the Amalgamation are available on the websites of BE, DGS and SEDAR.

25. The Filer will pay all of the costs associated with the Amalgamation, including the cost of holding the meetings for the Amalgamation and of soliciting proxies, including costs of mailing the Circular and accompanying materials.

26. Shareholders of BE will continue to have the right to redeem their Preferred Shares or Class A Shares for cash at any time up to the close of business on the business day immediately preceding the effective date of the Amalgamation but will be required to tender such shares for the Special Redemption on or before a date to be set by the Filer expected to be on about April 15, 2011.

27. Shareholders of BE and DGS may exercise rights of dissent pursuant to section 185 of the OBCA. Those who validly exercise such rights will be entitled to be paid the fair value of the shares. If BE and DGS were trusts these dissent rights would not be available on a merger of BE and DGS.

28. Certain changes will be made to the Preferred Shares and Class A Shares of DGS following the Amalgamation, including extension of the ultimate redemption date of the Preferred Shares and Class A Shares for an additional terms to be determined by the Filer (together with extensions thereafter). In that regard, the board of directors of DGS will have the authority to set the Preferred Share dividend rate at the time of any extension. Following the Amalgamation, shareholders will be able to redeem either their Preferred Shares or Class A Shares of DGS at NAV per share of the class prior to any extension of the redemption date. In order to maintain an equal number of Preferred Shares and Class A Shares of DGS outstanding following the Amalgamation, DGS will have the ability to redeem Preferred Shares on a *pro rata* basis if there are more Preferred Shares than Class A Shares outstanding following the Amalgamation. DGS will also have the ability to authorize the consolidation of Class A Shares if more Class A Shares than Preferred Shares are outstanding following the Amalgamation.

29. The Amalgamation meets all requirements necessary for mutual funds to complete a transaction without regulatory approval as enumerated under subsection 5.6(1) of NI 81-102, except that DGS does not have a current simplified prospectus in the local jurisdiction and except those requirements of subsection 5.6(1) as they relate to fund facts documents and prospectus amendments, as neither BE nor DGS is a non-listed continuously distributed mutual fund.

30. The notice of meeting sent to Shareholders of BE and DGS contains, or incorporates by reference, all the information and documents necessary for the Shareholders to consider the Amalgamation including a full description of the Amalgamation, a full description of BE and DGS and a summary of the Independent Review Committee's decision with respect to the proposed Amalgamation. The Circular contains a prominent statement that Shareholders of BE and DGS may obtain, free of charge, the most recent annual information form, the most recent annual and interim financial statements, and the most recent management reports of fund performance that have been made public by contacting the Filer or by accessing the websites for BE, DGS or SEDAR.

31. The Amalgamation is expected to provide the following benefits:

(a) Following the Amalgamation, DGS is expected to have a larger market capitalization and a greater number of securities and Shareholders than BE or DGS separately do, which is expected to enhance trading liquidity.

(b) Redemption entitlement for BE Shareholders will be enhanced as DGS offers quarterly redemptions at NAV less costs, whereas BE only offers redemptions at NAV less costs on an annual basis. Shareholders of BE will also be provided with an opportunity for redemption earlier than the scheduled maturity date of BE of May 31, 2011.

(c) Shareholders of both BE and DGS are expected to enjoy improved economies of scale and potentially lower proportionate fund operating expenses as part of the larger DGS fund following the Amalgamation, which correspondingly should improve returns.

(d) DGS offers a lower management fee of 0.60% of NAV per annum as compared to the current BE management fee of 1.0% of NAV per annum.

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 is that the Requested Relief is granted.

"Darren McKall"
Manager, Investment Funds
Ontario Securities Commission

2.1.2 Ventana Gold Corp.

Headnote

National Policy 11-203 – Process for Exemptive Relief in Multiple Jurisdictions – National Instrument 51-102 – Continuous Disclosure Obligations, s. 13.1 – Interim financial statements – An issuer wants relief from the requirements to file and/or deliver interim financial statements for a particular period – A compulsory acquisition procedure pursuant to corporate legislation has been undertaken, prior to the filing deadline, in relation to the issuer and its shareholders pursuant to which all of the issuer's securities will be acquired by the offer by a fixed date.

National Instrument 52-109 – Certification of Disclosure in Issuer's Annual and Interim Filings, s. 8.6 – An issuer wants relief from the requirements in Part 5 of NI 52-109 to prepare officer certifications – The issuer has applied for and received an exemption from filing interim financial statements.

Applicable Legislative Provisions

Section 13.1 of NI 51-102.
Section 8.6 of NI 52-109.

May 11, 2011

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

AND

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

AND

IN THE MATTER OF
VENTANA GOLD CORP.
(THE FILER)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief from the requirements: (a) under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), to prepare, file and, where required, deliver to shareholders interim financial statements and management's discussion and analysis for the nine months ended March 31, 2011, (the Interim Filings); and (b) under National Instrument 52-109

Certification *of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109), to file interim certificates (the Officer Certificates) relating to the Interim Filings (together, the Exemptive Relief Sought).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-202 *Passport System* (MI 11-202) is intended to be relied upon in Alberta; and

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

Interpretation

2 Terms defined in National Instrument 14-101 *Definitions* and MI 11-202 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. the Filer is a corporation existing under the *Business Corporations Act* (British Columbia) (the BCBCA); the Filer's head office is at 400 – 837 West Hastings Street, Vancouver, British Columbia V6C 3N6 and its registered and records office is at 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2;

2. the Filer is a reporting issuer in the Jurisdictions and the province of Alberta;

3. the Filer is not in default of any requirement of the Legislation or the securities legislation of Alberta;

4. the common shares of the Filer (the Shares) were delisted from trading on the Toronto Stock Exchange at the close of business on March 25, 2011 and as a result, as of March 26, 2011, the Filer became a "venture issuer" as such term is defined in NI 52-109;

5. the authorized capital of the Filer consists of an unlimited number of common shares; the Filer has no outstanding debt securities and in addition to common shares, there are 900,000 warrants to acquire common shares outstanding, all of which are held by one party and which are out of the money with an exercise price of $15.00 and an expiry date of June 7, 2011. The terms of the warrants expressly disclaim any rights of warrant-holders to be considered as share-holders;

6. on December 16, 2010, AUX Canada Acquisition Inc. (the Offeror) commenced an offer (the Offer) to acquire all of the Shares other than Shares beneficially owned by the Offeror and its affiliates and associates;

7. in the take-over bid circular dated December 16, 2010 accompanying the Offer, the Offeror disclosed that if the Offer was accepted by shareholders who, in the aggregate, held not less than 90% of the issued and outstanding Shares, the Offeror intended to acquire those Shares which remained outstanding held by Shareholders who did not accept the Offer (and each person who subsequently acquired any of such Shares) pursuant to the provisions of section 300 of the BCBCA;

8. on March 4, 15 and 17, 2011, the Offeror took up and paid for, and thereby acquired pursuant to the Offer, an aggregate of approximately 96.9% of the issued and outstanding Shares excluding those outstanding Shares already owned by the Offeror and its affiliates;

9. the Offer expired at 8:00 p.m. (Toronto time) on March 16, 2011;

10. together with the Shares already owned by the Offeror and its affiliates, the Offeror now holds approximately 96.7% of the Shares on a fully diluted basis;

11. in a press release dated March 16, 2011 announcing the completion of the Offer, the Filer announced that it would apply to cease to be a reporting issuer and to otherwise terminate its public reporting requirements as soon as possible;

12. on March 22, 2011, pursuant to the provisions of section 300 of the BCBCA, the Offeror sent to those shareholders of the Filer who had not accepted the Offer (the Remaining Shareholders, which definition includes any person who subsequently acquires such Shares) written notice (the Acquisition Notice) that the Offeror will acquire the Shares held

by the Remaining Shareholders on the same terms, including the price per Share, as the Shares acquired pursuant to the Offer (the Compulsory Acquisition);

13. section 300 of the BCBCA provides that once the Acquisition Notice has been sent, the Offeror is entitled and bound to acquire all of the Shares held by the Remaining Shareholders for the same price and on the same terms contained in the Offer;

14. pursuant to section 300 of the BCBCA, a Remaining Shareholder is entitled to make an application to the court on or before May 23, 2011; neither the Filer nor the Offeror has received notice of any such application. The court may, by order, set the price and terms for payment for the Shares and make consequential orders and give such directions as the court considers appropriate;

15. under the provisions of section 300 of the BCBCA, the Offeror intends to deliver to the Filer on or about May 26, 2011 (the Acquisition Date) a copy of the Acquisition Notice along with a cash payment in the amount equal to the number of Shares held by the Remaining Shareholders multiplied by $13.06, (being approximately $51.1 million), the aggregate amount the Remaining Shareholders are entitled to receive as payment for their Shares pursuant to the Compulsory Acquisition;

16. section 300 of the BCBCA provides that such delivery and payment by the Offeror may not be made for a period of at least two months after the date the Acquisition Notice is sent to the Remaining Shareholders; the Acquisition Date is at least two months after the date the Acquisition Notice was sent by the Offeror;

17. section 300 of the BCBCA also provides that upon receipt of the Acquisition Notice and the cash payment referred to in paragraph 15 above to which the Remaining Shareholders are entitled, the Filer must register the Offeror as the shareholder with respect to all the Shares held by the Remaining Shareholders;

18. as soon as practicable after the Acquisition Date, the Filer intends to apply to the securities regulatory authorities for an order that the Filer cease to be a "reporting issuer" under the laws of the Jurisdictions and the province of Alberta; it is therefore expected that the Filer will be 100% owned by the Offeror by May 27, 2011 and will cease to be a reporting issuer by mid June, 2011;

19. absent the granting of the Exemptive Relief Sought, the Filer would be required to file the Interim Filings and Officer Certificates by May 30, 2011;

20. the Offeror is entitled and bound to acquire all of the Shares held by the Remaining Shareholders and it is anticipated that the Offeror will acquire 100% of the Shares before the date on which the Interim Filings and Officer Certificates must be filed; however, due to the time required for the Filer to cease to be a reporting issuer, the Filer will still be a reporting issuer at that time;

21. it is unnecessary under the circumstances to prepare the Interim Filings and the Officer Certificates as information regarding the Filer's financial position is no longer relevant to the Remaining Shareholders or other market participants who may wish to purchase Shares held by the Remaining Shareholders; and

22. the Offeror has advised the Filer that it has no need to obtain, in the form of the Interim Filings and Officer Certificates, the information to be set out in the Interim Filings and Officer Certificates.

Decision

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

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

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

2.1.3 C.A. Bancorp Inc.

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 January 1, 2011 and ending on December 31, 2011 and the issuer's financial year beginning on January 1, 2012 and ending on December 31, 2012 (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 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings.
National Instrument 52-110 Audit Committees.

May 16, 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
C.A. BANCORP INC.
(the "Applicant")

DECISION

Background

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

1. the requirements of 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 Applicant's financial year beginning on January 1, 2011 and ending on December 31, 2011 and the Applicant's financial year beginning on January 1, 2012 and ending on December 31, 2012 (collectively, the "**Applicant's Deferred Financial Years**");

2. 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 Applicant's Deferred Financial Years;

3. 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 Applicant's Deferred Financial Years; and

4. 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 Applicant's Deferred Financial Years.

(Such requested relief referred to herein as, the **Relief 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 Applicant 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and

Labrador, Yukon Territory, Northwest Territories and Nunavut (the "**Passport Jurisdictions**").

Interpretation

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

Representations

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

The Applicant

1. The Applicant is a company existing under the *Business Corporations Act* (Alberta) (the "**ABCA**").

2. The head office of the Applicant is located at 401 Bay Street, Suite 1600, Toronto, Ontario, M5H 2Y4. The registered office of the Applicant is located at 3700 Canterra Tower, 400 Third Avenue SW, Calgary, Alberta, T2P 4H2.

3. The Applicant is a reporting issuer or equivalent in the Jurisdiction and the Passport Jurisdictions. The Applicant is not in default of its reporting issuer obligations under the Legislation or the legislation of the Passport Jurisdictions.

4. The Applicant is a publicly traded Canadian merchant bank and alternative asset manager that provides investors with access to a range of private equity and other alternative asset class investment opportunities. The Applicant has focused on investments in small- and middle-capitalization public and private companies, with emphasis on the industrials, real estate, infrastructure and financial services sectors. The Applicant is currently implementing a realization strategy under which it is no longer implementing its stated business objective, and is instead seeking opportunities to monetize its existing assets and distributing realized cash to shareholders.

5. The authorized share capital of the Applicant consists of an unlimited number of Common Shares, an unlimited number of Class A preference shares, issuable in series, an unlimited number of Class B preference shares, issuable in series, an unlimited number of Class C preference shares, issuable in series (collectively, the "**Preference Shares**"), of which 12,269,280 Common Shares and no Preference Shares of the Applicant are issued and outstanding.

6. The Common Shares are listed and posted for trading on the Toronto Stock Exchange under the symbol "BKP". The Common Shares are not listed or quoted on any other exchange or market in Canada or elsewhere.

7. The Applicant's financial year end is December 31.

Status

8. The Applicant 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**").

9. The Applicant is not an investment fund as that term is defined in the *Securities Act* (Ontario).

10. 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**").

11. 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 required 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 and in March 2011 issued amendments to Part 1 of the Handbook 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.

12. 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 an old Canadian GAAP and applies to financial statements, financial informa-

tion, operating statements and *pro forma* financial statements for periods relating to financial years beginning before January 1, 2011.

13. As part of the changeover to IFRS, IFRS-related amendments were made to NI 51-102, 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. Therefore, 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.

14. On October 8, 2010, the Canadian Securities Administrators ("**CSA**") published CSA Staff Notice 81-320 *Update on International Financial Reporting Standards for Investment Funds* ("**Notice 81-320**") which indicated that, given the October 1, 2010 amendments to the Handbook that provided for a deferral to the transition to IFRS for investment companies, the CSA would defer finalizing IFRS-related amendments to rules related to investment funds.

15. NI 52-107 and the Rules apply to the Applicant. 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 Applicant has applied for the Relief Sought.

16. The Applicant acknowledges that if the Relief Sought is granted the Applicant:

    (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 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 Relief Sought is granted provided that:

1. The Applicant continues to be an investment company, as defined in AcG-18; and applies all measurement and disclosure requirements of AcG-18, as and when permitted under AcG-18, within its annual and interim financial statements for periods ending on or after December 31, 2010.

2. To meet condition 1 above, the Applicant restates and re-files its annual financial statements for the period ending December 31, 2010 to clearly present and disclose all investments as being measured at fair value (as defined by AcG-18), with separate recognition of any adjustments, such as disposal costs, required to fairly present the financial statements as a whole on a liquidation basis of accounting.

3. the Applicant 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 Applicant's deferred financial years, as if the expression "January 1, 2011" in subsection 4.1(2) were read as "January 1, 2013";

4. the Applicant 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 Applicant's deferred financial years;

5. the Applicant 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 Applicant which includes or incorporates by reference financial statements of

the Applicant in respect of periods relating to the Applicant's deferred financial years;

6. the Applicant 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 Applicant which includes or incorporates by reference financial statements of the Applicant in respect of periods relating to the Applicant's deferred financial years;

7. the Applicant 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 Applicant which includes or incorporates by reference financial statements of the Applicant in respect of periods relating to the Applicant's deferred financial years;

8. the Applicant 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 Applicant's deferred financial years;

9. the Applicant 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 Applicant's deferred financial years;

10. if, notwithstanding this order, the Applicant decides not to rely on the Relief Sought and files an interim financial report prepared in accordance with IFRS for an interim period in a deferred financial year, the Applicant 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 order, 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 order, the Applicant decides not to rely on the Relief Sought and files annual financial statements prepared in accordance with IFRS for a deferred financial year, the Applicant 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 Period that were originally prepared in accordance with old Canadian GAAP and filed pursuant to this order, 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

2.1.4 PHX Energy Services Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption granted to a successor issuer from the requirement to deliver personal information forms for individuals for whom its predecessor issuer previously delivered personal information forms.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions.

May 10, 2011

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

AND

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

AND

IN THE MATTER OF
PHX ENERGY SERVICES CORP.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement under Subsection 4.1(b) of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) for the Filer to deliver a Personal Information Form and Authorization to Collect, Use and Disclose Personal Information (in the form attached as Appendix A to National Instrument 41-101 *General Prospectus Requirements*) for each director and executive officer of the Filer at the time of filing a preliminary short form prospectus, for whom Phoenix Technology Income Fund (the **Fund**) had previously delivered any of the documents described in clauses 4.1(b)(i)(E) through (G) of NI 44-101 at the time of filing such preliminary short form prospectus (the **Exemption Sought**).

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

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

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

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

Interpretation

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

Representations

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

The Fund and the Arrangement

1. The Fund was a trust established under the laws of the Province of Alberta pursuant a trust indenture, as amended and restated as of May 10, 2005, and as further amended on December 31, 2010 in connection with a Plan of Arrangement under Section 193 of the *Business Corporations Act* (Alberta), which resulted in the reorganization of the Fund (an income trust) into a new publicly traded oil and gas services corporation named "PHX Energy Services Corp." (the **Arrangement**).

2. Pursuant to the Arrangement, the Fund was dissolved, the Filer acquired all of the assets of the Fund and the Filer assumed all of the liabilities of the Fund.

3. The Arrangement did not involve the acquisition of any additional assets or the disposition of any existing operating assets.

4. The Fund was a reporting issuer or the equivalent under the securities legislation of each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec and New Brunswick. The Fund was dissolved in connection with the Arrangement and therefore ceased to be a reporting issuer in each of these Provinces.

5. The trust units of the Fund were listed on the Toronto Stock Exchange (the **TSX**) under the symbol "**PHX.UN**" and were delisted from the TSX at the close of business on January 5, 2011.

6. Prior to completion of the Arrangement, to the knowledge of the Filer, the Fund was not in default of applicable securities legislation in any of the Provinces of Canada.

The Filer

7. The Filer is a corporation incorporated under the laws of the Province of Alberta. The principal office of the Filer is located in Calgary, Alberta.

8. The Filer is a reporting issuer or the equivalent under the securities legislation of each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec and New Brunswick, and to its knowledge, is not in default of applicable securities legislation in any of the Provinces of Canada.

9. The common shares of the Filer are listed and posted for trading on the TSX under the symbol "**PHX**".

10. The Fund has previously delivered the documents described in clauses 4.1(b)(i)(E) through (G) of NI 44-101 (the **Fund PIFs**) for each individual who was acting in the capacity of director or executive officer of Phoenix Technology Services Inc., the former administrator of the Fund.

Decision

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

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

(a) each individual:

(i) for whom the Fund has previously delivered a Fund PIF; and

(ii) who is a director or executive officer of the Filer at the time of a prospectus filing by the Filer;

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

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

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

(d) this decision will terminate in any Jurisdiction in which the decision is in effect on the effective date of any change to subparagraph 4.1(b)(i) of NI 44-101.

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

APPENDIX A

AUTHORIZATION OF INDIRECT COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

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

[**Insert issuer name**] (the **Issuer**) hereby confirms that each individual listed on Schedule 1:

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

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

(c) has been notified by the Issuer:

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

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

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

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

2.1.5 Golden Peaks Resources Ltd.

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 assessed the readiness of its staff, board, audit committee, auditors and investors; the target has historically prepared its financial statements in accordance with International Financial Reporting Standards and the target is now or will be the resulting issuer; the issuer's MD&A for the most recent interim period ending prior to the reverse takeover transaction will provide detailed disclosure about its changeover plan as well as the transaction – exemption granted, subject to conditions.

Applicable Legislative Provisions

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

May 12, 2011

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

AND

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

AND

IN THE MATTER OF
GOLDEN PEAKS RESOURCES LTD.
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirement in section 4.2 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* (NI 52-107) that financial statements be prepared in accordance with generally accepted accounting principles determined with reference to Part V of the Handbook applicable to public enterprises (Canadian GAAP – Part V) , in order that the Filer may prepare its financial statements for the interim period ended March 31, 2011 and the financial year ending June 30, 2011 in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IFRS-IASB) (the Exemption Sought).

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

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

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

Interpretation

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

Representations

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

1. the Filer is a corporation incorporated under the laws of British Columbia;

2. the head office of the Filer is located at Suite 1305, 1090 West Georgia Street, Vancouver, British Columbia, V6E 3V7 and its registered office is located at Suite 3350, 1055 Dunsmuir Street, Vancouver, British Columbia V7X 1L2;

3. the Filer is a reporting issuer in British Columbia, Alberta and Ontario;

4. the Filer is not in default of securities legislation of any jurisdiction;

5. the Filer's securities are listed on the Toronto Stock Exchange;

6. the Filer completed an acquisition (the Acquisition) of all of the issued and outstanding common shares of Reliance Resources Limited (the Target), an Australian company, on March 31, 2011;

7. upon the completion of the Acquisition, the Target became a subsidiary of the Filer and the Filer continued to carry on its business through the Target (the Resulting Issuer);

8. the Filer is a mineral exploration company whose major asset, prior to the completion of the Acquisition, was its right to acquire a 100% interest in the La Fortuna Project in Argentina;

9. the Target has been preparing its financial statements in accordance with IFRS-IASB since its incorporation; the financial statements of the Target for its 2010 financial year were prepared in accordance with IFRS-IASB and were audited in accordance with International Standards on Auditing; all interim financial reports prepared by the Target have been prepared in accordance with IAS 34 *Interim Financial Reporting* as issued under IFRS-IASB; the Filer has filed the Target's financial statements for the period from July 24, 2009 (date of incorporation) to June 30, 2010 and the interim period ended December 31, 2010;

10. the Acquisition is a reverse acquisition; although for legal purposes the Filer was the acquiror, for accounting purposes the Target was the acquiror; accordingly, the financial statements of the Resulting Issuer are those of the accounting acquiror, namely the Target;

11. the financial year ended for the Target is June 30; the financial year end of the Resulting Issuer will be changed to June 30 on or prior to May 15, 2011;

12. the Filer has not previously prepared financial statements that contain an explicit and unreserved statement of compliance with IFRS;

13. the Canadian Accounting Standards Board adopted IFRS-IASB as Canadian GAAP for publicly accountable enterprises for financial years beginning on or after January 1, 2011;

14. NI 52-107 sets out acceptable accounting principles for financial reporting under the Legislation by domestic issuers, foreign issuers, registrants and other market participants; under NI 52-107, a domestic issuer must use Canadian GAAP – Part V for fiscal years beginning before January 1, 2011 with the exception that an SEC registrant may use US GAAP; under NI 52-107, only foreign issuers may use IFRS-IASB;

15. in CSA Staff Notice 52-321 *Early Adoption of International Financial Reporting Standards, Use of US GAAP and Reference to IFRS-IASB*, staff of the Canadian Securities Administrators recognized that some issuers may wish to prepare their financial statements in accordance with IFRS-IASB for periods beginning prior to January 1, 2011 and indicated that staff were prepared to recommend exemptive relief on a case by case basis to permit a domestic issuer to do so, despite section 4.2 of NI 52-107;

16. subject to obtaining the Exemption Sought, the Filer will adopt IFRS-IASB concurrent with the completion of the Acquisition;

17. the Filer believes that the use of a single accounting standard would eliminate complexity and cost from the Filer's financial statement preparation process; since the Target prepares it financial statements in accordance with IFRS-IASB, the use of IFRS-IASB as the Filer's accounting standard would permit the Filer to streamline the reporting process and reduce cost;

18. 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 and has concluded that they will be adequately prepared for the Filer's adoption of IFRS-IASB concurrent with the completion of the Acquisition;

19. the Filer has considered the implications of using IFRS-IASB concurrent with the completion of the Acquisition and 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; the Filer has concluded that if the Exemption Sought is granted it will continue to be able to fulfil these obligations;

20. the Filer will restate and re-file its management's discussion and analysis for the interim period ended January 31, 2011 within seven business days of obtaining the Exemption Sought and prior to filing its financial statements for the interim period ended March 31, 2011 and the financial year ended June 30, 2011; the amended and restated management's discussion and analysis will disclose relevant information about the Filer's transition to IFRS-IASB, including:

    (a) the key elements and timing of the Filer's changeover plan;

    (b) an explanation that the Acquisition is a reverse acquisition;

    (c) an explanation that the Filer's accounting will be a continuation of the Target's accounting which has been IFRS since inception; and

    (d) the Target will account for the Filer as a reverse acquisition and present consolidated financial statements; and

21. the Filer will disseminate a news release announcing that it has restated and re-filed its MD&A for the interim period ended January 31, 2011.

Decision

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

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

(a) the Filer prepares its annual financial statements for the financial year ending June 30, 2011 in accordance with IFRS-IASB;

(b) the Filer prepares its interim financial statements for the interim period ending March 31, 2011 in accordance with IFRS-IASB; and

(c) the Filer provides the communication set out in paragraphs 20 and 21.

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

2.1.6 WEX Pharmaceuticals Inc. – 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.

Applicable Legislative Provisions

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

May 16, 2011

WEX Pharmaceuticals Inc.
Suite 1601-700 West Pender Street
Vancouver, British Columbia
V6C 1G8

Dear Sirs/Mesdames:

Re: WEX Pharmaceuticals Inc. (the "Applicant") – application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon Territory, Northwest Territories and Nunavut (the "Jurisdictions") that the Applicant is not a reporting issuer

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

2.1.7 Goodman & Company, Investment Counsel Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to portfolio manager to engage the funds it manages in principal trading of debt securities of third parties with a related dealer in the secondary market – relief conditional on IRC approval and compliance with pricing requirements.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, ss. 13.5(2)(b)(i), 15.1.
National Instrument 81-102 Mutual Funds, ss. 4.2, 19.1.
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

May 13, 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
GOODMAN & COMPANY,
INVESTMENT COUNSEL LTD.
(the Filer)

AND

IN THE MATTER OF THE FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer under section 19.1 of NI 81-102, on behalf of existing mutual funds and future mutual funds that may be established in the future subject to National Instrument 81-102 *Mutual Funds* (**NI 81-102**) for which the Filer acts as manager and/or portfolio adviser (the **Funds**), for relief from the requirement in section 4.2 of NI 81-102 (the **Exemption Sought**) which prevents a mutual fund from purchasing a security from or selling a security to any of the following persons or companies:

1. The manager, portfolio adviser or trustee of the mutual fund;
2. A partner, director or officer of the mutual fund or of the manager, portfolio adviser or trustee of the mutual fund;
3. An associate or affiliate of a person or company referred to in paragraph 1 or 2;
4. A person or company, having fewer than 100 securityholders of record, of which a partner, director or officer of the mutual fund or a partner, director or officer of the manager or portfolio adviser of the mutual fund is a partner, director, officer or securityholder,

if such persons or companies (each a **Related Person**) are acting as principal.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

(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 all of the provinces and territories of Canada other than Ontario (together with Ontario, the **Jurisdictions**).

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions*, NI 81-102 and in National Instrument 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107**) have the same meaning in this decision unless otherwise defined.

In this Decision Document the term **Related Person** will be used to refer to an associate of the Filer that is a principal dealer (**Principal Dealer**) in the Canadian debt securities market.

Representations

This decision is based on the following facts represented by the Filer in respect of the Filer and the Funds.

1. The Filer is a corporation existing under the laws of the Province of Ontario, is registered with the OSC as an adviser in the category of portfolio manager, is further registered in that category in each of British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick and Nova Scotia and is registered as a commodity trading manager with the OSC.
2. The Filer is also an investment fund manager within the meaning of National Instrument 31-103 – *Registration Requirements and Exemptions* and has applied to the OSC for registration in that capacity as required by the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**).

3. Each of the Funds is or will be a reporting issuer in one or more of the Jurisdictions. The securities of each of the Funds are, or will be, qualified for distribution in each of the Jurisdictions pursuant to a simplified prospectus and annual information form that has been, or will be, prepared and filed in accordance with securities legislation of each of the relevant Jurisdictions.

4. The Filer and each Fund are not in default of securities legislation in any province or territory of Canada.

5. The manager of the Funds has established, or will establish, an independent review committee (**IRC**) in respect of each Fund managed or advised by it in accordance with the requirements of NI 81-107.

6. The Bank of Nova Scotia (**Scotiabank**) is the ultimate parent company of the Filer and of Scotia Capital Inc. (**Scotia Capital**). The Filer, as an affiliate of Scotiabank, is deemed pursuant to the Legislation to beneficially own the securities owned by Scotiabank (including the securities of Scotia Capital). As Scotiabank beneficially owns more than 10% of the voting shares of Scotia Capital, Scotia Capital may be considered to be an associate of the Filer under the Legislation.

7. Scotia Capital is a Principal Dealer in the Canadian debt securities market, both primary and secondary.

8. The Funds require the Exemption Sought in order to continue to effectively pursue their investment objectives and strategies.

9. A Fund's purchase of debt securities from a Related Person in the secondary market is subject to section 4.2 of NI 81-102.

10. Section 4.3(2) of NI 81-102, which provides certain relief from section 4.2(1), does not provide an exemption from section 4.2(1) for transactions in debt securities issued or fully and unconditionally guaranteed by the federal or a provincial government (**Government Debt Securities**) or debt securities of an issuer other than the federal or a provincial government (**Non-Government Debt Securities**) that are neither the subject of public quotations nor inter-fund trades that comply with section 6.1(2) of NI 81-107.

11. The exemption in section 4.3(2) of NI 81-102 would not assist a Fund's purchase or sale of Government Debt Securities or Non-Government Debt Securities from or to an associate of the Filer that is a Principal Dealer, such as Scotia Capital, which are prohibited under the Legislation (a **Restricted Transaction**).

12. The Filer has made the application for the Exemption Sought so that a Fund may purchase from or sell to a Related Person that is a Principal Dealer, Non-Government Debt Securities or Government Debt Securities in the secondary market.

13. There is a limited supply of Non-Government Debt Securities and Government Debt Securities available to the Funds, and frequently the only source of Non-Government Debt Securities for a Fund may be a Related Person, such as Scotia Capital.

14. The Filer considers granting the Exemption Sought to not be prejudicial to the public interest, given that the decision to transact securities purchases and sales with a Related Person will be made in the best interests of the Funds and free from the influence of a Related Person such as Scotia Capital.

15. The Filer considers that a Fund may be prejudiced if it must refrain from entering into a Restricted Transaction, where to do so is consistent with its investment objective.

16. Associates of the Filer such as Scotia Capital, do not influence the business judgment of the Filer in connection with the determination of the suitability of investments and information and influence barriers are in place. Decisions made by the Filer as to which investments a Fund should hold are based on the best interests of such Fund, without consideration given to the interests of the party with whom a purchase or sale is transacted. This principle is reflected in the policies and procedures that have been and will be implemented and approved by the IRC for dealing with related parties.

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 purchase or sale is consistent with, or is necessary to meet, the investment objective of the Fund;

(b) at the time of the investment, the IRC has approved the transaction in accordance with section 5.2(2) of NI 81-107;

(c) the Filer, as manager of a Fund, complies with section 5.1 of NI 81-107, and the Filer and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC pro-

vides in connection with the investment in the securities;

(d) the bid and ask price of the security transacted are readily available, as contemplated by section 6.1(2)(c) of NI 81-107;

(e) a purchase is not executed at a price which is higher than the available ask price and a sale is not executed at a price which is lower than the available bid price;

(f) the purchase or sale is subject to "market integrity requirements" as defined in NI 81-107; and

(g) the Fund keeps the written records required by section 6.1(2)(g) of NI 81-107.

"Vera Nunes"
Manager, Investment Funds
Ontario Securities Commission

2.1.8 Goodman & Company, Investment Counsel Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to portfolio manager to engage the funds it manages in principal trading of debt securities of third parties with a related dealer in the secondary market – relief conditional on IRC approval and compliance with pricing requirements.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, ss. 13.5(2)(b)(i), 15.1.
National Instrument 81-102 Mutual Funds, ss. 4.2, 19.1.
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

May 13, 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
GOODMAN & COMPANY,
INVESTMENT COUNSEL LTD.
(the Filer)

AND

IN THE MATTER OF
THE FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on its own behalf and on behalf of existing mutual funds and future mutual funds of which the Filer is the manager and/or adviser and to which National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) applies (each, an **NI 81-102 Fund** and collectively, the **NI 81-102 Funds**), and on behalf of existing mutual funds and future mutual funds of which the Filer is the manager and/or adviser and to which NI 81-102 does not apply (each, a **Pooled Fund** and collectively, the **Pooled Funds** and together with the NI 81-102 Funds, the **Funds**), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the

Filer, as the registered adviser of a Fund, from the prohibition in Section 13.5(2)(b)(ii) of National Instrument 31-103 – *Registration Requirements and Exemptions* (**NI 31-103**) to permit the Funds to purchase or sell a security from or to the investment portfolio of an associate of the Filer (a **Related Person**, as further defined below) (collectively, the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

(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 all of the provinces and territories of Canada other than Ontario (together with Ontario, the Jurisdictions).

Interpretation

Defined terms contained in National Instrument 14-101 – *Definitions*, NI 31-103, NI 81-102 and in National Instrument 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107**) have the same meaning in this decision unless otherwise defined.

In this Decision Document, the term **Related Person** will be used to refer to an associate of the Filer that is a principal dealer (**Principal Dealer**) in the Canadian debt securities market.

Representations

The decision is based on the following facts represented by the Filer in respect of the Filer and the Funds.

1. The Filer is a corporation existing under the laws of the Province of Ontario, is registered with the OSC as an adviser in the category of portfolio manager, is further registered in that category in each of British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick and Nova Scotia and is registered as a commodity trading manager with the OSC.

2. The Filer is also an investment fund manager within the meaning of NI 31-103 and has applied to the OSC for registration in that capacity as required by the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**).

3. Each of the NI 81-102 Funds is or will be a reporting issuer in one or more of the Jurisdictions. The securities of each of the NI 81-102 Funds are, or will be, qualified for distribution in each of the Jurisdictions pursuant to a simplified prospectus and annual information form that has been, or will be, prepared and filed in accordance with securities legislation of each of the relevant Jurisdictions.

4. The securities of the Pooled Funds are or will be offered for sale only on an exempt basis pursuant to available prospectus and registration exemptions from the prospectus requirements in one or more of the Jurisdictions. None of the Pooled Funds is or will be a reporting issuer.

5. The Filer and each Fund are not in default of securities legislation in any province or territory of Canada.

6. An Independent Review Committee (**IRC**) has been or will be established for each Fund in accordance with the requirements of NI 81-107.

7. The Filer, as the registered adviser of a Fund, will be a responsible person under the Legislation.

8. The Bank of Nova Scotia (**Scotiabank**) is the ultimate parent company of the Filer and of Scotia Capital Inc. (**Scotia Capital**). The Filer, as an affiliate of Scotiabank, is deemed pursuant to the Legislation to beneficially own the securities owned by Scotiabank (including the securities of Scotia Capital). As Scotiabank beneficially owns more than 10% of the voting shares of Scotia Capital, Scotia Capital may be considered to be an associate of the Filer under the Legislation.

9. Scotia Capital is a Principal Dealer in the Canadian debt securities market, both primary and secondary.

10. The Funds require the Exemption Sought in order to effectively pursue their investment objectives and strategies.

11. A Fund's purchase of debt securities of an issuer from an associate of a responsible person is prohibited under the Legislation (a **Restricted Transaction**).

12. There is a limited supply of Non-Government Debt Securities and Government Debt Securities available to the Funds, and frequently the only source of Non-Government Debt Securities for a Fund may be a Related Person such as Scotia Capital.

13. The Filer considers granting the Exemption Sought to not be prejudicial to the public interest, given that the decision to transact securities purchases and sales with a Related Person will be made in the best interests of the Funds and free from the influence of a Related Person, such as Scotia Capital.

14. The Filer considers that a Fund may be prejudiced if it must refrain from entering into a Restricted Transaction, where to do so is consistent with its investment objective.

15. Associates of the Filer, such as Scotia Capital, do not and will not influence the business judgment of the Filer in connection with the determination of the suitability of investments and information and influence barriers are in place. Decisions made by the Filer, as to which investments a Fund should hold are and will be based on the best interests of such Fund, without consideration given to the interests of the party with whom a purchase or sale is transacted. This principle is reflected in the policies and procedures that have been and will be implemented and approved by the IRC for dealing with related parties.

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 purchase or sale is consistent with, or is necessary to meet, the investment objective of the Fund;

(b) at the time of the investment, the IRC has approved the transaction in accordance with section 5.2(2) of NI 81-107;

(c) the Filer, as manager of a Fund, complies with section 5.1 of NI 81-107, and the Filer and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the investment in the securities;

(d) the bid and ask price of the security transacted are readily available, as contemplated by section 6.1(2)(c) of NI 81-107;

(e) a purchase is not executed at a price which is higher than the available ask price and a sale is not executed at a price which is lower than the available bid price;

(f) the purchase or sale is subject to "market integrity requirements" as defined in NI 81-107; and

(g) the Fund keeps the written records required by section 6.1(2)(g) of NI 81-107.

"Vera Nunes"
Manager, Investment Funds
Ontario Securities Commission

2.2 Orders

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

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

AND

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

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

WHEREAS on March 19, 2010, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering that (i) trading in the securities of Richvale Resource Corp. ("Richvale") shall cease and (ii) Richvale and its representatives, including Marvin Winick ("Winick"), Howard Blumenfeld ("Blumenfeld"), Pasquale Schiavone ("Schiavone") and Shafi Khan ("Khan") cease trading in all securities (the "Temporary Order");

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

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

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

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

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

iv) it was further ordered pursuant to clause 2 of subsection 127 (1) of the Act that any exemptions contained in Ontario securities laws in respect of Richvale,

Winick, Blumenfeld, Schiavone and Khan are removed.

AND WHEREAS on April 1, 2010, the Amended Temporary Order was extended to June 4, 2010 by order of the Commission pursuant to subsection 127(8) of the Act and the hearing in this matter was adjourned until June 3, 2010;

AND WHEREAS on June 3, 2010, the Amended Temporary Order was extended to December 3, 2010 pursuant to subsection 127(8) of the Act and the hearing in this matter was adjourned until December 2, 2010;

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

AND WHEREAS on December 2, 2010, the Commission ordered that the Amended Temporary Order be extended pursuant to subsection 127(8) of the Act against each of Richvale, Winick, Blumenfeld, Schiavone and Khan until the conclusion of the hearing on the merits in relation to Staff's Allegations;

AND WHEREAS on December 2, 2010, this matter was adjourned to a pre-hearing conference on February 28, 2011;

AND WHEREAS on February 28, 2011, a pre-hearing conference was held at 10:00 a.m. during which time Khan appeared personally and Staff advised the Panel that the other respondents had notice of the pre-hearing conference but did not attend;

AND WHEREAS at the pre-hearing conference on February 28, 2011, the Commission ordered that a further pre-hearing conference will take place on May 10, 2011 commencing at 2:30 p.m.;

AND WHEREAS the Commission further ordered on February 28, 2011 that the hearing on the merits in this matter is scheduled to commence on October 17, 2011 at 10:00 a.m. and continue each day through to October 24, 2011 and from October 26, 2011 each day through to October 31, 2011 or as soon thereafter as may be fixed by the Secretary to the Commission;

AND WHEREAS on May 10, 2011, a pre-hearing conference was held at 2:30 p.m. during which time Colonna and Khan attended personally and counsel attended on behalf of Winick and Staff advised the Panel that the other respondents had notice of the pre-hearing conference but did not attend;

AND WHEREAS on May 10, 2011, Staff and the Respondents provided the Commission with a status update with respect to this matter;

AND WHEREAS the Commission considered the submissions made by Staff and the Respondents;

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

IT IS ORDERED that the hearing with respect to Staff's Allegations is adjourned to October 17, 2011 at 10:00 a.m. or such further or other dates prior thereto as may be agreed to by the parties and fixed by the Office of the Secretary.

DATED at Toronto this 10th of May, 2011.

"Edward P. Kerwin"

2.2.2 Nelson Financial Group Ltd. et al.

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

ORDER

WHEREAS on May 12, 2010, 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") on May 12, 2010 with respect to Nelson Financial Group Ltd., Nelson Investment Group Ltd., Marc D. Boutet, Stephanie Lockman Sobol, Paul Manuel Torres, and H.W. Peter Knoll (collectively, the "Respondents");

AND WHEREAS on August 16, 2010, the Commission ordered that the hearing on the merits shall commence on Monday, February 14, 2011 at 10:00 a.m.;

AND WHEREAS on November 10, 2010, Staff amended the Statement of Allegations;

AND WHEREAS on January 31, 2011, the Commission ordered that:

1. The hearing for this matter is adjourned to May 16, 2011 through to May 31, 2011, excluding May 23 and 24, 2011, peremptory to the Respondents with or without counsel; and

2. A pre-hearing conference will be held on February 25, 2011 at 11:00 a.m;

AND WHEREAS the remaining parties to this proceeding are engaged in settlement discussions with Staff and the parties consent to the adjournment reflected by this Order;

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 commence on May 17, 2011 at 10:00 a.m., or such other date as the Secretary's Office may advise and the parties agree to.

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

"James E. A. Turner"

2.2.3 Nelson Financial Group Ltd. et al.

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

ORDER

WHEREAS on May 12, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations issued by Staff of the Commission ("Staff") in this matter;

AND WHEREAS on November 10, 2010, Staff amended the Statement of Allegations;

AND WHEREAS Marc D. Boutet ("Boutet") and Nelson Investment Group Ltd. ("Nelson Investment") entered into a settlement agreement with Staff dated May 12, 2011 (the "Settlement Agreement"), subject to the approval of the Commission;

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

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

IT IS ORDERED THAT

(a) The Settlement Agreement is approved;

(b) Pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Boutet and Nelson Investment shall cease permanently, with a carve out for trading by Boutet in his personal RRSP account after the payment set out in subparagraph (f) is paid in full;

(c) Pursuant to clause 1 of subsection 127(1) of the Act, the registration granted to Boutet and Nelson Investment under Ontario securities law shall be terminated permanently;

(d) Pursuant to clause 8 of subsection 127(1) of the Act, Boutet shall be prohibited from becoming or acting as a director or an officer of any issuer, for a period of 15 years;

(e) Pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Boutet and Nelson Investment, permanently; and

(f) Pursuant to clauses 9 and 10 of subsection 127(1) of the Act, Boutet and Nelson Investment shall pay the amount of $550,000 to be allocated to or for the benefit of third parties under subsection 3.4(2)(b) of the Act, with payment of $200,000 to be made by certified cheque at the time of the settlement hearing.

DATED at Toronto this 16th day of May, 2011.

"Edward P. Kerwin"

2.2.4 Nelson Financial Group Ltd. et al.

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

ORDER

WHEREAS on May 12, 2010, 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 Nelson Financial Group Ltd., Nelson Investment Group Ltd., Marc D. Boutet, Stephanie Lockman Sobol, Paul Manuel Torres, and H.W. Peter Knoll;

AND WHEREAS on August 16, 2010, the Commission ordered that the hearing on the merits shall commence on Monday, February 14, 2011 at 10:00 a.m.;

AND WHEREAS on January 31, 2011, the Commission ordered that:

1. The hearing for this matter is adjourned to May 16, 2011 through to May 31, 2011, excluding May 23 and 24, 2011, peremptory to the Respondents with or without counsel; and

2. A pre-hearing conference will be held on February 25, 2011 at 11:00 a.m;

AND WHEREAS on May 13, 2011, the Commission ordered that the hearing on the merits was adjourned until May 17, 2011 at 10:00 a.m.;

AND WHEREAS the parties consent to the adjournment;

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 May 25, 2011 at 10:00 a.m., or such other date as the Secretary's Office may advise and the parties agree to.

DATED at Toronto this 16th day of May, 2011.

"James Turner"

2.2.5 Oversea Chinese Fund Limited Partnership et al. – ss. 127(7), 127(8)

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

AND

**IN THE MATTER OF
OVERSEA CHINESE FUND LIMITED
PARTNERSHIP, WEIZHEN TANG AND
ASSOCIATES INC., WEIZHEN TANG CORP.
AND WEIZHEN TANG**

**EXTENSION OF TEMPORARY ORDER
(Subsections 127(7) and (8))**

WHEREAS on March 17, 2009, pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), the Ontario Securities Commission (the "Commission") made the following temporary orders (the "Temporary Order") against Oversea Chinese Fund Limited Partnership ("Oversea"), Weizhen Tang and Associates Inc. ("Associates"), Weizhen Tang Corp. ("Corp.") and Weizhen Tang, (collectively the "Respondents"):

1. that all trading in securities of Oversea, Associates and Corp. shall cease;

2. that all trading by the Respondents shall cease; and

3. that the exemptions contained in Ontario securities law do not apply to the Respondents.

AND WHEREAS on March 17, 2009, pursuant to subsection 127(6) of the Act, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

AND WHEREAS on March 18, 2009, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on April 1, 2009 at 2:00 p.m.;

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

AND WHEREAS prior to the April 1, 2009 hearing date, Staff of the Commission ("Staff") served the Respondents with copies of the Temporary Order, Notice of Hearing, and Staff's supporting materials;

AND WHEREAS on April 1, 2009, counsel for the Respondents advised the Commission that the Respondents did not oppose the extension of the Temporary Order;

AND WHEREAS on April 1, 2009, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to extend the Temporary Order until September 10, 2009;

AND WHEREAS on April 1, 2009, the Commission ordered that the Temporary Order be extended, pursuant to subsection 127(8) of the Act, to September 10, 2009 and the hearing be adjourned to September 9, 2009;

AND WHEREAS on September 8, 2009, the Commission ordered, on consent, that the Temporary Order be extended until September 26, 2009 and the hearing be adjourned until September 25, 2009 at 10:00 a.m. as counsel for the Respondents requested that the hearing be adjourned as he required more time to file materials for the hearing;

AND WHEREAS on September 24, 2009, the Commission ordered, on consent, that the Temporary Order be extended until October 23, 2009 and the hearing be adjourned until October 22, 2009 at 10:00 a.m.;

AND WHEREAS on October 22, 2009, the Commission ordered, on consent, that the Temporary Order be extended until November 16, 2009 and the hearing be adjourned until November 13, 2009 at 10:00 a.m.;

AND WHEREAS on November 13, 2009, the Respondents brought a motion before the Commission to have the Temporary Order varied to allow Weizhen Tang to trade (the "Tang Motion") and Staff opposed this motion;

AND WHEREAS on November 13, 2009, Staff sought an extension of the Temporary Order until after the conclusion of the charges before the Ontario Court of Justice against Oversea, Associates and Weizhen Tang;

AND WHEREAS on November 13, 2009, the Commission considered the materials filed by the parties, the evidence given by Weizhen Tang, and the submissions of counsel for Staff and counsel for the Respondents;

AND WHEREAS on November 13, 2009, the Commission was of the opinion that, pursuant to subsection 127(8) of the Act, satisfactory information had not been provided to the Commission by any of the Respondents; it was in the public interest to order that the Tang Motion is denied; the Temporary Order is extended until June 30, 2010; and the hearing be adjourned to June 29, 2010 at 10:00 a.m.;

AND WHEREAS on June 29, 2010, Staff sought an extension of the Temporary Order until after the conclusion of the charges before the Ontario Court of Justice against Oversea, Associates and Weizhen Tang;

AND WHEREAS on June 29, 2010, the Respondents and Staff filed materials, including the Affidavit of Jeff Thomson, sworn on June 23, 2010;

AND WHEREAS on June 29, 2010, the Commission considered the materials filed by the parties, the submissions of counsel for Staff and counsel for the Respondents, and the submissions of Tang;

AND WHEREAS on June 29, 2010, the Commission ordered that the Temporary Order be extended until March 31, 2011, and the hearing be adjourned to March 30, 2011, at 10:00 a.m.;

AND WHEREAS on March 30, 2011, no one appeared on behalf of the Respondents despite being given notice of this appearance;

AND WHEREAS on March 30, 2011, the Commission ordered that the Temporary Order was extended until May 17, 2011 and the hearing was adjourned to May 16, 2011 at 10:00 a.m.;

AND WHEREAS on May 16, 2011, Staff made submissions and sought an extension of the Temporary Order and the Respondent Weizhen Tang appeared on behalf of all Respondents and made submissions opposing the extension of the Temporary Order;

AND WHEREAS pursuant to subsection 127(8) of the Act, satisfactory information has not been provided to the Commission by any of the Respondents at this time;

AND WHEREAS on May 16, 2011, the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED that the Temporary Order is extended until November 1, 2011; and

IT IS FURTHER ORDERED that the hearing in this matter is adjourned to October 31, 2011, at 10:00 a.m.

DATED at Toronto this 16th day of May, 2011.

"James D. Carnwath"

2.2.6 Nelson Financial Group Ltd. et al.

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

ORDER

WHEREAS on May 12, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations issued by Staff of the Commission ("Staff") in this matter;

AND WHEREAS on November 10, 2010, Staff amended the Statement of Allegations;

AND WHEREAS Paul Manuel Torres ("Torres") entered into a settlement agreement with Staff dated May 11, 2011 (the "Settlement Agreement"), subject to the approval of the Commission;

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

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

IT IS ORDERED THAT

(a) The Settlement Agreement is approved;

(b) Pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Torres shall cease permanently with a carve out for trading by Torres in his personal RRSP account after the payment set out in subparagraph (f) is paid in full;

(c) Pursuant to clause 1 of subsection 127(1) of the Act, the registration granted to Torres under Ontario securities law shall be terminated, permanently;

(d) Pursuant to clause 8 of subsection 127(1) of the Act, Torres is prohibited from becoming or acting as a director or an officer of any issuer for the greater of 15 years, or until such time as the payment specified in paragraph (f) is made in full;

(e) Pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Torres, permanently; and

(f) Pursuant to clauses 9 and 10 of subsection 127(1) of the Act, Torres shall pay the amount of $50,000 to be allocated to or for the benefit of third parties under subsection 3.4(2)(b) of the Act, with payment of $20,000 to be made by certified cheque at the time of the settlement hearing and the remaining $30,000 to be paid within five years of the date this Settlement Agreement is executed.

DATED at Toronto this 16th day of May, 2011.

"Edward P. Kerwin"

2.2.7 Nelson Financial Group Ltd. et al.

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

ORDER

WHEREAS on May 12, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127(1) and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") in this matter dated May 12, 2010;

AND WHEREAS on November 10, 2010, Staff amended the Statement of Allegations;

AND WHEREAS Stephanie Lockman Sobol ("Sobol") entered into a settlement agreement with Staff dated May 16, 2011 (the "Settlement Agreement") subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and counsel for Sobol.

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

IT IS ORDERED THAT

1. The Settlement Agreement is approved; and

2. Pursuant to clause 8 of subsection 127(1) of the Act, Sobol shall be prohibited from acting as a director or officer of an issuer for a period of 6 years from the date of the order approving the settlement, save and except in relation to her employment as general manager of Provider Capital Group until June 13, 2011.

DATED at Toronto this 18th day of May, 2011.

"James D. Carnwath"

2.3 Rulings

2.3.1 Sextant Capital Management Inc. et al.

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

AND

IN THE MATTER OF
SEXTANT CAPITAL MANAGEMENT INC.,
SEXTANT CAPITAL GP INC., OTTO SPORK,
KONSTANTINOS EKONOMIDIS,
ROBERT LEVACK AND NATALIE SPORK

MID-HEARING RULING
(ADMISSIBILITY OF COMPELLED TESTIMONY)

Decision:	October 18, 2010		
Panel:	James D. Carnwath	–	Chair of the Panel
	Carol S. Perry	–	Commissioner
Counsel:	Tamara Center Brendan Van Niejenhuis Ray Daubney Pavel Malysheuski	–	for Staff of the Ontario Securities Commission
	Joseph Groia Kevin Richard	–	Counsel for Otto Spork, Natalie Spork and Konstantinos Ekonomidis

[1] Staff seeks to file excerpts from the respective transcripts of compelled examinations of Natalie Spork and Konstantinos Ekonomidis, (the "Respondents"). The transcripts record the compelled testimony authorized by s. 13 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*"), which allows persons appointed to investigate matters pursuant to an order under s. 11 of the *Act* to compel persons or companies to provide testimony, documents, and/or other things.

[2] The Respondents both took and rely upon the protections provided under s. 9 of the *Evidence Act* (Ontario), which provides that compelled testimony shall not be used or receivable in evidence against that person in any civil proceeding or any proceeding under any act of the legislature.

ISSUES TO BE DECIDED

[3] The Respondents make several submissions in opposing the use of the compelled testimony. The issues to be decided are as follows:

(A) Are the investigation stage and the adjudicative stage one proceeding, or two separate proceedings, in a regulatory context?

(B) Regardless of the answer to (A), does s. 9(2) of the *Evidence Act* (Ontario) prohibit the use of compelled testimony in the circumstances of this matter?

(C) Does the use of the compelled testimony contravene the Respondents' *Charter* rights?

(A) Are the investigation stage and the adjudicative stage one proceeding, or two separate proceedings, in a regulatory context?

[4] In support of their submission that the investigative stage and the adjudicative stage are two separate proceedings, the Respondents submit:

- Rule 2.5 of the OSC's *Rules of Procedure* states that "a proceeding commences upon the issuance of a Notice of Hearing by the Secretary".

- Section 3 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("SPPA") applies "to a proceeding by a tribunal in the exercise of a statutory power of decision", while s. 3(2) of the SPPA provides that the SPPA does not apply to investigations. Therefore, say the Respondents, a proceeding cannot be both subject to and not subject to the SPPA.

- The decision in *Alberta (Securities Commission) v. Brost* [2008] A.W.L.D. 4625 cited by Staff is of no assistance to the Panel because of the different regimes in Ontario and Alberta.

[5] We take the view that r. 2.5 of the OSC's *Rules of Procedure* is not determinative of the issue. There can be stages in a regulatory proceeding, including an investigation stage and an adjudicative stage. Rule 2.5 simply identifies the commencement of the adjudicative stage.

[6] As regards the SPPA, the Respondents cite no authority for the proposition that a regulatory proceeding cannot be both subject to, and not subject to, the SPPA. We know of no impediment to one stage of a proceeding being subject to the SPPA and another not. The investigative stage, by definition, precedes the adjudicative stage which is subject to SPPA supervision.

[7] The Alberta Court of Appeal decision in *Brost*, above, is persuasive and worthy of respect. The issue before the court was a simple one – the use of compelled testimony. That issue transcends any differences in the regimes of Ontario and Alberta. At para. 37, the Court found that:

> The interviews were not used to incriminate these appellants in the sense that criminal proceedings were involved nor were they used in other proceedings. Rather the interviews were used in the same regulatory proceeding in which they were obtained.

We take the same view in this matter – the compelled testimony would be used in the same regulatory proceeding in which it was obtained.

[8] Section 16(2) of the *Act* provides that all testimony given under s. 13 is for the "exclusive use of the Commission and shall not be disclosed" except as permitted under s. 17. Section 17(6) specifically permits disclosure of that testimony in connection with "a proceeding commenced by the Commission under this Act." We agree with Staff's submission that the combination of these two sections contemplate that testimony given under s. 13 may be used in a s. 127 proceeding before the Commission.

[9] Section 18 of the *Act* sets out prohibited uses of compelled testimony pursuant to s. 13. Section 18 provides that compelled testimony is not to be used in s. 122 proceedings or any other proceedings under the *Provincial Offences Act*. Nowhere in s. 18 of the *Act* is there a prohibition against the use of compelled testimony in s. 127 proceedings brought before the Commission. Had the legislature intended to prohibit the use of compelled testimony in s. 127 proceedings, it would have been a simple matter for the inclusion of s. 127 proceedings as one of the prohibited uses of compelled testimony in s. 18. We conclude that the reverse is the case, that is, the legislative intention was that compelled testimony could be used in s. 127 proceedings.

[10] We conclude that the investigative stage and the adjudicative stage are not separate proceedings, but rather stages in one proceeding, in the circumstances of this matter.

(B) Regardless of the answer to (A), does s. 9(2) of the *Evidence Act* (Ontario) prohibit the use of compelled testimony in the circumstances of this matter?

[11] The Respondents submit that s. 9(2) of the *Evidence Act* (Ontario) prohibits the use of the compelled testimony because Staff proposes that it be used "in any proceeding under any Act of the Legislature" which includes the *Securities Act*.

[12] Section 9 of the *Evidence Act*, states:

> 9(1) A witness shall not be excused from answering any question upon the ground that the answer may tend to criminate the witness or may tend to establish his or her liability to a civil proceeding at the instance of the Crown or of any persons or to a prosecution under any Act of the Legislature.
>
> (2) If, with respect to a question, a witness objects to answer upon any of the grounds mentioned in subsection (1) and if, but for this section or any Act of the Parliament of Canada, he or she would therefore be excused from answering such question, then, although the witness is by reason of this section or by reason of any Act of the Parliament of Canada, compelled to answer, the answer so given shall not be used or receivable in evidence against him or her in any civil proceeding or in any proceeding under any Act of the Legislature.
>
> *Evidence Act* (Ontario), s. 9

[13] In support of their submission, the Respondents cite *Liberman v. College of Physicians & Surgeons (Ontario)* (2010) S.C.J. 337 in support of their submissions. Dr. Liberman testified in a hearing involving the conduct of one Dr. Yazdanfar. In a subsequent hearing involving his own conduct, the College proposed to confront Dr. Liberman with the compelled testimony he gave in Dr. Yazdanfar's hearing. Not surprisingly, Jennings J. found that the prohibition in s. 9(2) of the *Evidence Act* prohibited the introduction of compelled testimony given by Dr. Liberman in Dr. Yazdanfar's hearing. We find on the facts of *Liberman*, that the hearing involving Dr. Liberman's conduct was a subsequent proceeding to that in which he gave evidence involving the conduct of Dr. Yazdanfar. The case does not assist the Respondents as its facts fall squarely within the prohibition in s. 9(2) of the *Evidence Act* (Ontario).

[14] To accept the Respondent's submission that compelled evidence cannot be used "in any proceeding under any Act of the Legislature" would hamper effective enforcement for many boards and commissions throughout Ontario that have the power to compel testimony.

[15] We agree with Staff's submission that for s. 9(2) of the *Evidence Act* (Ontario) to make sense in a tribunal setting, the words "subsequent" must be read in to s. 9(2) so that it provides that "the answer so given shall not be used or receivable in evidence against him or her in any civil proceeding or in any subsequent proceeding under any Act of the Legislature.

[16] We conclude that s. 9(2) of the Evidence Act (Ontario) does not prohibit the use of the compelled testimony in this matter.

(C) Does the use of the compelled testimony contravene the Respondents' *Charter* rights?

[17] Section 11(c) of the *Charter* gives any person charged with an offence the right "not to be compelled to be a witness in proceedings against that person in respect of the offence".

[18] As long ago as 1987, the Supreme Court of Canada held that the *Charter* applies only in circumstances where the proceedings are criminal or penal in nature and does not apply in proceedings that are regulatory in nature:

> In my view, if a particular matter is of a public nature, intended to promote public order and welfare within a public sphere of activity, then that matter is the kind of matter which falls within s. 11. It falls within the section because of the kind of matter it is. This is to be distinguished from private, domestic or disciplinary matters which are regulatory, protective or corrective and which are primarily intended to maintain discipline, professional integrity and profession standards or to regulate conduct within a limited private sphere of activity…
>
> *R. v. Wigglesworth*, [1987] 2 S.C.R. 541 at para. 32

[19] We must conclude that s. 11(c) of the Charter does not apply to the Respondents in the circumstances of this matter.

[20] Section 13 of the *Charter* provides that a witness who testifies in any proceeding has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceeding, except in a prosecution for perjury or for the giving of contradictory evidence.

[21] We have determined previously in these reasons that the investigative stage and the adjudicative stage are one proceeding, in a regulatory context.

[22] In *British Columbia (Securities Commission) v. Branch*, [1995] 2 S.C.R. 3, the Supreme Court of Canada found that compelled evidence is admissible in the context of proceedings before provincial securities commissions. The court went on to say that it must be established that the predominant purpose of an investigation was to obtain relevant evidence to be led in an administrative proceeding, rather than to incriminate those persons from whom the evidence was obtained. If the intention was to incriminate, derivative use of that compelled evidence in other proceedings would be prohibited.

[23] T here is no evidence to suggest that Staff intended to incriminate the Respondents. Everything we have heard and read in these proceedings confirms that Staff is carrying out the regulatory mandate of the *Act*.

[24] We must conclude that s. 13 of the *Charter* does not apply to the Respondents in the circumstances of this case.

[25] Staff may file excerpts from the respective transcripts of compelled examinations of the Respondents, Natalie Spork and Konstantinos Ekonomidis.

DATED at Toronto this 18th day of October, 2010.

"James D. Carnwath"
James D. Carnwath

"Carol S. Perry"
Carol S. Perry

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Nelson Financial Group Ltd. et al.

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of Marc D. Boutet ("Boutet") and Nelson Investment Group Ltd. ("Nelson Investment") (collectively, the "Respondents").

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated May 12, 2010 (the "Proceeding") against the Respondents according to the terms and conditions set out in Part V of this Settlement Agreement. The Respondents agree to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III - AGREED FACTS

3. Only for the purposes of this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondents agree with the facts as set out in Part III of this Settlement Agreement.

Overview

4. In this Proceeding, Staff allege an illegal distribution of securities in breach of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act"), by the respondent issuer Nelson Financial Group Ltd. ("Nelson Financial"), its related investment company Nelson Investment, the directing mind of these entities Boutet, and by the other individually named respondents, H. W. Peter Knoll ("Knoll"), Paul Manuel Torres ("Torres") and Stephanie Lockman Sobol ("Sobol"), who were employees and/or agents of Nelson Financial and/or Nelson Investment.

5. Between December 19, 2006 and January 31, 2010 (the "Material Time"), Nelson Financial, through Nelson Investment and/or its employees and agents, including the individual respondents, raised investor funds of over $50 million (net of redemptions) from approximately 500 Ontario investors by issuing non- prospectus qualified securities. Nelson Financial relied upon the Accredited Investor Exemption (defined below) and the Minimum Investment exemption in selling securities of Nelson Financial. However, a significant number of investors were not accredited.

6. Throughout the Material Time, Nelson Financial sustained operating losses each year and operated at an increasing deficit. Notwithstanding that Boutet was advised by a consultant that Nelson had a path to profitability in four to five years if it moved away from the vehicle financing business, Nelson Financial continued to budget and realize losses, and Nelson Financial was unable to meet its obligations without the receipt of new investor capital. Nelson Financial deposited investor funds in the Nelson Financial operating account. These funds were then used to fund Consumer Loans (defined below), but also to fund operational expenses and to pay investors the returns on their investment. Nelson Financial continued to accept additional

investor funds after the point at which it was insolvent, and while it continued to inform investors that it was enjoying financial success.

The Respondents

7. Nelson Financial was incorporated in Ontario on September 14, 1990. Nelson Financial is not a reporting issuer and is not registered under the Act. Nelson Financial provides vendor assisted financing for the purchase of home consumable products, either through a vendor (or an aggregator of vendors), or directly to the consumer (the "Consumer Loans").

8. Nelson Investment was incorporated in Ontario on September 14, 2006 for the sole purpose of selling securities of Nelson Financial. On December 19, 2006, Nelson Investment obtained registration under the Act as a dealer in the category of limited market dealer ("LMD"), now exempt market dealer ("EMD").

9. Boutet is a resident of Ontario and began his career with a Canadian chartered bank. After a ten year tenure with the bank, Boutet joined a leasing company and worked as a senior account manager for three years. In 1990, Boutet formed Nelson Financial. At all material times, Boutet was listed as the sole officer and director of Nelson Financial and Nelson Investment, and was the directing mind of Nelson Financial. As such, he regularly received reports of the financial performance of the Nelson Entities. Throughout the Material Time, he acted as a salesperson at Nelson Investment but dealt personally only with a select group of investors. Boutet was paid a total of $660,000 in salary and commission in the Material Time.

10. Throughout the Material Time, Boutet was registered with the Commission as a trading officer under the category of LMD with Nelson Investment. After the departure of Knoll from Nelson Financial in September 2009, Boutet registered as the ultimate designated person and chief compliance officer under the firm registration category of EMD.

11. Knoll was initially employed by Nelson Financial in the Fall of 2005 and was then employed by Nelson Investment as a salesperson and its compliance officer from at least December 19, 2006 until September 15, 2009. In that period, Knoll was registered with the Commission as a trading officer and the designated compliance officer of Nelson Investment. Knoll was responsible for the compliance function at Nelson Investment, including review of the Accredited Investor Certificates and Know-Your-Client forms. Upon Knoll's departure from Nelson Investment, Boutet took over as the compliance officer of Nelson Investment while he searched for a replacement compliance officer.

12. Torres was employed by and acted as a salesperson for Nelson Financial securities through Nelson Investment beginning in or around August 2008. Torres has been registered under the Act as a salesperson (now dealing representative) with Nelson Investment since November 13, 2008.

13. Sobol has been employed by Nelson Financial since May 2008. Sobol was a key member of the management team of Nelson Financial. Sobol has never been registered with the Commission.

BACKGROUND AND PARTICULARS

A. Illegal Distribution – Sections 25 and 53 of the Act

14. During the Material Time and through Nelson Investment, Nelson Financial raised approximately $82 million through the sale and distribution of securities of Nelson Financial to (almost exclusively) Ontario investors. As of February 28, 2010, there were approximately 500 Nelson Financial investors with a total investment amount outstanding of approximately $51.2 million, net of redemptions.

15. The securities sold and distributed by Nelson Financial were in the form of fixed term promissory notes and preferred shares and were offered by Nelson Financial at fixed/guaranteed annual rates of return of 12% and 10%, respectively, typically paid to investors on a monthly basis.

16. Nelson Investment, Boutet, Knoll and Torres each received commissions on the funds raised by the sale of Nelson Financial securities, including on amounts "rolled over" by investors upon maturity of the promissory notes, i.e. where an investor opted to remain invested with Nelson Financial instead of redeeming their investment.

17. Throughout the Material Time, the scope of registration for Nelson Financial's agent Nelson Investment and its sales staff, was limited to the sale of securities for which a prescribed exemption was properly available.

18. In distributing its securities, Nelson Financial relied upon the accredited investor exemption (the "AI Exemption") as set out in section 2.3 of National Instrument 45-106 ("NI 45-106") and the minimum investment exemption as set out in section 2.10 of NI 45-106 .

19. A significant number of the investors to whom securities were issued by Nelson Financial did not meet the requirements necessary to qualify as accredited investors.

20. In some instances, Nelson Financial knew or ought to have known that the investors were not accredited. For example, some “know-your-client” forms noted that not all financial assets were liquid and no further inquiries were made by Nelson Financial staff to ensure investors were qualified. Other know-your-client forms did not include income or net worth information for the investors, or included information that, on its face, did not meet the requirements of the AI Exemption. Boutet accordingly failed to ensure that a satisfactory system of review and supervision was in place to make adequate inquiries to determine whether all investors were, in fact, accredited.

21. For each investment up to October 2009, Boutet signed the respective offering and issuance documents in his capacity as President of Nelson Financial, including the term sheet for each promissory note/preferred share, and each promissory note issued by Nelson Financial. After that time and upon Boutet's replacement of Knoll as the compliance officer of Nelson Investment, Sobol signed the issuance documents on behalf of Nelson Financial in lieu of Boutet.

22. The trades in the securities of Nelson Financial were trades in securities not previously issued and were therefore distributions. No preliminary prospectus or prospectus was filed and no receipts were issued for them by the Director to qualify the trading of the securities.

23. Nelson Financial failed to ensure that the requirements of the AI Exemption were met in every case and, therefore cannot rely on the AI Exemption in respect of many of the trades of Nelson Financial securities. Nelson Financial breached section 53 of the Act by distributing securities of Nelson Financial without a prospectus in circumstances where no exemption was properly available.

24. Further, as no exemption was properly available, the trades in the securities of Nelson Financial were beyond the registerable activity permitted by the category of registration under the Act and thus in breach of section 25 of the Act. Boutet hired registered sales and compliance staff to carry out the offering, but Boutet is responsible for these failures by Nelson Financial and for the lack of an adequate system of review and supervision.

B. Conduct Contrary to the Public Interest

25. Nelson Financial relied on investors' funds for liquidity throughout the relevant period and raised new investor funds in a manner that was misleading to investors.

26. In soliciting investors, Nelson Financial expressly and implicitly represented to investors that Nelson Financial's business model, and consequently the success of the Nelson Financial investments, was premised upon applying investor capital to fund the Consumer Loans so that Nelson Financial would generate a higher return on the Consumer Loans than the returns promised to investors, as follows: a) investors' funds are used directly to fund the Consumer Loans; b) the Consumer Loans are extended at interest rates ranging from 29.9%; c) the fixed rates of return of 10-12% on the securities are paid to investors from the high interest rates earned on the Consumer Loans; and d) the "remaining spread" is used by Nelson Financial for "portfolio management, administration, underwriting and profit".

27. Throughout the Material Time, Nelson Financial made all of its monthly interest and "dividend" payments to investors and, for those who elected to redeem their investments upon maturity or otherwise, Nelson Financial repaid investors their full principal.

28. Throughout the Material Time, however, Nelson Financial was trying to overcome past losses and Nelson’s Financial operations did not generate sufficient revenue for it to cover its operating expenses, nor its interest, "dividend", and principal repayment obligations to investors. During the Material Time, Nelson Financial therefore relied on the receipt of new investor capital to meet, at least in part, its obligations to investors.

29. Accordingly, Nelson Financial used at least part of the new investor funds that it obtained in breach of ss. 25 and 53 of the Act to pay other investors their monthly returns and to repay investors their principal upon redemption. Nelson Financial's continued acceptance of new investor funds when some of the new investor funds were used to meet its obligations to investors was contrary to investor interests and the public interest.

30. While Nelson Financial was making statements to investors that it was successful, at no time did Nelson Financial advise investors that it was insolvent or that their funds were being used, in whole or in part, to pay interest or redemption to other investors. To the contrary, on a number of occasions Nelson Investment and Nelson Financial made statements to investors that were authorized or permitted by Boutet that Nelson Financial was achieving record financial success as a means of inducing investors to remain invested in Nelson Financial and to make further investments in the securities of Nelson Financial. These statements were misleading in that they did not disclose to investors all relevant facts, including negative facts,

regarding Nelson Financial's financial circumstances. Moreover, until January 2010, Boutet did not take steps to stop the offering.

31. On October 15, 2009, Boutet filled out the OSC Risk Assessment Questionnaire. There were a number of inaccurate statements provided by Boutet to Staff as a result of carelessness on Boutet's part. Furthermore, in October 2009, Compliance and Registrant Regulation Staff conducted an on-site compliance review of Nelson Investment as LMD. Members of Staff were advised by Boutet on October 22nd that the assets of Nelson Financial were about $60 million. The financial statements of Nelson Financial, which show the correct amount of assets, were subsequently provided to Compliance Staff. Boutet acknowledges that Nelson Financial assets at the time of Staff's compliance review was approximately $26 million, not $60 million.

32. OSC enforcement staff commenced an investigation in about January 2010. At the direction of Marc Boutet, Nelson Financial voluntarily suspended the distribution of any of its securities pending investigation of Staff's concerns. Boutet and Nelson Investment cooperated with Staff's investigation.

33. On March 23, 2010, Nelson Financial sought and obtained an order of the Ontario Superior Court of Justice for creditor protection and restructuring under the *Companies' Creditors Arrangement Act* ("CCAA") on the basis that it was insolvent.

CCAA PROCEEDINGS AND CURRENT STATUS OF NELSON FINANCIAL

34. In the court-supervised CCAA process, the persons holding promissory notes issued by Nelson Financial (the "Noteholders") had the benefit of representative counsel and an advisory committee of Noteholders. A court appointed monitor, A. John Page Associates Inc., was authorized to oversee the continuing operations of Nelson Financial with Boutet.

35. Up to November, 2010 Boutet assisted the monitor to review the Nelson Financial records and affairs and Boutet responded to investor inquiries in conjunction with the monitor. On November 22, 2010, the Court made an order approving certain heads of agreement (the "Heads of Agreement") between Boutet, A. John Page & Associates Inc. and Representative Counsel which provided for the resignation of Boutet as a director, officer and employee of Nelson Financial and the appointment of Sherry Townsend, a member of the Noteholders' Committee, as the Interim Operating Officer of Nelson Financial to direct and manage the business operations of the company and to manage its efforts to develop a restructuring plan under the CCAA. Amongst other things and in addition to the above, the Heads of Agreement required Boutet to surrender his ownership interest in Nelson Financial and to surrender and release any and all claims Boutet might otherwise have against Nelson Financial under the CCAA. The approximate face value of Boutet's financial interest surrendered in that process was $618,000.

36. By Order entered March 4, 2011, the Ontario Superior Court ordered that the claims of Nelson Financial's creditors were to be paid in full before any claim by Nelson Financial's preferred shareholders are paid. The aggregate stated capital of the preferred shares was $14.6 million, and those shareholders will not receive any repayment under the CCAA restructuring.

37. Also on March 4, 2011, the Ontario Superior Court accepted for filing a Plan of Compromise and Arrangement in respect of Nelson Financial. According to the Plan of Compromise and Arrangement "The effect of the Plan is that each Creditor holding a Proven Claim will receive a Capital Recovery Debenture in the principal amount of $25.00, New Special Share with a stated capital and redemption value of $25.00 and one Common Share with a stated capital of $1.00 in full satisfaction of each $100.00 of such Proven Claim". The purpose of the Plan of Compromise and Arrangement is to "enable the business...to continue as a going concern" in its reorganized form. Pursuant to the Order, Nelson Financial sent to all Noteholders an Information Circular concerning these securities.

38. Pursuant to the Order of March 4, 2011, Nelson Financial called a meeting of Noteholders (and other eligible creditors) on April 16, 2011 to approve and sanction the Plan of Compromise and Arrangement. At the meeting on April 16, 2011, the Noteholders voted strongly in favour of the Plan of Compromise and Arrangement. It was approved by the Court on April 20, 2011.

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

39. By engaging in the conduct described above, Boutet and Nelson Investment have breached Ontario securities law by contravening sections 25 and 53 of the Act and have acted contrary to the public interest.

PART V – TERMS OF SETTLEMENT

40. The Respondents agree to the terms of settlement listed below.

41. The Commission will make an order pursuant to section 127(1) of the Act that:

(a) The settlement agreement is approved;

(b) Pursuant to clause 2 of ss. 127(1) of the Act, trading in any securities by Boutet and Nelson Investment shall cease permanently, with a carve out for trading by Boutet in his personal RRSP account after the payment set out in subparagraph (f) is paid in full;

(c) Pursuant to clause 1 of ss. 127(1) of the Act, the registration granted to Boutet and Nelson Investment under Ontario securities law shall be terminated permanently;

(d) Pursuant to clause 8 of ss. 127(1) of the Act, Boutet shall be prohibited from becoming or acting as a director or an officer of any issuer, for a period of 15 years;

(e) Pursuant to clause 3 of ss. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Boutet and Nelson Investment, permanently;

(f) Pursuant to clause 9 and 10 of ss. 127(1) of the Act, Boutet and Nelson Investment shall pay the amount of $550,000 to be allocated to or for the benefit of third parties under s. 3.4(2)(b) of the Act, with payment of $200,000 to be made by certified cheque at the time of the settlement hearing; and

(g) the Respondents consent to reciprocal orders in other provinces if requested by other regulators.

Boutet has represented to the Commission that he does not have the means to make a higher settlement payment, and that Nelson Investments is no longer operating and has no assets.

PART VI – STAFF COMMITMENT

42. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding against the Respondents under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 44 below.

43. If the Commission approves this Settlement Agreement and the Respondents fail to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondents. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

44. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for May 16, 2011, or on another date agreed to by Staff and the Respondents, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

45. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondents' conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

46. If the Commission approves this Settlement Agreement, the Respondents agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

47. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

48. Whether or not the Commission approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART X – DISCLOSURE OF SETTLEMENT AGREEMENT

49. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

(a) This Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the settlement hearing takes place will be without prejudice to Staff and the Respondents; and

(b) Staff and the Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

50. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

51. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

52. A fax copy of any signature will be treated as an original signature.

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

"Marc D. Boutet"
Marc D. Boutet
Respondent, personally and on behalf
Nelson Investment Group Ltd.

"Scott Madger"
Witness

"Tom Atkinson"
Tom Atkinson
Director, Enforcement Branch

SCHEDULE "A"

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

ORDER

WHEREAS on May 12, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in connection with a Statement of Allegations issued by Staff of the Commission in this matter pursuant to section 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

AND WHEREAS on November 10, 2010, the Staff of the Commission amended the Statement of Allegations;

AND WHEREAS Marc D. Boutet ("Boutet") and Nelson Investment Group Ltd. ("Nelson Investment") entered into a settlement agreement with Staff of the Commission ("Staff") dated May 12th, 2011 (the "Settlement Agreement"), subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and for Boutet and Nelson Investment.

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

IT IS ORDERED THAT

(a) The settlement agreement is approved;

(b) Pursuant to clause 2 of ss. 127(1) of the Act, trading in any securities by Boutet and Nelson Investment shall cease permanently, with a carve out for trading by Boutet in his personal RRSP account after the payment set out in subparagraph (f) is paid in full;

(c) Pursuant to clause 1 of ss. 127(1) of the Act, the registration granted to Boutet and Nelson Investment under Ontario securities law shall be terminated permanently;

(d) Pursuant to clause 8 of ss. 127(1) of the Act, Boutet shall be prohibited from becoming or acting as a director or an officer of any issuer, for a period of 15 years;

(e) Pursuant to clause 3 of ss. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Boutet and Nelson Investment, permanently;

(f) Pursuant to clause 9 and 10 of ss. 127(1) of the Act, Boutet and Nelson Investment shall pay the amount of $550,000 to be allocated to or for the benefit of third parties under ss. 3.4(2)(b) of the Act, with payment of $200,000 to be made by certified cheque at the time of the settlement hearing;

DATED at Toronto this ___th day of May, 2011.

_____

3.1.2 Nelson Financial Group Ltd. et al.

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

AND

**IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND PAUL MANUEL TORRES**

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of Paul Manuel Torres (the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated May 12, 2010 (the "Proceeding") against the Respondent according to the terms and conditions set out in Part V of this Settlement Agreement. The Respondent agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

3. This proceeding relates to Staff's allegations of an illegal distribution of securities in breach of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), by the respondent issuer, Nelson Financial Group Ltd. ("Nelson Financial"), its related investment company, Nelson Investment Group Ltd. ("Nelson Investment") (collectively, the "Nelson Entities"), the directing mind of these entities, Marc D. Boutet ("Boutet"), and by the other individually named respondents, H. W. Peter Knoll ("Knoll"), Paul Manuel Torres ("the Respondent") and Stephanie Lockman Sobol ("Sobol"), who were employees and/or agents of Nelson Financial and/or Nelson Investment (collectively, the "Respondents").

4. Between December 19, 2006 and January 31, 2010 (the "Material Time"), Nelson Financial, through Nelson Investment and/or its employees and agents, including the Respondent, raised investor funds of over $50 million (net of redemptions) from approximately 500 Ontario investors by issuing non-prospectus qualified securities. Although the Respondents purported to rely upon the Accredited Investor Exemption (defined below) in selling securities of Nelson Financial, a significant percentage of investors were not accredited. The Respondent's conduct as described herein constituted a violation of Ontario securities law.

A. THE RESPONDENTS

5. Nelson Financial was incorporated in Ontario on September 14, 1990. Nelson Financial is not a reporting issuer and is not registered under the Act. Nelson Financial provides vendor assisted financing for the purchase of home consumable products, either through a vendor (or an aggregator of vendors), or directly to the consumer (the "Consumer Loans").

6. Nelson Investment was incorporated in Ontario on September 14, 2006 and sold securities of Nelson Financial. On December 19, 2006, Nelson Investment obtained registration under the Act as a dealer in the category of limited market dealer ("LMD"), now exempt market dealer ("EMD").

7. Boutet is a resident of Ontario and was at all material times listed as the sole officer and director of Nelson Financial and Nelson Investment (together, the "Nelson Entities"). Boutet was the directing mind of the Nelson Entities.

8. Respondent was employed by and acted as a salesperson for Nelson Investment beginning in or around August 2008. The Respondent has been registered under the Act as a salesperson (now dealing representative) with Nelson Investment since November 13, 2008.

B. BACKGROUND AND PARTICULARS

Illegal Distribution – Sections 25 and 53 of the Act

9. Nelson Investment was incorporated by Boutet in 2006 for the sole purpose of selling securities of Nelson Financial and, throughout the Material Time, Nelson Investment's business was limited to selling securities of Nelson Financial.

10. During the Material Time and through Nelson Investment, Nelson Financial raised approximately $82 million through the sale and distribution of securities of Nelson Financial to (almost exclusively) Ontario investors. As of February 28, 2010, there were approximately 500 Nelson investors with a total investment amount outstanding of approximately $51.2 million, net of redemptions.

11. The securities sold and distributed by Nelson Financial were in the form of fixed term promissory notes and preferred shares and were offered by Nelson Financial at fixed/guaranteed annual rates of return of 12% and 10%, respectively, typically paid to investors on a monthly basis.

12. The Respondent received commissions on the funds raised by the sale of Nelson Financial securities, including on amounts "rolled over" by investors upon maturity of the promissory notes, i.e. where an investor opted to remain invested with Nelson Financial instead of redeeming their investment.

13. Throughout the Material Time, the scope of registration for the Respondent was limited to the sale of securities for which a prescribed exemption was properly available.

14. In distributing its securities, Nelson Financial relied upon the accredited investor exemption (the "AI Exemption")as set out in section 2.3 of National Instrument 45-106 and the minimum investment exemption as set out in section 2.10 of 45-106.

15. A significant percentage of the investors to whom securities were issued by Nelson Financial either did not meet the requirements necessary to qualify as accredited investors or there was insufficient information for the Nelson Entities and their employees and/or agents (including the Respondent) to make that determination.

16. In many instances, the Respondent knew or ought to have known that the investors were not accredited and failed to make further inquiries to determine whether investors were, in fact, accredited.

17. The Respondent traded, either directly or through acts in furtherance of trading, in securities of Nelson Financial. The trades in the securities of Nelson Financial were trades in securities not previously issued and were therefore distributions. No preliminary prospectus or prospectus was filed and no receipts were issued for them by the Director to qualify the trading of the securities.

18. The Respondent failed to ensure that the requirements of the AI Exemption were met and, therefore cannot rely on the AI Exemption in respect of many of the trades of Nelson Financial securities. The Respondent did not discuss the criteria to qualify for the AI Exemption with investors, unless they asked. He did not review the Know Your Client documentation that was completed by investors. In addition, the Respondent did not discuss risks with potential investors for the Respondent. The Respondent breached section 53 of the Act by distributing securities of Nelson Financial without a prospectus in circumstances where no exemption was properly available.

19. Further, as no exemption was properly available, the trades in the securities of Nelson Financial were beyond the registerable activity permitted by the category of registration for the Respondent under the Act and thus in breach of section 25 of the Act.

20. The Respondent received a salary of $48,000 per year and 0.5% commission on new investments and investments "rolled over". In 2009, the Respondent earned approximately $200,000 in total. He did not advise investors that he, or his employer, Nelson Investment, received a sales commission.

21. On or about January 31, 2010, due to regulatory concerns raised by Staff following its on-site compliance review, Nelson Financial temporarily suspended the distribution of any of its securities. The Respondent family members redeemed their investments in Nelson Financial on February 16, 2010.

22. On March 23, 2010, less than two months after suspending its capital raising activities, Nelson Financial was required to seek an order for creditor protection and restructuring under the *Companies' Creditors Arrangement Act* on the basis that it was insolvent.

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

23. The foregoing conduct engaged in by the Respondent constituted breaches of Ontario securities law and/or was contrary to the public interest:

    (a) The Respondent traded securities of Nelson Financial without a prospectus in circumstances where no exemption was available contrary to the prospectus requirements of section 53 of the Act and contrary to the public interest;

    (b) The Respondent traded securities of Nelson Financial where no exemption was available contrary to the scope of his registration and the registration requirements of section 25 of the Act and contrary to the public interest;

PART V – TERMS OF SETTLE MENT

24. The Respondent agrees to the terms of settlement listed below.

25. The Commission will make an order pursuant to section 127(1) of the Act that:

    (a) The settlement agreement is approved;

    (b) Pursuant to ss. 127(1)2. of the Act, trading in any securities by the Respondent shall cease permanently, with a carve out for trading by the Respondent in his personal RRSP account after the payment set out in subparagraph (f) is paid in full;

    (c) Pursuant to ss. 127(1)1. of the Act, the registration granted to the Respondent under Ontario securities law shall be terminated, permanently;

    (d) Pursuant to ss. 127(1)8. of the Act, the Respondent is prohibited from becoming or acting as a director or an officer of any issuer for the greater of 15 years, or until such time as the payment specified in paragraph (f) is made in full;

    (e) Pursuant to ss. 127(1)3. of the Act, any exemptions contained in Ontario securities law do not apply to the Respondent, permanently;

    (f) Pursuant to ss. 127(1)9. of the Act, the Respondent shall pay the amount of $50,000 to be allocated to or for the benefit of third parties under s. 3.4(2)(b) of the Act, with payment of $20,000 to be made by certified cheque at the time of the settlement hearing and the remaining $30,000 to be paid within five years of the date this Agreement is executed;

26. In connection with this settlement, the Respondent has represented to the Commission that he is not currently employed and that his net worth is not sufficient to pay the entire settlement amount immediately.

PART VI – STAFF COMMITMENT

27. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding against the Respondent under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 27 below.

28. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

29. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for May 16, 2011, or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

30. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

31. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

32. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

33. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART X – DISCLOSURE OF SETTLEMENT AGREEMENT

34. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

    i. this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and

    ii. Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

35. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

36. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

37. A fax copy of any signature will be treated as an original signature.

DATED at Toronto this 11th day of May, 2011.

"Paul Manuel Torres"
Respondent

"Swapna Chandra"
Witness

"Tom Atkinson"
Director, Enforcement Branch

SCHEDULE "A"

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

ORDER

WHEREAS on May 12, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in connection with a Statement of Allegations issued by Staff of the Commission in this matter pursuant to section 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act");

AND WHEREAS on November 10, 2010, the Staff of the Commission amended the Statement of Allegations;

AND WHEREAS Paul Manuel Torres ("Torres") entered into a settlement agreement with Staff of the Commission ("Staff") dated May 11, 2011 (the "Settlement Agreement"), subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and from Paul Manuel Torres.

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

IT IS ORDERED THAT

(a) The settlement agreement is approved;

(b) Pursuant to clause 2 of ss. 127(1) of the Act, trading in any securities by Torres shall cease permanently with a carve out for trading by Torres in his personal RRSP account after the payment set out in subparagraph (f) is paid in full;

(c) Pursuant to clause 1 of ss. 127(1) of the Act, the registration granted to Torres under Ontario securities law shall be terminated, permanently;

(d) Pursuant to clause 8 of ss. 127(1) of the Act, Torres is prohibited from becoming or acting as a director or an officer of any issuer for the greater of 15 years, or until such time as the payment specified in paragraph (f) is made in full;

(e) Pursuant to clause 3 of ss. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Torres, permanently;

(f) Pursuant to clause 9 and 10 of ss. 127(1) of the Act, Torres shall pay the amount of $50,000 to be allocated to or for the benefit of third parties under s. 3.4(2)(b) of the Act, with payment of $20,000 to be made by certified cheque at the time of the settlement hearing and the remaining $30,000 to be paid within five years of the date this Agreement is executed;

DATED at Toronto this ____th day of May, 2011.

_____

3.1.3 Lyndz Pharmaceuticals Inc. et al.

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

AND

IN THE MATTER OF
LYNDZ PHARMACEUTICALS INC.,
JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE

REASONS AND DECISION

Hearing:	May 31 and June 1, 2010		
Decision:	May 16, 2011		
Panel:	Patrick J. LeSage, Q.C.	–	Commissioner and Chair of the Panel
	Sinan O. Akdeniz	–	Commissioner
Appearance:	Jonathon Feasby	–	For Staff of the Ontario Securities Commission
	Michael Eatch	–	For himself and Lyndz Pharmaceuticals Inc.
	Rickey McKenzie	–	For himself and James Marketing Ltd.

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REASONS AND DECISION

I. OVERVIEW

A. History of the Proceeding

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to consider whether Lyndz Pharmaceuticals Inc. ("**Lyndz**"), James Marketing Ltd. ("**James Marketing**"), Michael Eatch ("**Eatch**") and Rickey McKenzie ("**McKenzie**") (collectively, the "**Respondents**") breached the Act and acted contrary to the public interest.

[2] On December 4, 2008, the Commission issued a temporary cease trade order (the "**Temporary Order**") with respect to Lyndz, Lyndz Pharma Ltd. ("**Lyndz UK**"), James Marketing, Eatch and McKenzie. The Commission extended the Temporary Order from time to time, and on September 24, 2009, the Commission removed Lyndz UK as a respondent and extended the Temporary Order until the conclusion of the hearing on the merits.

[3] The proceeding on the merits relating to the Respondents was commenced by a Statement of Allegations filed by Staff of the Commission ("**Staff"**) on September 23, 2009 and a Notice of Hearing issued by the Commission on the same day. Subsequent to the issuance of the Statement of Allegations and the Notice of Hearing, the Commission held pre-hearing conferences on May 6, 7, and 19, 2010. The hearing on the merits took place on May 31 and June 1, 2010, at which Staff and the Respondents appeared and made submissions (the "**Merits Hearing**").

B. The Respondents

1. The Corporate Respondents

[4] Lyndz is a company incorporated pursuant to the laws of Ontario. During the relevant time, Lyndz' registered business address was Eatch's home address.

[5] James Marketing is a corporation incorporated pursuant to the laws of the United Kingdom with its head office registered to an address in London, England.

[6] Lyndz and James Marketing together are referred to as the "**Corporate Respondents**".

2. The Individual Respondents

[7] Eatch is a resident of Ontario. He is the president, secretary and sole director of Lyndz. He is also the sole director and shareholder of Lyndz UK, a company incorporated pursuant to the laws of the United Kingdom, described below in paragraph 10.

[8] McKenzie is a resident of Aurora, Ontario. He is the sole director and shareholder of James Marketing.

[9] Eatch and McKenzie together are referred to as the "**Individual Respondents**".

C. Lyndz UK

[10] Lyndz UK is a company incorporated pursuant to the laws of the United Kingdom. It operates from the same address as James Marketing.

D. The Allegations

[11] Staff alleges that Lyndz and Eatch distributed Lyndz securities to Ontario investors from 1999 to 2004, and that all of the Respondents distributed Lyndz securities to investors in the United Kingdom from 2005 to 2008.

[12] Staff's Statement of Allegations contains two summaries of its allegations, one found in paragraphs 5 to 8 and the other in paragraphs 15 to 20. We note that the scope of Staff's summary of its allegations as set out in paragraphs 15 to 20 is narrower than that of the summary found in paragraphs 5 to 8. For instance, paragraphs 5 to 8 allege that all of the Respondents engaged in an illegal distribution of Lyndz securities. However, in paragraphs 15 to 20, only Lyndz and Eatch are alleged to have engaged in an illegal distribution.

[13] Staff stated in opening submissions that it is relying on paragraphs 5 to 8 of the Statement of Allegations.

[14] We will assess the allegations in light of paragraphs 5 to 8 of the Statement of Allegations, reproduced below:

> The Respondents diverted funds raised through the sale of shares in Lyndz to the personal benefit of Eatch and McKenzie via James Marketing and Lyndz UK contrary to subsection 126.1(b) of the [Act].
>
> The Respondents distributed securities in Lyndz in Ontario without being registered to do so under the Act, without having filed a prospectus and without the benefit of an applicable exemption contrary to [subsection] 53(1) of the Act.
>
> Eatch and Lyndz made statements in shareholder correspondence and marketing materials that were materially misleading or untrue or failed to state facts that were required to be stated to make the statements not misleading, contrary to [subsection] 126.2(1)(a) of the Act. These representations included the claim, with the intention of effecting a trade in the securities of Lyndz, that a person or company would repurchase the outstanding securities of Lyndz, contrary to [subsection] 38(1)(a) of the Act.
>
> Eatch and Lyndz purported to issue shares in Lyndz and conducted themselves as if the corporation was a going concern during a 26 month period when Lyndz was dissolved as an Ontario corporation contrary to [subsections] 126.1(b) and 126.2(1)(a) of the Act.

II. PRELIMINARY ISSUES

A. The Agreed Statements of Facts and Additional Evidence

[15] At the commencement of the Merits Hearing, Staff and the Respondents submitted that they were able to resolve the factual issues in dispute and jointly filed two Agreed Statements of Facts. One of the Agreed Statements of Facts pertains to Eatch and Lyndz; the other pertains to James Marketing and McKenzie. The Agreed Statements of Facts are appended to these reasons as Schedules "A" and "B".

[16] Staff submitted that, pursuant to the terms of this partial resolution of the matter, Staff would have the right to call viva voce evidence from Staff's forensic accountant, Yvonne Lo ("**Lo**"). In Staff's submission, the purpose of calling viva voce evidence from Lo is to explain Staff's source and use analysis of bank accounts controlled by the Respondents ("**Staff's Source and Use Analysis**"), which formed the basis of the parties' agreement on the amounts raised and disbursed by the Respondents. Accordingly, Staff requested that the Panel proceed on the basis of the Agreed Statements of Facts and *viva voce* evidence from Lo.

[17] The Respondents expressed puzzlement over the need for Lo's evidence when they have admitted certain facts, and in particular, the amounts raised and disbursed by them, in the Agreed Statements of Facts.

[18] The Panel invited the parties to resolve this issue. After an adjournment to allow discussions between the parties, the parties agreed that, instead of calling viva voce evidence from Lo, Staff would file a limited amount of additional documentary evidence in its place. Staff filed transcripts of examinations of Eatch and McKenzie, correspondence between Eatch and McKenzie, Staff's Source and Use Analysis and copies of different versions of Lyndz' business plan (the "**Lyndz Business Plan**") that were given to investors. The evidence will be discussed in detail below in paragraph 39.

[19] Accordingly, the Agreed Statements of Facts and the documentary evidence described in paragraph 18 constitute the entirety of Staff's evidence.

B. The Partial Agreement between the Parties not a Withdrawal of the Fraud Allegation

[20] Staff completed its case on May 31, 2010. After Staff summarized its position on the Respondents' alleged illegal distribution and fraudulent conduct in closing, the Respondents expressed their belief that Staff would not be requesting a finding of fraud pursuant to the parties' partial resolution of the matter. Specifically, the Respondents stated they believed they were no longer facing an allegation of fraud because the paragraphs relating to fraud were struck out of the Agreed Statements of Facts at a pre-hearing conference.

[21] Staff submitted the parties were aware that what was removed was an acceptance of a characterization of the conduct as "fraud", which is different from removing the conduct, and that the allegation of fraud would be advanced on the basis of the facts set out in the Agreed Statements of Facts. It would be completely unreasonable, in Staff's view, for the Respondents to have understood that they were no longer facing an allegation of fraud.

[22] The Panel confirmed with the Respondents that Staff was seeking a finding of fraud against them and provided two options for the Respondents to consider. The Respondents could elect to dispute the allegation of fraud based on the Agreed Statements of Facts and other evidence adduced in this proceeding. In the alternative, if the Respondents took the position that the Agreed Statements of Facts were signed in error and they preferred to proceed to a full merits hearing, the Panel would strike this proceeding and the matter would be heard by a new panel in a contested merits proceeding.

[23] The Panel adjourned the hearing to afford the Respondents an opportunity to carefully consider the two options presented to them. After the adjournment, the Respondents expressed a preference to proceed on the basis of the Agreed

Statements of Facts and additional evidence admitted on consent by the parties. The Respondents were then given an opportunity to present their evidence and to make submissions.

III. ISSUES

[24] Staff made submissions on the findings they requested which narrowed the scope of the issues to the following:

(a) Does the Commission have jurisdiction over the Respondents?

(b) Did the Respondents distribute securities of Lyndz in Ontario without a prospectus, contrary to subsection 53(1) of the Act?

(c) Did the Respondents engage or participate in any act, practice or course of conduct relating to securities of Lyndz that they knew or reasonably ought to have known perpetrated a fraud on any person or company, contrary to subsection 126.1(b) of the Act?

IV. THE POSITION OF THE PARTIES

A. Staff

[25] Staff takes the position that the Agreed Statements of Facts admit the essential elements of both an illegal distribution and fraud under the Act.

[26] Staff submits that the Respondents' admissions, contained in the Agreed Statements of Facts, clearly demonstrate that the Respondents engaged in the illegal distribution of Lyndz securities from 1999 to 2008, contrary to subsection 53(1) of the Act.

[27] Staff argues that the Agreed Statements of Facts, supplemented by the additional documentary evidence admitted at the Merits Hearing, also demonstrate that the Respondents engaged in a fraud on the investors in Lyndz and thereby breached subsection 126.1(b) of the Act. Staff submits that the fraud committed by the Respondents can be reduced to the simple idea of selling shares to investors on the basis of a false premise which wrongly deprived investors of their money. Shareholders invested money based on the premise that the money they paid for Lyndz shares would be spent on developing a humanitarian pharmaceutical manufacturing business described in the Lyndz Business Plan and in correspondence the Respondents sent them. However, the premise on which shareholders invested was false. Rather than developing the projects they led investors to believe they were pursuing, the Respondents spent the majority of investors' money on personal expenses, withdrew it in cash or entirely failed to account for it. As a result, the investors were wrongly deprived of their money.

[28] In Staff's submission, the evidence shows that the illegal distribution of Lyndz shares was little more than a personal fundraising project for both Eatch and McKenzie.

B. The Respondents

1. Eatch and Lyndz

[29] Eatch admits to engaging in a distribution of Lyndz securities without a prospectus. However, he submits that the Respondents did not actively solicit investors in the United Kingdom. He submits the investors were strictly friends, relatives and associates. He believed he could sell his shares in a private company to up to fifty shareholders, but the number of shareholders "escalated from there" (Hearing Transcript, May 31, 2010, p. 106). Eatch accepts responsibility for that mismanagement.

[30] Eatch vehemently opposes Staff's characterization of his conduct as fraudulent. He maintains that Lyndz' humanitarian project to engage in manufacturing of pharmaceuticals was legitimate. In closing, he made substantial submissions about the Lyndz Business Plan and the steps that he purportedly took to advance the project. Some of his submissions were:

- He intended to purchase a pharmaceutical plant in British Columbia, but the plant was sold to another after it was burnt down and rebuilt;
- There was another plant which he intended to purchase, but his discussions with the vendor stalled and the vendor ultimately decided against selling the plant; and
- The consultants mentioned in the Lyndz Business Plan are all family friends. Their credentials can be verified;

[31] Eatch does not dispute that he withdrew and spent investor funds. However, he characterizes the withdrawals as either business related or salary paid to him for developing the pharmaceutical project.

[32] Eatch submits he has met with every investor, used his name and telephone number in his dealings with investors, invited investors to his home, and constantly updated investors about what was happening. In his submission, this indicates that he did not engage in fraud.

[33] Eatch further submits that the investors in Lyndz do not view his project as fraudulent. He maintains that over 95 percent of Lyndz' shareholders in the United Kingdom are "still 100 percent behind [him] and they don't want their money back and they just want to see the project go to fruition" (Hearing Transcript, May 31, 2010, p. 107). He expressed his readiness to return to the development of his pharmaceutical business and humanitarian project after the conclusion of this proceeding.

2. McKenzie and James Marketing

[34] In his Agreed Statement of Facts, McKenzie acknowledges that he engaged in acts in furtherance of distributing Lyndz securities. Nonetheless, at the Merits Hearing, McKenzie stated that he had "never called a client, never sold a client, solicited a client in any manner or fashion" (Hearing Transcript, June 1, 2010, p. 47).

[35] As with Eatch, McKenzie strongly protests Staff's allegation of fraud against him. McKenzie maintains that Eatch and Lyndz were pursuing a legitimate humanitarian enterprise and that the project was designed to serve the needs of the third world.

[36] McKenzie takes the position that the investment scheme was not fraudulent because he would not have purchased shares in a fraudulent company. He takes the view that he could not have engaged in fraud because the shareholders are content with their investments.

[37] McKenzie insists that his involvement in the distribution was very limited. He describes his role as confined to that of a collector, a passive conduit for the flow of investor funds. As well, he emphasizes that he had no input to the materials that were sent to investors. While he received money that came from investor funds, he maintains that he only received 10 percent of the funds invested in Lyndz as a commission for facilitating Lyndz' distribution.

V. EVIDENCE

A. Evidence Tendered at the Hearing

1. Staff's Evidence

[38] As discussed in paragraphs 15 to 19 above, the evidence admitted in this hearing includes two Agreed Statements of Facts. The Agreed Statements of Facts are appended to these reasons as Schedules "A" and "B".

[39] On consent of the parties, certain documentary evidence was filed. These documents are:

- Transcripts and exhibits of compelled examinations of Eatch;
- Transcript and exhibits of compelled examination of McKenzie;
- A letter from Eatch to McKenzie setting out the proposed division of funds between them;
- An invoice and an email from Eatch to McKenzie confirming receipt of £129,000 of investor funds in cash in the years 2006 to 2007; and
- Staff's Source and Use Analysis of bank accounts relating to the Respondents.

[40] The Panel also admitted as evidence various versions of the Lyndz Business Plan which are substantially the same as the versions found in the exhibits of the compelled examinations of the Individual Respondents referred to in paragraph 39 above.

[41] Staff submits that where the evidence in these documents is inconsistent with the Agreed Statements of Facts, the Agreed Statements of Facts prevail. We agree with Staff's submissions on that point.

[42] As noted above, the Respondents consented to the admission of the documentary evidence noted in paragraph 39. They did not dispute the admissions in the compelled examinations which, on consent, became evidence, nor did they contest that they were the parties to the correspondence listed above. They provided no basis for us to question the accuracy of Staff's Source and Use Analysis.

2. The Respondents' Evidence

[43] Lyndz and Eatch introduced as evidence a fax copy of a letter from Fred Stonham ("**Stonham**") purporting to document the views of Lyndz shareholders (the "**Stonham Letter**"). This letter states that Stonham has been in contact with investors and that they support Eatch. Eatch made substantial submissions regarding the Lyndz Business Plan and the steps that he purportedly took to achieve the objectives set out in the Lyndz Business Plan, but otherwise did not call any evidence.

[44] McKenzie called Eatch as a witness and examined him briefly, only regarding the Stonham Letter and Eatch's view of whether fraud has occurred. McKenzie did not testify and led no other evidence.

B. Summary of Findings

[45] Based on the Agreed Statements of Facts and the evidence tendered at the Merits Hearing described above, we find that this case involves an investment scheme in which the Respondents distributed securities to investors based on the premise that their funds would be invested in the development of Lyndz' proposed pharmaceutical business and humanitarian projects in developing nations. That premise was misleading and false and as a result of the Respondents' activities, Lyndz' investors were deprived of their funds. Investor funds were diverted by the Respondents to their personal benefit rather than being invested in a pharmaceutical business.

1. The Investment Scheme

(a) 1999-2004

[46] From 1999 to 2004, Lyndz securities were distributed to residents of Ontario and other provinces through at least 47 transactions. At least 14 of the 47 transactions, including transactions with Ontario investors, were made in exchange for funds totalling over $400,000. The remainder of those transfers of securities were made as gifts to friends and family of Eatch who had assisted him with his business.

(b) 2005-2008

[47] From 2005 to 2008, Lyndz securities were distributed from Ontario to more than 70 residents of the United Kingdom through over 150 transactions. Lyndz investors in the United Kingdom paid between $0.15 and $0.33 per share. Approximately $1,700,000 was raised during this period.

2. The Role of Lyndz and Eatch

[48] Eatch is the directing mind of both Lyndz and Lyndz UK.

(a) 1999-2004

[49] From 1999 to 2004, Lyndz and Eatch distributed Lyndz shares to residents of Ontario and other provinces through at least 47 transactions. The over $400,000 raised from this distribution was used for payments to Eatch's partner, Eatch's personal expenses, and some for Lyndz' business expenses. A precise accounting of the disposition of these funds is not available.

(b) 2005-2008

[50] From 2005 to 2008, Lyndz and Eatch distributed Lyndz' shares from Ontario to more than 70 residents of the United Kingdom through over 150 transactions. Specifically, Lyndz and Eatch engaged in numerous acts in furtherance of that distribution, including the following:

- Eatch prepared the Lyndz Business Plan to be distributed to investors;
- Eatch sent correspondence to prospective investors on Lyndz letterhead soliciting them to invest in the shares of Lyndz;
- Eatch, with McKenzie's permission, sent correspondence to prospective investors on James Marketing letterhead soliciting them to invest in the shares of Lyndz;
- Eatch, with McKenzie's permission, used James Marketing's email account to invoice Lyndz' investors on the letterhead of James Marketing and instruct them to make payments to James Marketing;
- Eatch personally sent share certificates to a majority of Lyndz' investors;
- Eatch personally telephoned, met with and corresponded with investors in connection with their purchase of Lyndz securities; and
- Eatch maintained a bank account in the United Kingdom in the name of Lyndz UK for the purpose of receiving funds from James Marketing that had been deposited with James Marketing by Lyndz investors in exchange for shares in Lyndz (the "**Lyndz UK Account**").

[51] In all of the documents and correspondence sent to Lyndz' shareholders by Lyndz and Eatch, Lyndz is purported to be developing a business of manufacturing and distributing pharmaceuticals and bringing affordable pharmaceuticals to the third world as a "humanitarian project". For example, Eatch prepared the Lyndz Business Plan, various versions of which were distributed by him and his company to Lyndz investors. The Lyndz Business Plan contains the following information about the company:

- Lyndz was planning an acquisition of a pharmaceutical production facility in British Columbia;
- Lyndz was planning to build a pharmaceutical plant with the assistance of John Buttner, "an architect and an Austrian registered engineer with more than 30 years of experience in the design, construction and project management of industrial and commercial buildings";
- Lyndz supported efforts to prevent and treat diseases and conditions in the developing world;
- Lyndz anticipated three different phases of financing over time; and
- A number of individuals were involved in Lyndz in management and consulting roles;

[52] Lyndz and Eatch led investors to believe that the funds they exchanged for shares in Lyndz would be invested in the development of Lyndz' proposed pharmaceutical business and humanitarian projects in impoverished nations. However, this representation was false. There is no credible evidence that Lyndz had any legitimate underlying business or legitimate business purpose.

3. The Role of James Marketing and McKenzie

[53] McKenzie is the directing mind of James Marketing.

[54] We pause to note that paragraph 31 of the Agreed Statement of Facts of James Marketing and McKenzie relates to McKenzie's prior conviction for participating in a criminal investment fraud. That fact is irrelevant to our consideration on the merits and will be disregarded.

(a) 1999-2004

[55] Neither James Marketing nor McKenzie was involved in the distribution of Lyndz securities in this time period.

(b) 2005-2008

[56] From 2005 to 2008, James Marketing and McKenzie distributed Lyndz shares from Ontario to more than 70 residents of the United Kingdom through over 150 transactions.

[57] James Marketing and McKenzie engaged in numerous acts in furtherance of that distribution, including the following:

- McKenzie knowingly allowed Eatch to send correspondence to prospective investors on James Marketing letterhead soliciting them to invest in Lyndz;
- McKenzie gave Eatch access to James Marketing's email account for the purpose of allowing Eatch to invoice Lyndz' investors on the letterhead of James Marketing and instruct them to make payments to James Marketing;
- McKenzie personally sent share certificates to some Lyndz' investors;
- McKenzie personally telephoned, met with and corresponded with investors in connection with their purchase of Lyndz securities;
- James Marketing received funds totalling approximately $1,700,000 from the distribution of Lyndz' shares; and
- McKenzie maintained a bank account in the United Kingdom in the name of James Marketing (the "**James Marketing UK Account**") for the purpose of receiving funds from Lyndz investors.

[58] In all documents and correspondence sent to Lyndz' shareholders by James Marketing and McKenzie, Lyndz is purported to be developing a business of manufacturing and distributing pharmaceuticals and bringing affordable pharmaceuticals to the third world as a "humanitarian project".

[59] James Marketing and McKenzie led investors to believe that the funds they exchanged for shares in Lyndz would be invested in the development of Lyndz' proposed pharmaceutical business and humanitarian projects in impoverished nations. However, this representation was false. Lyndz had no underlying business or legitimate business purpose. McKenzie, because of his involvement in the receipt and the application of the funds, knew or ought to have known Lyndz had no legitimate business purpose or engagement.

4. Disbursement of Investor Funds raised from 2005 to 2008

[60] Pursuant to an agreement entered into between Eatch and McKenzie (the "**Agreement**"), investor funds would first be deposited into the James Marketing UK Account, and then they would be divided between the Individual Respondents, Eatch and McKenzie, in accordance with the terms of the Agreement. As the Agreement stipulates, James Marketing acted as the conduit for investor funds raised from the distribution of Lyndz' securities and received approximately $1,700,000 of investor funds.

[61] The Agreement further provides that 30% of the investor funds would be transferred into an account held by Eatch in the name of Lyndz UK and 60% would be provided to Eatch directly in cash. The Agreement also provides that for "facilitating" the redistribution of the funds paid by Lyndz' investors, McKenzie was entitled to retain 10% of the funds deposited into the accounts of James Marketing.

[62] However, the actual division of funds between the Individual Respondents deviated from the terms of the Agreement:

- Eatch received approximately $655,000 of investor funds in the following manner. James Marketing transferred $380,000 to the Lyndz UK Account and $25,000 to an account of Eatch's spouse. McKenzie withdrew approximately $500,000 from the James Marketing UK Account in cash and transferred at least 50%, or $250,000, to Eatch; and
- McKenzie received the remainder of investor funds in the James Marketing UK Account, which totalled approximately $700,000.

[63] Of the $655,000 of investor funds Eatch received, Eatch disposed of approximately half, or $327,500, on personal expenses unrelated to the business of Lyndz. The other $327,500 remains unaccounted for. For example:

- Eatch received a significant amount of investor funds in the form of cash. As discussed in paragraph 62, Eatch received approximately $250,000 from McKenzie in cash. Of the $380,000 of investor funds that McKenzie transferred to the Lyndz UK Account, Eatch withdrew approximately $220,000 from that account in cash. In total, Eatch received over $470,000 in cash. A significant portion of this amount is unaccounted for, although we do know that Eatch spent over $51,000 at an oyster bar called AW Shucks Seafood in Aurora, Ontario;

- Eatch spent approximately $26,000 on travel expenses unrelated to the business of Lyndz;

- Eatch spent approximately $21,000 on retail expenditures unrelated to the business of Lyndz, including money spent at the Arts Music Store, DOT Patio and Home, K Shoes of England, the LCBO, and Sears; and

- Eatch's spouse received approximately $36,000 of investor funds. Of that $36,000, approximately $25,000 was transferred to her from the James Marketing UK Account and approximately $11,000 was from the Lyndz UK Account.

[64] McKenzie disposed of the remainder of investor funds in the James Marketing UK Account, or approximately $700,000, on matters unrelated to Lyndz' business. For example:

- McKenzie spent approximately $142,000 on retail expenditures unrelated to Lyndz' business, including money spent at the Apple Store, Banana Republic, the LCBO, Rogers Video and Shoppers Drug Mart;

- McKenzie spent approximately $100,000 on accommodations unrelated to Lyndz' business;

- McKenzie spent approximately $95,000 on travel expenses unrelated to Lyndz' business; and

- McKenzie transferred over $77,000 to his spouse.

[65] In summary, investor funds flowed through the James Marketing UK Account, most of which were ultimately received by either Eatch or McKenzie. Eatch received a total of approximately $655,000 and McKenzie received approximately $700,000.

[66] Nearly all of the investor funds were either spent on matters unrelated to the business of Lyndz or unaccounted for. Specifically, Eatch spent approximately $327,500 on personal expenses unrelated to the business of Lyndz and was unable to account for the other $327,500 that he received. McKenzie disposed of approximately $700,000 on matters unrelated to business of Lyndz.

VI. ANALYSIS

A. Does the Commission have Jurisdiction over the Respondents?

[67] The majority of investors who purchased Lyndz securities from 2005 to 2008 were located outside of Ontario, primarily in the United Kingdom. However, the Agreed Statements of Facts acknowledge that a large majority of the share certificates and items of correspondence sent to Lyndz' investors were sent by Eatch and McKenzie from Ontario, that a large majority of the instructions to financial institutions to transfer funds were issued from Ontario, and that a large majority of the investor funds withdrawn in cash were withdrawn in Ontario. Based on the evidence, we find that there is a significant if not overwhelming nexus to Ontario to give the Commission jurisdiction over the Respondents.

B. Did the Respondents distribute Lyndz securities without a prospectus, contrary to subsection 53(1) of the Act?

[68] Subsection 53(1) sets out the prospectus requirement under the Act:

> **53. (1) Prospectus required** – No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[69] The allegation of a violation of subsection 53(1) of the Act by the Respondents was not a contentious issue before the Panel. In the Agreed Statements of Facts, the Respondents acknowledge that they distributed Lyndz securities without a prospectus.

1. Lyndz and Eatch

[70] Eatch admits on behalf of both himself and Lyndz, of which he was the directing mind, that they distributed Lyndz securities to Ontario investors from 1999 to 2004 which raised approximately $400,000, and to investors in the United Kingdom

from 2005 to 2008 which raised approximately $1,700,000. Eatch further admits that, in relation to the period from 2005 to 2008, he and Lyndz engaged in specific acts in furtherance of distributing Lyndz securities. Lyndz and Eatch met or spoke with investors in connection with their purchases of Lyndz shares, sent documents and correspondence to investors, invoiced investors, sent share certificates to investors and maintained a bank account to receive investor funds.

[71] We received no evidence to support an exemption under the Act which would allow Lyndz and Eatch to distribute Lyndz securities without a prospectus being filed and a receipt issued by the Director.

[72] We find that Lyndz and Eatch engaged in a distribution of Lyndz securities without being qualified by a prospectus and without a prospectus exemption being available, contrary to subsection 53(1) of the Act.

2. James Marketing and McKenzie

[73] McKenzie made admissions on his own behalf and on behalf of James Marketing, for which he was the directing mind, that they participated in a distribution of Lyndz securities from 2005 to 2008 which raised approximately $1,700,000. McKenzie admits that he and his company engaged in acts in furtherance of distributing Lyndz shares by sending share certificates, met or spoke with investors in connection with their purchases of Lyndz shares and opening and maintaining an account for the purpose of receiving investor funds. Further, in his capacity as a director of James Marketing, McKenzie authorized Lyndz and Eatch to use James Marketing's letterhead and email account to communicate with investors in relation to the distribution of Lyndz securities.

[74] We received no evidence to support an exemption under the Act which would allow James Marketing and McKenzie to distribute Lyndz securities without a prospectus being filed and a receipt issued by the Director.

[75] We find that James Marketing and McKenzie engaged in a distribution of Lyndz securities without being qualified by a prospectus and without a prospectus exemption being available, contrary to subsection 53(1) of the Act.

C. Did the Respondents engage in an act, practice or course of conduct relating to Lyndz securities which they knew or reasonably ought to have known perpetrated a fraud, contrary subsection 126.1(b) of the Act?

[76] Subsection 126.1(b) of the Act is the fraud provision:

> **126.1 Fraud and market manipulation** – A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[77] It is well established in the Commission's jurisprudence that the elements of fraud under subsection 126.1(b) of the Act are:

1. The prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
2. Deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
3. Subjective knowledge of the prohibited act; and
4. Subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk.)

[78] The mental element of the fraud provision has been described in the British Columbia Court of Appeal's analysis in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (the Supreme Court of Canada denied leave to appeal the *Anderson* decision ([2004] S.C.C.A. No. 81). The fraud provision of the British Columbia *Securities Act*, R.S.B.C. 1996, c. 418 has identical operative language as section 126.1 of the Act. The British Columbia Court of Appeal said:

> … [the fraud provision of the BC Act] does not dispense with proof of fraud, including proof of a guilty mind…[the fraud provision of the BC Act] simply widens the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated by others, as well as those who participate in perpetrating the fraud. It does not eliminate proof of

> fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions.

[79] For a corporation, it is sufficient to show that its directing mind or minds knew that the corporation perpetrated a fraud.

1. Lyndz and Eatch

(a) 1999-2004

[80] The fraud provision of the Act was proclaimed into force on December 31, 2005. It cannot apply to the distribution of Lyndz securities from 1999 to 2004.

(b) 2005-2008

[81] Lyndz and Eatch led investors to believe that the funds they exchanged for shares in Lyndz would be invested in the development of Lyndz' proposed pharmaceutical business and humanitarian projects in impoverished nations. In all of the documents and correspondence that Lyndz and Eatch prepared and sent to Lyndz shareholders, including the Lyndz Business Plan, Lyndz is purported to be developing a business of manufacturing and distributing pharmaceuticals as well as bringing affordable pharmaceuticals to the third world as a "humanitarian project".

[82] The evidence shows that the representations about the nature of Lyndz' business made by Lyndz and Eatch were sometimes false, sometimes misleading and sometimes both. In the Agreed Statement of Facts of Eatch and Lyndz, it is acknowledged that Lyndz never had any active business except for what is described in the Agreed Statement of Facts. Having reviewed the Agreed Statement of Facts, we conclude that the only business described therein is the distribution of Lyndz' shares. Lyndz does not have any assets, employees or physical location. It has no legitimate underlying business or business purpose. Although Eatch claimed that Lyndz is a legitimate business and described some of the steps that he purportedly took to develop Lyndz' pharmaceutical business in his submissions, there is no credible evidence before the Panel to support those submissions.

[83] Moreover, contrary to what Lyndz and Eatch claimed about the company, few if any funds were invested in the development of Lyndz' pharmaceutical business or humanitarian projects. Eatch and Lyndz engaged in unauthorized diversion of investor funds and disposed of a vast majority of funds for purposes unrelated to Lyndz' business. For example, as described in paragraph 63, Eatch withdrew over $470,000 in cash, a significant portion of which was unaccounted for. Staff's Source and Use Analysis also shows that a significant amount of investor funds was spent on personal expenses, including over $51,000 spent at a restaurant named AW Shucks Seafood. The unauthorized diversion of investor funds was further supported by Eatch's admission that he spent approximately half of the $655,000 of investor funds, or $327,500, that he received from McKenzie on personal expenses and was unable to account for the other half.

[84] Lyndz and Eatch failed to exercise control over how McKenzie disposed of the remainder of investor funds in the James Marketing UK Account which totalled approximately $700,000.

[85] Given that almost all of the investor funds were either spent on expenses unrelated to Lyndz' business or unaccounted for, we conclude that Lyndz investors were deprived of the funds they invested in Lyndz as a result of the misrepresentation and unauthorized diversion of investor funds.

[86] Eatch misrepresented the nature of Lyndz' business when he sent documents and correspondence that he prepared to investors and disposed of a significant portion of investor funds for purposes unrelated to Lyndz' business. We conclude that Eatch knew of the dishonest act and the deprivation of Lyndz investors that flowed therein. Eatch, therefore, contravened subsection 126.1(b) of the Act.

[87] Eatch is the directing mind of Lyndz. His knowledge is attributable to Lyndz. Lyndz therefore also contravened subsection 126.1(b) of the Act.

[88] Based on the evidence, we find that Lyndz and Eatch knowingly perpetrated a fraud, contrary to subsection 126.1(b) of the Act.

2. James Marketing and McKenzie

[89] James Marketing and McKenzie contributed to the misrepresentations perpetrated by Lyndz and Eatch about the nature of Lyndz' business. They knowingly allowed Eatch to use James Marketing's letterhead and email account to correspond with investors in connection with their purchases of Lyndz shares. The correspondence sent by Eatch on James Marketing's letterhead or through James Marketing's email account represents Lyndz as developing a business of manufacturing and distributing pharmaceuticals and bringing affordable pharmaceuticals to the third world as a "humanitarian project". This led

investors to believe that the funds they exchanged for shares in Lyndz would be invested in the development of Lyndz' proposed pharmaceutical business and humanitarian projects in impoverished nations.

[90] However, as discussed above, these representations were false. Lyndz had never developed a pharmaceutical business, nor is there any credible evidence that investor funds were applied to the development of such business. Instead, almost all investor funds were either spent on matters unrelated to the business of Lyndz or are unaccounted for.

[91] In his Agreed Statement of Facts, McKenzie admits that he has never known Lyndz to have an active business. Having received $700,000 of investor funds and disposed of them, McKenzie knew or ought to have known of the dishonest act and the deprivation of Lyndz investors that would result.

[92] McKenzie is the directing mind of James Marketing. His knowledge is attributable to James Marketing. Accordingly, we find that James Marketing knew or ought to have known about the dishonest act and the deprivation of investors that would result.

[93] Based on the evidence, we find that James Marketing and McKenzie participated in fraudulent misconduct, contrary to subsection 126.1(b) of the Act.

VII. CONCLUSION

[94] For the reasons stated above, we find that:

(i) Lyndz, James Marketing, Eatch and McKenzie distributed Lyndz securities without a preliminary prospectus and a prospectus having been filed and receipted by the Director, contrary to subsection 53(1) of the Act; and

(ii) Lyndz, James Marketing, Eatch and McKenzie perpetrated a fraud on Lyndz investors, contrary to subsection 126.1(b) of the Act.

[95] The parties are directed to contact the Office of the Secretary within 10 days to set a date for a sanctions and costs hearing, failing which a date will be set by the Office of the Secretary.

Dated at Toronto at this 16th day of May, 2011.

"Patrick J. LeSage"
Patrick J. LeSage, Q.C.

"Sinan O. Akdeniz"
Sinan O. Akdeniz

SCHEDULE "A"

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

AND

**IN THE MATTER OF
LYNDZ PHARMACEUTICALS INC.,
JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE**

**AGREED STATEMENT OF FACTS OF
MICHAEL EATCH and LYNDZ PHARMACEUTICALS INC.**

1. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority in Canada, the Respondent agrees with the facts as set out in this Agreed Statement of Facts.

A. Background

2. Lyndz Pharmaceuticals Inc. ("Lyndz") is a company incorporated pursuant to the laws of Ontario.

3. Michael Eatch ("Eatch") is a resident of Ontario. He is the president, secretary and sole director of Lyndz. During the relevant time, Lyndz' registered business address was Eatch's home.

4. Eatch has never been registered with the Ontario Securities Commission (the "Commission").

5. Lyndz has never had any active business, except what is described in this Agreed Statement of Facts.

6. Lyndz is not a reporting issuer in Ontario and has not filed a prospectus. Its common shares are not listed on any exchange.

7. Eatch is also the sole director and shareholder of Lyndz Pharma Ltd. ("Lyndz UK"), a company incorporated pursuant to the laws of the UK, operating out of the same address as James Marketing Ltd ("James Marketing").

8. Lyndz UK has never had an active business.

9. The Respondent, McKenzie, is a resident of Aurora, Ontario, and the sole director and shareholder of James Marketing.

10. McKenzie has never been registered with the Commission.

11. James Marketing, is a corporation incorporated pursuant to the laws of the UK with its head office registered to an address in London, England.

12. James Marketing has never had any active business except what is described in this Agreed Statement of Facts.

13. James Marketing has never been registered with the Commission.

14. In all documents and correspondence sent to Lyndz' shareholders by Eatch, Lyndz, McKenzie and James Marketing, Lyndz is purported to be developing a business of manufacturing and distributing pharmaceuticals and bringing affordable pharmaceuticals to the third world as a "humanitarian project".

B. Role Played by Eatch and Lyndz in the Sale of Lyndz Securities to Ontario Investors

15. In at least 47 transactions from 1999 through 2004 Eatch and Lyndz distributed Lyndz shares to residents of Ontario and other provinces.

16. At least 14 of the 47 distributions, including distributions to Ontario investors, were made in exchange for funds totalling over $400,000 CDN.

17. The remainder of these 47 distributions were made as gifts to friends and family of Mr. Eatch who had assisted him with his business.

18. The over $400,000 CDN raised as part of this distribution was disposed of on Lyndz business, payments to Mr. Eatch's partner and personal expenses of Michael Eatch. A precise accounting of the disposition of these funds is not available.

C. Roles Played by Eatch, Lyndz and Lyndz UK in the Sale of Lyndz Securities to UK Investors

19. On over 150 occasions from 2005 through 2008, Eatch, McKenzie, James Marketing and Lyndz distributed Lyndz shares from Ontario to more than 70 residents of the UK.

20. Eatch and Lyndz committed numerous acts in furtherance of these distributions of Lyndz securities. These acts included the following:

a. Eatch sent correspondence to prospective investors on Lyndz letterhead soliciting them to invest in the shares of Lyndz;

b. Eatch, with McKenzie's permission, sent correspondence to prospective investors on James Marketing letterhead soliciting them to invest in the shares of Lyndz;

c. Eatch, with McKenzie's permission, used James Marketing's email account to invoice Lyndz' investors on the letterhead of James Marketing and instruct them to make payments to James Marketing;

d. Eatch personally sent share certificates to a majority of Lyndz' investors;

e. Eatch personally telephoned, met with and corresponded with investors in connection with their purchase of Lyndz securities; and,

f. Eatch maintained a bank account in the UK in the name of Lyndz Pharma for the purpose of receiving funds from James Marketing that had been deposited with James marketing by Lyndz investors in exchange for shares in Lyndz.

21. James Marketing received funds totalling approximately $1,700,000 CDN1[1] from the distribution of Lyndz' shares.

22. Eatch and McKenzie made an agreement to divide the funds McKenzie received in the accounts of James Marketing between themselves according to an agreement that Eatch confirmed in writing and sent to McKenzie (the "Agreement").

23. Pursuant to the Agreement, McKenzie was to instruct his bank to transfer 30% of the investor funds to an account held by Eatch in the name of Lyndz UK and provide 60% of the funds to Eatch directly in cash. The Agreement also provided that for "facilitating" the redistribution of the funds paid by Lyndz' investors as described above, McKenzie was entitled to retain 10% of the funds deposited into the accounts of James Marketing.

24. In fact, McKenzie transferred approximately $380,000 CDN from the account of James Marketing to the account of Lyndz UK, and $25,000 CDN to account of the spouse of Michael Eatch.

25. McKenzie withdrew approximately $500,000 CDN in cash from the James Marketing account. There is no precise accounting of these funds, but at least 50% was transferred to Eatch.

26. McKenzie disposed of the remainder of the investor funds in the James Marketing account, which totalled approximately $700,000 CDN, on matters unrelated to the business of Lyndz, including a gratuitous transfer of approximately $75,000 CDN to his spouse.

27. Eatch spent approximately half of the funds he received from McKenzie on personal expenses unrelated to the business of Lyndz. The other 50% of those funds remains unaccounted for.

28. Eatch, McKenzie, Lyndz and James Marketing led investors to believe that the funds they exchanged for shares in Lyndz would be invested in the development of Lyndz' proposed pharmaceutical business and humanitarian projects in impoverished nations.

29. A large majority of the share certificates and items of correspondence sent to Lyndz' investors by McKenzie and Eatch were sent from Ontario.

[1] All funds were originally received in British Pounds and have been converted on the basis of an average exchange rate during the relevant period.

30. A large majority of the instructions to financial institutions to transfer funds were issued from Ontario.

31. A large majority of the investor funds withdrawn in cash were withdrawn in Ontario.

32. Lyndz UK investors paid between $0.15 and $0.33 per share.

33. As an officer and director of Lyndz and Lyndz UK, Eatch was at all times either directly responsible for the conduct of those companies or authorized, permitted or acquiesced in that conduct.

Dated this 19th day of May, 2010

_____
Michael Eatch

_____
Michael Eatch on behalf of
Lyndz Pharmaceuticals Inc.

_____
Staff of the Ontario Securities Commission

SCHEDULE "B"

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

AND

**IN THE MATTER OF
LYNDZ PHARMACEUTICALS INC.,
JAMES MARKETING LTD.,
MICHAEL EATCH AND RICKEY MCKENZIE**

**AGREED STATEMENT OF FACTS OF
JAMES MARKETING LTD. and RICKEY MCKENZIE**

1. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority in Canada, the Respondent agrees with the facts as set out in this Agreed Statement of Facts.

A. Background

2. The Respondent, McKenzie, is a resident of Aurora, Ontario, and the sole director and shareholder of James Marketing.

3. McKenzie has never been registered with the Ontario Securities Commission (the "Commission").

4. The Respondent, James Marketing Ltd. ("James Marketing"), is a corporation incorporated pursuant to the laws of the UK with its head office registered to an address in London, England.

5. James Marketing has never had any active business except what is described in this Agreed Statement of Facts.

6. James Marketing has never been registered with the Commission.

7. Lyndz Pharmaceuticals Inc. ("Lyndz") is a company incorporated pursuant to the laws of Ontario.

8. Michael Eatch ("Eatch") is a resident of Ontario. He is the president, secretary and sole director of Lyndz. During the relevant time, Lyndz' registered business address was Eatch's home.

9. Eatch has never been registered with the Commission.

10. In all documents and correspondence sent to Lyndz' shareholders by Eatch, Lyndz, McKenzie and James Marketing, Lyndz is purported to be developing a business of manufacturing and distributing pharmaceuticals and bringing affordable pharmaceuticals to the third world as a "humanitarian project".

11. McKenzie has never known Lyndz to have an active business.

12. Lyndz is not a reporting issuer in Ontario and has not filed a prospectus. Its common shares are not listed on any exchange.

13. Eatch is also the sole director and shareholder of Lyndz Pharma Ltd. ("Lyndz UK"), a company incorporated pursuant to the laws of the UK, operating out of the same address as James Marketing.

14. McKenzie has never known Lyndz UK to have an active business.

B. Roles Played by McKenzie and James Marketing in the Sale of Lyndz Securities

15. On over 150 occasions from 2005 through 2008, Eatch, McKenzie, James Marketing and Lyndz distributed Lyndz shares from Ontario to more than 70 residents of the UK.

16. McKenzie and James Marketing committed numerous acts in furtherance of these distributions of Lyndz' securities. These acts included the following:

a. McKenzie knowingly allowed Eatch to send correspondence to prospective investors on James Marketing letterhead soliciting them to invest in the shares of Lyndz;

b. McKenzie gave Eatch access to James Marketing's email account for the purpose of allowing Eatch to invoice Lyndz' investors on the letterhead of James Marketing and instruct them to make payments to James Marketing;

c. McKenzie personally sent share certificates to some Lyndz' investors;

d. McKenzie personally telephoned, met with and corresponded with investors in connection with their purchase of Lyndz securities;

e. James Marketing received funds totalling approximately $1,700,000 CDN[1] from the distribution of Lyndz' shares; and,

f. McKenzie maintained bank accounts in the UK in the name of James Marketing for the purpose of receiving funds from Lyndz investors.

17. McKenzie and Eatch made an agreement to divide the funds McKenzie received in the accounts of James Marketing between themselves according to an agreement that Eatch confirmed in writing and sent to McKenzie (the "Agreement").

18. Pursuant to the Agreement, McKenzie was to instruct his bank to transfer 30% of the investor funds to an account held by Eatch in the name of Lyndz UK and provide 60% of the funds to Eatch directly in cash. The Agreement also provided that for "facilitating" the redistribution of the funds paid by Lyndz' investors as described above, McKenzie was entitled to retain 10% of the funds deposited into the accounts of James Marketing.

19. In fact, McKenzie transferred approximately $380,000 CDN from the account of James Marketing to the account of Lyndz UK, and $25,000 CDN to account of the spouse of Michael Eatch.

20. McKenzie withdrew approximately $500,000 CDN in cash from the James Marketing account. There is no precise accounting of these funds, but at least 50% was transferred to Eatch.

21. McKenzie disposed of the remainder of the investor funds in the James Marketing account, which totalled approximately $700,000 CDN, on matters unrelated to the business of Lyndz, including a gratuitous transfer of approximately $75,000 CDN to his spouse.

22. Eatch spent approximately half of the funds he received from McKenzie on personal expenses unrelated to the business of Lyndz. The other 50% of those funds remains unaccounted for.

23. Eatch, McKenzie, Lyndz and James Marketing led investors to believe that the funds they exchanged for shares in Lyndz would be invested in the development of Lyndz' proposed pharmaceutical business and humanitarian projects in impoverished nations.

24. A large majority of the share certificates and items of correspondence sent to Lyndz' investors by McKenzie and Eatch were sent from Ontario.

25. A large majority of the instructions to financial institutions to transfer funds were issued from Ontario.

26. A large majority of the investor funds withdrawn in cash were withdrawn in Ontario.

27. McKenzie was aware that Eatch had also distributed Lyndz shares to Ontario residents but McKenzie did not receive investor funds arising from those distributions.

28. In December 2005, McKenzie purchased 500,000 shares in the name of James Marketing. McKenzie paid Eatch $0.03 per share, for a total of $15,000.

29. Lyndz UK investors paid between $0.15 and $0.33 per share.

30. As an officer, the sole director and the sole shareholder of James Marketing, McKenzie was at all times either directly responsible for the conduct of James Marketing or authorized, permitted or acquiesced in that conduct.

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[1] All funds were originally received in British Pounds and have been converted on the basis of an average exchange rate during the relevant period.

C. Prior Participation in Criminal Investment Fraud

31. In 2001, McKenzie was convicted of fraud over $5000 and conspiracy to commit an indictable offence under the *Criminal Code*, and received a total sentence of two years less a day. The offences for which McKenzie was incarcerated concerned the telemarketing of a fraudulent gemstone investment from Ontario to Canadian investors, including Ontario residents.

Dated, the 19th day of May, 2010.

_____
Rickey McKenzie

_____
Rickey McKenzie on behalf of
James Marketing Ltd.

_____
Staff of the
Ontario Securities Commission

3.1.4 Sextant Capital Management 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
SEXTANT CAPITAL MANAGEMENT INC.,
SEXTANT CAPITAL GP INC., OTTO SPORK,
KONSTANTINOS EKONOMIDIS,
ROBERT LEVACK AND NATALIE SPORK

REASONS FOR DECISION
(Section 127 of the Act)

Hearing:	June 7, June 14-17, June 21, August 4-5, October 4-8, October 13-15, and December 9-10, 2010		
Decision:	May 17, 2011		
Panel:	James D. Carnwath	–	Chair of the Panel
	Carol S. Perry	–	Commissioner
Appearances:	Tamara Center Brendan Van Niejenhuis Pavel Malysheuski	–	For Staff of the Commission
	Suzy Kauffman	–	Counsel for PricewaterhouseCoopers in its capacity as Receiver and Manager of Sextant Capital Management Inc. and Sextant Capital GP Inc.
	Joseph Groia Kevin Richard David Sischy Ashley Krol Tatsiana Okun (student-at-law)	–	Counsel for Otto Spork, Natalie Spork and Konstantinos Ekonomidis
	Wendy Berman	–	Independent Counsel for Otto Spork, Natalie Spork and Konstantinos Ekonomidis in attendance on October 5, 2010

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REASONS FOR DECISION

I. INTRODUCTION

[1] Staff of the Ontario Securities Commission (the "Commission") allege that Otto Spork, Sextant Capital Management Inc. ("SCMI") and Sextant Capital GP Inc. ("Sextant GP") committed non-criminal fraud during the period from July 2007 to December 2008 in three ways:

(a) they sold investment fund units with falsely inflated values;

(b) they took millions of dollars in fees based on falsely inflated values; and

(c) they directly misappropriated money from investment funds.

[2] Staff allege the fraud was perpetrated through three investment funds managed from Toronto – the Sextant Strategic Opportunities Hedge Fund L.P. (the "Canadian Fund") in Ontario, the Sextant Strategic Hybrid2Hedge Resource Fund Offshore Ltd. (the "Hybrid Fund") incorporated in the Cayman Islands and the Sextant Strategic Global Water Fund Offshore Ltd. (the "Water Fund") incorporated in the Cayman Islands (the three funds together, the "Sextant Funds").

[3] Staff make further allegations of conduct contrary to the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Act*") and contrary to the public interest against some or all the named Respondents. Staff allege that Otto Spork, Konstantinos (Dino) Ekonomidis, Natalie Spork and Robert Levack, each had a role in managing the Canadian Fund. Staff allege that all of the named Respondents breached their management duties to that fund, to the detriment of investors.

[4] There is a Temporary Cease Trade Order in place against certain Respondents, made on December 8, 2008. The order also suspended SCMI's registration and continues until the conclusion of the hearing on the merits. Various directions freezing a custodial trading account and bank accounts related to the Canadian Fund were also issued by the Commission and continued by the Ontario Superior Court of Justice.

[5] On application of the Commission dated March 5, 2009, the Canadian Fund, SCMI and Sextant GP were placed into receivership by Order of the Ontario Superior Court of Justice dated July 19, 2009.

[6] On May 15, 2009, the Cayman Islands Monetary Authority appointed controllers over the Hybrid Fund and the Water Fund. The powers of the controllers were confirmed by Order of the Grand Court of the Cayman Islands dated June 16, 2009.

II. ISSUES

[7] The Statement of Allegations requires us to answer the following questions:

(a) Did Otto Spork, SCMI and Sextant GP commit a fraud on investors contrary to s. 126.1 *Act*?

(b) Did SCMI, Sextant GP, Otto Spork, Dino Ekonomidis and Natalie Spork breach their duties as investment fund managers contrary to s. 116 of the *Act*?

(c) Did SCMI, Otto Spork, Dino Ekonomidis and Natalie Spork breach their duties pursuant to OSC Rule 31-505 – *Conditions of Registration* ("Rule 31-505")?

(d) Did SCMI and Sextant GP fail to maintain proper books and records contrary to s. 19 of the *Act*?

(e) Did the Respondents act contrary to the public interest?

[8] Robert Levack is no longer a respondent. On June 1, 2010, a Commission Panel approved his settlement agreement.

III. THE MATERIAL FILED

[9] At the opening of the hearing on the merits, twenty volumes of hearing briefs were provisionally filed as Exhibit 4. Counsel agreed that their admission as exhibits would take place in the course of the hearing as documents in those volumes were identified by witnesses. References to the exhibits in these Reasons will be by exhibit number, tab number and where necessary, page number ("Ex.-, Tab.-, p.-").

[10] In addition there is a complete transcript of the proceedings comprising 14 volumes. Reference to the transcript will be by volume number, page number and line, as required ("Tr., Vol. -.p.-, l.-"). As well, there are transcripts of the closing submissions referred to by date.

IV. THE MAJOR PLAYERS

[11] The following descriptions of the major players are the Panel's findings of fact based on the evidence, the agreement of counsel and information not seriously challenged by the parties.

[12] Otto Spork is a former dentist, with subsequent experience as a trader on the TSX. In 2006 and early 2007, he created the three hedge funds described in these reasons as the Sextant Funds. Otto Spork managed the Sextant Funds through companies which he controlled. He was registered under the *Act* as Officer and Director (Trading and Non-Advising), Designated Compliance Officer and Ultimate Responsible Person in the category of limited market dealer, investment counsel and portfolio manager with SCMI from February 1, 2006 to June 5, 2008.

[13] Helen Spork is Otto Spork's wife.

[14] Dino Ekonomidis is Helen Spork's brother and Otto Spork's brother-in-law. He was vice-president, Corporate Developments, for SCMI and registered under the *Act* as a salesperson with SCMI in the limited market dealer category from August 14, 2006 to September 28, 2009 and as a dealing representative in the exempt market dealer category from September 28, 2009 to January 31, 2010.

[15] Natalie Spork is Otto Spork's daughter. From July 7, 2008 she was registered as Officer and Director (Non-Advising, Non-Trading) and Ultimate Responsible Person in the categories of limited market dealer, investment counsel and portfolio manager and as Officer and Director (Non-Advising) in the category of commodity trading manager with SCMI. On May 28, 2008, Natalie Spork was given the title of President and Secretary of SCMI.

[16] Gary Allen was a trader under the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended. He was hired to act as a supervisor of Otto Spork while the latter attempted to obtain his futures trading license.

[17] Jamie Spork is Otto Spork's daughter from a previous marriage

[18] Robert Levack was a Chartered Financial Analyst and was SCMI's Chief Compliance Officer from February 2006 to July 17, 2009. He was registered under the *Act* as an Officer (Advising, Non-Trading) and Chief Compliance Officer in the categories of limited market dealer and investment counsel and portfolio manager with SCMI from February 1, 2006 until June 5, 2008. As of June 5, 2008 his registration was modified to Officer (Advising and Trading), Chief Compliance Officer and Designated Compliance Officer.

[19] The Canadian Fund is a hedge fund in Ontario organized as a limited partnership. The limited partners consist of the investors in the hedge fund.

[20] The Hybrid Fund is one of two hedge funds operating as a corporation under Cayman Islands law. The Water Fund is a second hedge fund operating as a corporation under the law of the Cayman Islands. We refer to the Hybrid Fund and the Water Fund as the "Offshore Funds".

[21] Sextant GP is the general partner and manager of the Canadian Fund.

[22] SCMI is the Investment Adviser for the Canadian Fund. SCMI was registered under the *Act* as an investment counsel, portfolio manager and limited market dealer as of February 1, 2006, until its suspension on December 8, 2008.

[23] Sextant Capital Management a Islandi ehf ("Sextant Iceland") is an Icelandic company and was the sub-adviser to the Canadian Fund from July 2008. In addition, Sextant Iceland is the investment adviser to the Offshore Funds.

[24] Sextant Capital Management S.a.r.l. ("Sextant Lux") is a Luxembourg company and adviser to the Offshore Funds before June 2008. It was replaced by Sextant Iceland in June of 2008.

[25] Iceland Glacier Products ehf ("IGP" or "IGP Iceland") is an Icelandic company in which the Sextant Funds became major investors.

[26] iGlobal Water (Canada) Inc. ("iGlobal Water") is located in Toronto, and was controlled by Otto Spork.

[27] Riambel Holdings S.A. ("Riambel") and Hermitage Holding A.G., Switzerland ("Hermitage") are two holding companies owned 100% by Otto Spork.

[28] Iceland Global Water ehf ("IGW" or "IGW Iceland") is an Icelandic company in which the Sextant Funds became investors.

[29] Iceland Global Water 2 Partners S.C.A. ("IGW Lux") is a Luxembourg company which owns 100% of IGW.

[30] Iceland Global Water II S.a.r.l ("IGW GP") is a Luxembourg company 100% owned by Otto Spork. IGW GP owns 100% of the "unlimited shares" in IGW Lux, making it akin to a general partner in IGW Lux.

[31] Attached to these Reasons is Schedule "A", which the parties agree sets out the various relationships among the various companies identified above. Based on the schedule, we find that Otto Spork owned 100% of SCMI, Sextant GP and Sextant Iceland.

[32] We find Otto Spork controlled each of the corporate identities shown on Schedule "A" and owned many of them outright as more particularly shown on Schedule "A". We also find that any third-party transfers to, or investments in, any of the entities on Schedule 'A' fell under the total control of Otto Spork.

V. THE NARRATIVE HISTORY

A. Formation and Operation of the Sextant Funds

1. Canadian Fund

[33] Otto Spork created the Canadian Fund in 2006 and marketed it through a Confidential Offering Memorandum (the "OM") dated February 17, 2006. The Canadian Fund operated under a limited partnership agreement (the "LP Agreement") which bound the investors (the limited partners). Sextant GP was the general partner and SCMI was the investment adviser to the Canadian Fund (together the "Fund Manager").

[34] The OM set out the investment objectives and strategies of the Canadian Fund, as well as investment restrictions that applied to its activities. The LP Agreement incorporated the same investment restrictions, which included the following terms:

> The Fund will not engage in any undertaking other than the investment of the Fund's assets in accordance with the Fund's investment objective and subject to the investment restrictions set out below and will engage in such activities as are necessary or ancillary with respect thereto.
>
> …
>
> The Fund may not invest more than 20% of its portfolio, based on the Net Asset Value of the Fund at the most recent Valuation Date, in any single class of securities of an issuer, where for the purposes of this restriction a long position is valued as the cost of the securities purchased and a short position is valued as the gross proceeds of the sale of the securities sold short;
>
> …
>
> The Fund will not purchase securities from, or sell securities to the Investment Advisor or any of its affiliates or any principal of any of them or any firm in which any principal of the Investment Advisor may have a direct or indirect material interest.
>
> (Ex. 4-1, Tab 2)

[35] The OM and LP Agreement also provided for the compensation of the Canadian Fund's General Partner and Investment Adviser. There were two forms of compensation:

1. Advisory Fee. Initially Sextant GP, later SCMI was entitled to an advisory fee (also referred to as a "management fee") of 2% of the NAV ("Net Asset Value") payable monthly in 1/12 instalments. The NAV was established by Sextant GP with the assistance of Investment Administration Solutions Inc. ("IAS"), located in British Columbia. IAS calculated the values of publicly traded securities as established by reported trades. The value of the IGP (and IGW) shares held by the Canadian Fund was established by Otto Spork. We note the value of the IGW shares was set at their cost or book value throughout the applicable period in calculating the NAV of the Canadian Fund.

2. Performance Fee. Sextant GP was entitled to a performance fee, consisting (in broad terms) of 20% of the increase in NAV in the most recent month. This was subject to a provision which provided that, should the Canadian Fund's NAV decrease, Sextant GP would not collect a performance fee until the Canadian Fund NAV exceeded the "high-watermark" achieved in the prior or current fiscal year.

2. Offshore Funds

[36] Both Offshore Funds had substantially identical terms for the compensation of the Fund Manager. In their case, the Fund Manager was Sextant Lux. After June 2008, Sextant Iceland became the Fund Manager. These Fund Managers were owned and controlled by Otto Spork.

[37] The Offshore Funds were each offered to investors under the Confidential Private Placement Memoranda dated January 15, 2007.

3. Canadian Fund's Investment Practices

[38] The OM portrayed a strategy of taking primarily long positions in equity and equity-related securities, hedged by short positions in commodities. In 2006 and 2007, but to a far lesser degree in 2008, the Canadian Fund traded in a variety of securities.

[39] For that purpose, the Canadian Fund maintained a brokerage account with Newedge Canada Inc. ("Newedge"); Newedge served as the fund custodian. Brokerage records from Newedge (which have been reviewed and analyzed by OSC Staff, but not by the Receiver) show the Canadian Fund's trades over the term of its active life. In the case of publicly-traded securities, trading by the Canadian Fund would occur by SCMI instructing Newedge to purchase or sell a particular security.

[40] The Canadian Fund also contracted with IAS to serve as its fund accountant. In that role, IAS also served as its NAV calculation agent. Newedge would regularly report to IAS on transactions, so that IAS could maintain a current record of the Canadian Fund's overall holdings, and calculate the NAV of the Canadian Fund weekly and monthly.

[41] In the case of publicly traded securities, IAS would use their market price on the relevant NAV calculation date in order to determine the value of those holdings as part of the Canadian Fund's portfolio value. In the case of IGP and IGW, IAS would take instruction from Otto Spork as to the value to assign to the Canadian Fund's holdings in those private companies.

[42] The reported NAV of the Canadian Fund is relevant for this case in three ways:

(a) **Investor Reliance.** The NAV of the Canadian Fund was reported to investors, and potential investors, as representing the current market value of the Canadian Fund. This information could influence existing investors in deciding whether to remain in the Canadian Fund or redeem their units and could influence prospective investors in deciding whether to make an investment. The NAV and its historical progression were regularly reported to investors on the website used to promote the Canadian Fund and through monthly mailings to investors.

(b) **Advisory Fees.** The monthly NAV calculation was used, under the terms of the OM, to calculate the Advisory Fee payable to SCMI and Sextant GP based on 1/12 of 2% of the reported NAV of the Canadian Fund.

(c) **Performance Fees.** The month-over-month increase in the NAV was used under the terms of the OM to calculate the Performance Fee payable to Sextant GP, based on 20% of the increase in the reported NAV over the prior month (subject to the provision protecting unit-holders against a decrease in the NAV, as referred to above).

VI. STAFF WITNESSES

A. Jane Lee

[43] Jane Lee became a Chartered Accountant in 1990. After several years experience in finance administration she became the Senior Vice-President for fund accounting with IAS. Ms. Lee's evidence may be found in Tr., Vol. 11, p. 5 and following.

[44] SCMI became a client of IAS and IAS assumed certain responsibilities for the Canadian Fund and the two Offshore Funds; IAS did fund accounting and record keeping for the Canadian Fund and only fund accounting for the Offshore Funds.

[45] Ms. Lee described the role of IAS, which was to prepare and determine the NAV per unit for a fund. This was done by taking the value of the total assets less the liabilities and then dividing by the number of units outstanding to arrive at a NAV per unit. Ms. Lee's responsibility was that of a senior person who reviewed the file to ensure its accuracy before releasing it to the client for its approval.

[46] Ms. Lee said that Otto Spork was the only person who approved the NAV for the Sextant Funds, which he communicated by e-mails (Ex. 4-6, Tabs 7, 8 and 14). The NAV was established for the Canadian Fund on a weekly and

monthly basis and at month-end and for the Offshore Funds. Ms. Lee was referred to Ex. 4-4 which contained the portfolio valuation statements for the Canadian Fund from June 2007 to January 2009 separated by tabs into months. She was asked to comment on the portfolio valuation ending April 30, 2008. The portfolio valuation showed total portfolio holdings of $15,427,000 (all dollar figures are rounded and approximate throughout these Reasons). Included in the portfolio holdings were 7,109,750 shares of IGP with a book value of $2,483,000 and a market value of $10,055,000. The IGP shares represented approximately 65% of the total portfolio value. The values of the securities in the portfolio valuations were established in two ways. The market value of the publicly-traded securities was established in the usual manner by referencing public market prices. The value of the private company securities came from Otto Spork. Ms. Lee never received instructions from anyone other than Otto Spork for establishing the value of IGP shares.

[47] Ms. Lee's evidence on this point led to the following exchange with the Chair:

> THE CHAIR: You take what Dr. Spork gives you.
>
> THE WITNESS: Because we're – he's in a position to value that particular stock, we're not. It's a private company.
>
> THE CHAIR: Yes. It's not a criticism. I'm trying to understand the methodology.
>
> THE WITNESS: M'hmm.
>
> THE CHAIR: And what I heard you say earlier was he gives you the numbers, you enter them.
>
> THE WITNESS: Yes.
>
> THE CHAIR: No matter what the number is.
>
> THE WITNESS: We review it, but we – again, we're not in a position to say that it's not an incorrect number because again we are not privy to the value of the private company.
>
> THE CHAIR: You accept his instructions.
>
> THE WITNESS: Yes.
>
> THE CHAIR: Thank you.
>
> (Tr. Vol. 11, p. 39 l. 23 – p. 40 l. 17)

[48] As for the non-portfolio items (liabilities) identified by Ms. Lee, one in particular stood out. This was an item referenced as "Advanced Payment" of $4,033,000 approximately found at p. 73 of the April 2008 Tab in Ex. 4-4. She explained this sum as an amount actually owing from the Fund Manager. It should be remembered that the "Fund Manager" for these amounts owing included both Sextant GP and SCMI. The figures represent monies already taken by the Fund Manager as advance payment for management and performance fees. The figure of $4,033,000 was a cumulative balance to April 30, 2008.

[49] Ms. Lee was then referred to the securities ledger that listed the individual transactions for the purchases and sales of IGP shares by the Canadian Fund. (Ex. 4-6, Tab 18).

[50] Ms. Lee identified two acquisitions of IGP shares on July 31, 2007, one for 320,000 shares seemingly acquired by a transfer of securities, and one for 6,575,350 shares acquired at a price of €0.170820 per share for a cost of CDN $1,758,405. Ms. Lee was then referred to the portfolio valuation for the Canadian Fund as of July 31, 2007 (Ex. 4-4, p. 10) where the market value of IGP shares was set at €0.321 per share. The market value of the shares was shown to be CDN $3,200,000, almost twice as much as their cost.

[51] Ms. Lee conducted a similar analysis for the two Offshore Funds. Her attention was drawn to Ex. 4-6, Tab 19, which she identified as the securities ledger for the Hybrid Fund. She was also referred to Ex. 4-5 at the tab for December 31, 2008 at p. 72. She identified that the Hybrid Fund held 14,536,928 shares of IGP as of December 31, 2008 with an average cost of €0.373 per share and a book value of USD $8 million. As of December 31, 2008, the market value was shown at €2.45 per share for a total market value of USD $49,576,000 and represented 92.37% of the Hybrid Fund's portfolio value.

[52] The same analysis was carried out for the Water Fund. It held 16,511,323 shares of IGP as of December 31, 2008 with a book value of USD $8,600,000. The market value of the shares at that date was set at €2.45 per share for a total market value of USD $56,310,000 and represented 95.04% of the Water Fund's portfolio value.

[53] Ms. Lee's examination-in-chief concluded with a question about how the operating expenses of the funds were paid. Ms. Lee testified that the expenses were accrued on instructions from Otto Spork by referring to Ex. 4-6, Tabs 4, 5 and 15. Ms. Lee said there was no pattern in terms of timing, frequency or amount. She said the amounts were usually in round amounts. IAS was never told what the expenses were for nor did it ever receive supporting documents other than the e-mails with the instructions. She examined the general ledger for the Canadian Fund (Ex. 4-10, Tab 12a, p. 129) as of December 31, 2008. She identified the operating expenses recorded for that year to be $1.8 million. This sum, she said, was fully paid in 2008 over and above the management fees and the performance fees that were paid to the Fund Manager.

[54] Ms. Lee's cross-examination began with a question directed to the book value of the IGW shares, held by the two Offshore Funds. After examining the portfolio valuations for each of the funds found at pp. 72 and 144 in Ex. 4-5, Ms. Lee acknowledged that book value was the same in each of the Offshore Funds. Ms. Lee's attention was then drawn to Exhibit 4-4, Tab April 2008, p. 84, an incentive fees report. She confirmed that SCMI, Helen Spork and Robert Spork invested approximately $4 million in the Canadian Fund in April 2008. Ms. Lee was then shown Ex. 5, Tab 8, in which Otto Spork instructed Newedge to carry out certain transactions involving the redemption of the Canadian Fund units purchased by SCMI, Helen Spork and Robert Spork. Ms. Lee said that based on the e-mail at Tab 8, it appeared that the settlement of the redemption would be carried out by the transfer of shares of IGP, the actual number of shares of IGP to be transferred being 1,591,000 plus 1,117,000. Ms. Lee was then shown Ex. 4-6, Tab 18, where on July 21, 2008 the securities ledger for the Canadian Fund shows the exact number of shares previously identified coming out of the fund. She acknowledged that the redemptions were thus carried out without cash payments to the Spork's but rather a transfer of shares of IGP from the Canadian Fund to the Offshore Funds.

[55] Further questions to Ms. Lee were put by counsel for the Respondents relating to the correlation between entries in the general ledger and the entry for accrued management fees in the portfolio valuation statements. Several examples were put to Ms. Lee of matching entries with which she agreed. It was put to Ms. Lee that there appeared to be a short-fall of $400,000 between the crystallized performance fee, as used in the portfolio valuation, and the entries indicated in the general ledger. Ms. Lee acknowledged the discrepancy but pointed out for the discrepancy to be accurate the general ledger would have to be correct. Her view was that the general ledger was not correct.

[56] Following re-examination, Commissioner Perry asked Ms. Lee to explain what she meant when she said earlier in her testimony that there were areas where Sextant's practices deviated from what Ms. Lee would consider normal. Her response was that as far as she could remember, there were no other clients that advanced or pre-paid their performance or management fees.

B. Supriya Sarin and Andrew Wilczynski

[57] Supriya Sarin is a manager in the corporate advisory services group of PricewaterhouseCoopers Inc.

[58] Andrew Wilczynski is a partner with PricewaterhouseCoopers LLP and a senior vice-president of the restructuring and insolvency arm of PricewaterhouseCoopers ("PWC").

[59] The parties agreed that Ms. Sarin and Mr. Wilczynski could testify as a witness panel, as permitted by s. 15.2 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 ("SPPA"). The procedure is designed to avoid calling two or more witnesses separately with the understanding that the person best qualified to answer a specific question will respond to that question for the panel. Their evidence is found in Tr. Vol. 3, p. 5 and following.

[60] PWC was appointed the receiver over SCMI, Sextant GP and the Canadian Fund on July 17, 2009. PWC was not appointed as receiver of the Offshore Funds who were placed under a controllership ("Controllership") pursuant to the laws of the Cayman Islands. PWC and the Cayman controllers share legal counsel in Iceland. PWC had filed two reports to the Ontario Superior Court of Justice and both reports have been approved by the court. (Ex. 4-16, Tabs 1 and 2)

[61] The witness panel concluded that the Canadian Fund held 17% of the issued shares of IGP. Their belief was that the two Offshore Funds together held 42% of IGP, split between the two funds.

[62] The witness panel described the efforts to serve Otto Spork with a notice of examination pursuant to the receivership. Service was attempted in Canada and PWC has retained a service in Iceland to serve Otto Spork in that location. PWC also attempted to meet with Otto Spork but he has refused to do so. Service was attempted on his counsel in Canada but counsel advised that they had not been retained to accept service on behalf of Otto Spork.

[63] The witness panel then described the efforts to carry out the receivership mandate, including obtaining information and gathering in the assets. They obtained the portfolio valuation statements for the Sextant Funds from IAS. They met with Tony Tartaglia, the audit partner in charge of the Sextant account at BDO Dunwoody ("BDO") and gained access to the Sextant books and records for the audit year 2007. BDO Dunwoody no longer had any information for 2008 and the witness panel were told

that those documents had been sent back to Sextant. They obtained from the Royal Bank ("RBC") copies of all the bank statements for the three entities, SCMI, Sextant GP and the Canadian Fund.

[64] The witness panel explained the difficulties in reviewing the activities of the three entities. The records were incomplete and no staff was available to explain the transactions. PWC therefore shifted their focus and decided to "follow the money". They tried to map what monies came in and what monies went out to try and understand the dynamics of the flow of funds in and out of the Sextant group.

[65] During its review of the group's bank statements obtained from RBC for the period January 2007 to December 2008, the receiver noted several transfers by one or more members of the group to non-arms-length individuals and entities. The transfers are identified in the receiver's second report to the court and appear as follows:

Party	Amount ($)
Otto Spork	1,580,681
1035316 Ontario Ltd.	668,300
Dino Ekonomidis	457,544
Helen Spork née Ekonomidis	1,110,147
Natalie Spork	271,506
Jamie Spork	98,617
Sextant Capital Management a Islandi ehf	2,557,267
Riambel Holding S.A.	79,435
Total	6,823,497

(Ex. 4-16, Tab 2, p. 154)

[66] We find that the recipients of the $6.8 million are Otto Spork, his relatives or companies which he controls. PWC noted that they were unable to find sufficient supporting information to determine the nature and appropriateness of all these transfers.

[67] In addition to the transfers to the non-arms-length's individuals and entities listed above, a significant portion of the credit card expenses of $1.7 million between January 2007 and December 2008 are in respect of personal credit cards held by Otto Spork, Helen Spork, Natalie Spork and others. The credit card expenses covered hotels, meals, other travel costs as well as personal expenditures. The receiver was not able to determine the extent to which the payments were for appropriate business purposes and which were for personal expenses based on the information, or lack thereof contained in the books and records.

[68] In paragraph 24 of the receiver's second report is found a revised summary of the group's Consolidated Cash Flow. The summary shows receipts from arms-length third-party investors of $26 million, together with the proceeds from a sale of IGP shares to the Water Fund of $1.4 million, accounting for total receipts of approximately $27 million. The summary shows redemptions by arms-length third-party investors of $5 million, leaving $22 million to be accounted for.

[69] In the disbursements, the summary shows monies received from non-arms-length parties of $2.8 million and investments by non-arms-length individuals in the Canadian Fund of $1.6 million. These items were explained by Ms. Sarin as a partial re-classification of receipts. The $2.8 million, in the light of the cancelled cheques, indicated that the money was basically being loaned out by the various companies to those related parties and then reinvested by those related parties as subscriptions for units of the fund. Similarly, the $1.6 million was shown as a negative disbursement because the receiver concluded that the monies were advanced by the companies to the individual related parties and then put back in to the Canadian Fund. The receiver concluded this was not fresh money coming in but rather recycled money. The total of the two entries comes to approximately $4.4 million.

[70] It was Ms. Sarin's view that of the original $6.8 million transferred to non-arms-length parties, $4.4 million came back as investment in the Canadian Fund leaving approximately $2.4 million in monies paid to related parties and not repaid to the fund. She pointed out that this was the simple math of the transactions, although the receiver's view was that the entire $6.8 million was owed by the recipients because there was no evidence of the purpose of the transfers.

[71] In the course of its mandate, the receiver visited Iceland from January 18, 2010 to January 21, 2010. Its investigation led the receiver to make the following conclusions:

(i) IGP Iceland was formed to sell bottled water, including the possibility of expanding to include large bulk water shipments. IGP Iceland was in the course of constructing a 7,300 sq. ft. bottling facility in Rif, in western Iceland.

(ii) IGP Iceland's principal asset was a contract with the town of Rif that provided it with water rights. Under the contract, IGP Iceland had constructed a pipeline from a glacier-fed spring running to Rif. Approximately US $2,000,000 was spent building the pipeline.

(iii) The proposed building was at the foundation stage. The contract required the facility be completed by April 4, 2010. It was not clear whether IGP Iceland would meet that deadline; indeed, the receiver found that to be unlikely. The receiver estimated that US $8,000,000 to $10,000,000 had been spent on developing and constructing the plant.

(iv) The receiver estimated once the building was erected, it would take six to nine months to make the plant operational, including the installation of a bottling line. The receiver estimated the cost of construction and purchasing and installing two bottling lines to be US $20 million or more. The source of funding was uncertain. Aside from its water contract and capitalized costs, IGP Iceland had no material assets.

(v) The receiver also investigated the then current status of IGW, a vehicle through which medium bulk water was to be sold by shipping in medium-sized bladders of water, loaded on to ships for transport. IGW owned a fully constructed medium bulk water filling facility located on the Westmann Islands off the southern coast of Iceland. The facility consisted of a large hangar with three bay doors from which filled bladders could be loaded on to waiting ships. The facility was approximately 50 yards from a large sea port.

(vi) The water to be shipped was to be obtained from a glacier located in southern Iceland. Water was delivered to the island by pipeline, owned by the municipality.

(vii) The facility was fully constructed but not operational due to the absence of sales contracts. Moreover, certain government approvals were necessary to commence operations. The only remaining material construction was the paving of a roadway from the facility to the seaport.

(Ex. 4-16, Tab 2, pp. 170-172)

IGP/IGW Funding Gap

[72] In pursuit of its mandate, the Receiver attempted to understand and reconcile the funds advanced from the Canadian Fund to the IGP/IGW group. Its findings are found in Ex. 4-16, Tab 2, pp. 177-180 reproduced below:

> 111. The Receiver has attempted to understand and reconcile the funds advanced from the Sextant Canadian Fund to the IGP/IGW Group and the distinction between the funds invested into IGP and IGW and the lesser amounts in turn invested by IGP and IGW into IGP Iceland and IGW Iceland (the "IGP/IGW Funding Gap"). To the extent that not all of the funds invested in IGP and IGW made it into IGP Iceland and IGW Iceland, the Receiver is now attempting to uncover where such funds went (i.e. as they are apparently no longer with IGW and clearly not within IGP given the Liquidation).
>
> 112. The Receiver remains concerned with the apparent inability to account for the funds invested by the Sextant Canadian Fund in the IGP/IGW Group. Understanding the IGP/IGW Funding Gap is made more complicated by the exchange rate considerations resulting from dealing in four currencies over different periods of time (i.e. Canadian dollars, US dollars, Euros and Icelandic Kroners (which exchange rate fluctuations have been particularly volatile following the financial collapse of Iceland's principal banks)).
>
> 113. As set out above, according to the books and records in the Receiver's possession, approximately $26.4 million was raised by the Sextant Canadian Fund from investor subscriptions, of which only approximately $9.37 million was invested in IGP and IGW, consisting of: (i) $7.37 million in equity subscriptions (as confirmed by both RBC bank records and the IAS statement of December 31, 2008); and (ii) a further sum in the approximate amount of $2 million (as confirmed only by RBC bank records and not by the IAS statement of December 31, 2008), for which no shares have been issued to the Sextant Canadian Fund.

114. Information provided to the Receiver by Mr. Mirakian on February 12, 2010, indicated that the following investments were made by Sextant Canadian Fund and the Cayman Funds:

	Sextant Strategic Opportunities Hedge Fund (CDN)	Sextant Strategic Global Water Fund (USD)	Sextant Strategic Hybrid 2 Hedge Resources Fund (USD)
IGP Luxembourg	6,131,347	8,602,252	8,015,040
IGW Luxembourg	1,235,125	2,476,167	1,238,083
Total	**7,366,472**	**11,078,419**	**9,253,123**

Total Investment in IGP & IGW (USD)[1]
26,346,952

1 – Opportunities fund converted from CDN to USD at exchange rate of 1.2246

115. As a result of the comingling of monies obtained from the Sextant Canadian Fund and the Cayman Funds, it is not always possible for the Receiver to separate the uses of the Sextant Canadian Fund's monies by IGP and IGW from the uses of the Cayman Funds' monies by IGP and IGW. However, collectively, the Sextant Canadian Fund and the Cayman Funds transferred approximately US $26.35 million to IGP and IGW.

116. The Receiver was informed via information received from Mr. Mirakian on February 12, 2010, of the following uses of the Sextant Canadian Fund and Cayman Funds' monies:

(i) approximately US $4.7 million was invested in IGW; and (ii) US $21.6 million was invested in IGP, with monies invested in IGP used as follows:

	Sextant Strategic Opportunities Hedge Fund (CDN)	Sextant Strategic Global Water Fund (USD)	Sextant Strategic Hybrid 2 Hedge Resources Fund (USD)
1 – Purchase of IGP shares	5,535,952	5,386,100	1,371,000
2 – Loan to IGP	404,933	421,263	421,263
3 – Sale & Purchase of shares w/ other subsidiaries	705,351	288,800	4,615,855
4 – Share swap transactions	(834,889)	2,506,290	1,607,022
5 – Adjustments for free shares	320,000	0	0
Total	**6,131,347**	**8,602,253**	**9,253,123**

Sum of Items 1 and 2 (USD)[1]	5,807,363	1,792,363
Sum of Items 3,4,5 – no cashflow to IGP	2,794,890	6,222,677

Sum of Items 1 and 2 for 3 funds (USD)
Sum of Items 1 and 2 for 3 funds (USD) 9,173,097
Sum of Items 1, 2, 3, 4, and 5 (book value) 21,624,108

1 – Opportunities fund converted from CDN to USD at exchange rate of 1.2246

117. According to the audited financial statements for IGP Iceland and IGW Iceland for the year ending December 31, 2008:

(i) in total, approximately US $12.5 million was invested by IGP in IGP Iceland, whether by way of equity or debt. Of this amount, $5.94 million or approximately 47.4% came from the Sextant Canadian Fund and the balance from the two Cayman Funds. All of this money has apparently been spent by IGP Iceland in the course of the construction project as well as interest paid to IGP on its loans and professional costs incurred by IGP Iceland, save for the funds in trust with Mr. Jonsson to fund completion of construction of the second pipeline; and

(ii) In total, approximately US $2 million was invested by IGW in IGW Iceland, whether by way of equity or debt. All of this money has apparently been spent in the course of the construction project as well as interest paid to IGW on its loans and professional costs incurred by IGW Iceland.

118. Accordingly, though US $21.6 million was invested in IGP by the Sextant Canadian Funds and the Cayman Funds, only approximately US $12.5 million was invested by IGP in IGP Iceland. As per the uses of the IGP funds provided by Mr. Mirakian, the balance US $9.1 million has been paid to then existing shareholders in IGP (whose identities are not known to the Receiver) for purchase of their shares in IGP and other share swap transactions in IGP. While no details of the share purchases and share swap transactions have been provided by Mr. Mirakian, this once again raises concerns with respect to possible self-dealing by Dr. Spork and the absence of appropriate corporate governance protocols in IGP. It seems extraordinary that the existing shares of IGP could have been properly valued at over US $9 million, given that IGP had no assets or business at this time, save for the shares of IGP Iceland, which itself was a shell company at the time.

119. Further, though US $4.7 million was apparently invested in IGW by the Sextant Canadian Funds and the Cayman Funds, approximately US $2 million was invested by IGW in IGW Iceland. The Receiver has not determined what has happened to the balance of the funds (amounting to US $2.7 million).

120. The above discussion only considers the transfer of funds by the Sextant Canadian Fund and the Cayman Funds in IGP and IGW. There are many other shareholders in both IGP and IGW and if these shareholders paid anything close to what the Sextant Canadian Fund and the Cayman Funds paid, there should be many more millions of dollars in missing capital. The numbers suggest that the other shareholders perhaps did not pay for their shares or alternatively, did not pay the same value for the shares as the Sextant Canadian Fund and the Cayman Funds.

[73] In cross-examination, counsel for Otto Spork referred to a number of documents which Mr. Wilczyanski had never seen. He acknowledged that they appeared to explain “the funding gap” referred to in his evidence but he was unable to conclude that without further analysis.

C. Michael Ho

[74] Michael Ho is a Forensic Accountant employed by the Commission. Mr. Ho became a Chartered Accountant in 1988 and obtained his CMA certification in 1999. Mr. Ho’s evidence centered on Exhibit 38 (described as Hearing Brief Vol. 20) containing a series of spreadsheets prepared by him or under his supervision. His evidence may be found in Tr. Vol. 12, pp. 76-137.

[75] Mr. Ho’s attention was first drawn to Ex. 38, Tab 5, which Mr. Ho described as an analysis of the cash-flow of the Canadian Fund from January 1, 2007 to December 31, 2008. It is important to remember his evidence concerned only the Canadian Fund. His analysis was based on documents he received from the various banks and brokers that the Canadian Fund had accounts with, including RBC and Newedge. He also looked at the accounting records of the Canadian Fund as prepared by IAS as described in the evidence of Ms. Lee. A copy of Ex. 38, Tab 5 is attached to these reasons as Schedule “B”.

[76] Briefly put, a total of $30 million was deposited into the accounts of the Canadian Fund and during that same period $29 million was dispersed from those accounts. Mr. Ho did not take into account any transaction under $10,000. Third-party investors invested $23 million. In addition, Otto Spork and parties related to him invested $4.6 million. SCMI transferred $1 million and the Water Fund transferred $1.5 million to the Canadian Fund.

[77] The application of funds included investments and transfers to IGP of $2.9 million. There were transfers to SCMI and Sextant Capital GP totalling $16.3 million, third-party investor redemptions accounted for $3.9 million and net investments in other securities of $3.7 million.

[78] Included in the $16.3 million paid or transferred to SCMI and Sextant GP there were various transactions totalling $3.5 million that IAS characterized as investments in IGP. Mr. Ho said it was appropriate to add the $3.5 million to the $2.9 million in the first line of his analysis of application of funds to reflect a $6.4 million investment in IGP by the Canadian Fund.

[79] Mr. Ho's attention was drawn to the Receiver's revised summary of the group's consolidated cash-flow found in Ex. 4-16, at p. 151. Mr. Ho explained that the different figures in that revised summary when compared to his summary at Ex. 38, Tab 5 was caused by the Receiver analysing three entities – the Canadian Fund, SCMI and Sextant GP. He added that his analysis looked at source documents that relate to both the bank account with RBC as well as the brokerage accounts, whereas the Receiver's analysis did not cover cash-flow movements that took place within the brokerage accounts for the Canadian Fund.

[80] Mr. Ho was then asked about the spreadsheets found in Tab 1 of Ex. 38. Three spreadsheets related to the Canadian Fund, the Hybrid Fund and the Water Fund. Each of the spreadsheets shows the market price per IGP share held by the respective funds for the period July 31, 2007 to December 31, 2008. Each further shows the market price per share, the total market value of investment in IGP, the total NAV, a total market value of the investment in IGP as a percentage of NAV. Mr. Ho took the information from the reports provided by IAS and made the percentage calculations shown in the final column on spreadsheets one, two and three in Tab 1, Ex. 38. Shortly put, the total market value of investment in IGP as a percentage of NAV as at December 31, 2008 for the Canadian Fund was 94%, for the Hybrid Fund 107%, and for the Water Fund 98%.

[81] Mr. Ho was referred to Tab 3 of Ex. 38. In this spreadsheet, he extracted all the balances relating the Fund Manager and put them all in one page, coming up with a net balance for all those balances relating to the Fund Manager for each month. The first two columns in the spreadsheet are described as "Due From Fund Manager" and "Advanced Payment to Fund Manager". Taken together, those two columns represent sums the Fund Manager owed to the Canadian Fund for each month in 2008. The next seven columns are the varying sums owed by the Canadian Fund to the Fund Manager. These columns include accrued management fees and GST, operating expenses, crystallized performance fees and GST and accrued performance fees and GST. The spreadsheet shows that as of April 30, 2008 an advance payment of $4 million was paid to the Fund Manager. In Ex. 38, Tab 4, Mr. Ho calculates the total amount paid in 2008 to the Fund Manager was $6.6 million.

D. The Indications of Value

[82] During 2007 and 2008, Otto Spork obtained two calculations of value, received a marketing letter from Canaccord and arranged two share purchases by third parties to justify his valuations of the IGP shares held by the Canadian Fund. These five alleged indications of value are discussed below.

1. Hempstead

[83] Hempstead & Co. ("Hempstead") is a US company carrying on business in New Jersey. In December 2007, Otto Spork retained Hempstead to perform "an appraisal on the fair market value" of the aggregate equity of IGP as of December 31, 2007. The report dated April 2, 2008 may be found at Ex. 4-18, Tab 32.

[84] Hempstead's opinion was that the fair market value of the aggregate equity of IGP at December 31, 2007, on a majority interest basis was $250 million.

[85] Attached to the report as Exhibit 1 is a statement of assumptions and limiting conditions. The first three of the assumptions and limiting conditions are as follows:

- Information, estimates and opinions contained in this appraisal are obtained from sources considered reliable; however, no liability for such sources is assumed by the appraiser.
- It is understood that in preparation of this report, Hempstead & Co. Inc., is acting as a service provider and not in a fiduciary capacity.
- We have relied upon the accuracy and completeness of information supplied by the client company without further verification thereof. We have assumed that all financial statements were prepared in conformity with generally accepted accounting principles unless informed otherwise.

[86] At page 3 of the report, Hempstead confirms that it conferred with IGP's management and received a copy of the company's business plan, which it incorporated by reference. Hempstead makes it clear that it is assumed that all financial statements were prepared in accordance with general accepted accounting principles and that it relied upon the accuracy and completeness of the material furnished to it and did not independently verify the information contained in that material.

[87] Hempstead calculated the value of IGP using an income-based or discounted cash-flow approach. At p. 38 of the report, Hempstead notes that the calculated value of $250 million assumes that the company will remain an ongoing concern and will have the funds necessary to finance the start up of its facility, as well as the operating costs of the company during its formative stages. We find this report cannot be relied upon as an independent valuation of IGP shares. It appears to have been produced by Hempstead accepting Otto Spork's projections without, as the report acknowledges, verifying the information provided by him. Our conclusion extends to any subsequent analysis which relies upon the Hempstead report.

[88] Hempstead was also retained by Otto Spork to prepare a second report dealing with the value of IGP's lease rights over the Snæfellsjökull glacier. In a report dated April 2, 2008 Hempstead calculated the value as being $510 million. In effect, the second report is a calculation of the incremental value of the water that IGP itself couldn't use according to its business plan. The second report repeats the qualifications of the first report, rendering it equally unreliable.

2. Spardata

[89] Securities Pricing and Research Inc. ("Spardata") is a US company carrying on business in Maryland. It was retained by Otto Spork and issued a report dated January 28, 2008, placing a calculated value on IGP as of December 31, 2007 of US $442,833,500 and a value per share of US $6.50. The report is found in Ex. 4-18, Tab 29. Spardata said the purpose of the report was to perform a calculation of enterprise value of IGP as of December 31, 2007.

[90] The report contained the following qualification at p. 7:

> **Calculation of Value.** The reader of this report should be cautioned to the fact that this analyst relied on Client-prepared projections of future revenues, expenses and accounts in this valuation. The analyst relied on the client-provided information at the direction of the client. SPARDATA has not formally reviewed the Client's calculations or the assumptions used in the information provided by the client and cannot opine regarding the likelihood that the projections will indeed be attained. Furthermore, if the analyst had used SPARDATA-prepared projections, the value conclusion would likely have varied significantly from the value conclusion derived from the Client's projections. Therefore, SPARDATA does not express an opinion of value in this report, but provides only a calculation of value based on the Client's assumptions. **SPARDATA strongly cautions the reader that the calculation of value contained herein may be unreliable, and should not be the basis for a debt or equity investment decision.** [emphasis in original]

[91] The report calculates an enterprise value for IGP based on financial projections provided by Otto Spork. We find this report cannot be relied upon as an independent valuation of IGP shares. Our conclusion extends to any subsequent analysis which relies on the report.

3. Steve Winokur (Canaccord)

[92] Steven Winokur holds a Master of Business Administration from the University of Toronto, and is a Managing Director in the Investment Banking group at Canaccord Genuity ("Canaccord"). He advises companies on accessing capital through public and private equity markets. Canaccord would generally be compensated with a success-based fee on the completion of a financing transaction. Mr. Winokur's evidence is found in Tr. Vol. 5, p.6 and following.

[93] Mr. Winokur was introduced to Otto Spork by Vik Kapoor, a retail broker with GMP. He spoke with Otto Spork by telephone and signed a non-disclosure agreement with IGP on behalf of Canaccord in July of 2008. He then commenced the due diligence process to learn about the company and assess the marketability of a potential initial public offering ("IPO") of IGP. He visited Iceland for 24 hours and observed the IGP facilities at Rif. He observed the construction site of survey stakes in the ground and a pile of pipes in another area. He also visited the port area that was proposed to have bulk quantities of water shipped to prospective purchasers. During the course of his examination-in-chief, Mr. Winokur candidly responded to a question as follows:

> Q. Was there a different focus of water sale that you were looking at, other than bottled?
>
> A. I don't recall. We were looking at -- you know, we were basing our analysis off of the forecasts that were provided.
>
> (Tr. Vol. 5, p. 39, ll. 6-11)

[94] After a lengthy exchange of e-mails and conversations, Mr. Winokur wrote Otto Spork on September 29, 2008, in a letter headed, "Re: Value Discussions Letter". The letter explained some of the thought processes Canaccord used to determine its recommended valuation range. In short, the letter recommended an initial public offering of IGP to be marketed based on a pre-money valuation of approximately $400 million. Canaccord recommended that the size of the IPO be $100

million. Following this letter, communication between Otto Spork and Canaccord dwindled over the succeeding weeks and months. Sometime in the month of December 2008, Otto Spork and Mr. Winokur had their last conversation.

[95] In examination-in-chief, Mr. Winokur was asked the following question:

> Q. and as a proportion of the diligence, the due diligence you would ordinarily do before taking a company to market, are you able to estimate a percentage of the amount of work you completed?
>
> A. You know, probably 5 percent or less or something along those lines.
>
> (Tr. Vol. 5, p. 16, ll. 14-20)

[96] In cross-examination, counsel for the Respondents drew Mr. Winokur's attention to the several occasions on which he told Otto Spork how highly he thought of IGP's prospects. Among the examples,

> "Guy's, this is why we LOVE what you're doing. Going to be HUGE."
>
> (Ex. 8, Tab 30, p. 1);
>
> "I continue to like IGP a great deal and look forward to the opportunity to work with you."
>
> (Ex. 8, Tab 52)

[97] The following exchange took place between Mr. Groia and Mr. Winokur:

> Q. So would it be fair to suggest that even in December of 2008 you remain keen on doing the potential financing?
>
> A. Well, I had no update on the businesses between the two dates, so I think this is a little bit of marketing.
>
> (Tr. No. 6, p. 47, ll. 1-6)

[98] Our review of Mr. Winokur's evidence and the documents to which he was referred persuade us that Mr. Winokur was indeed engaged in "a little bit of marketing". We find Mr. Winokur was working diligently to acquire Otto Spork as a client with a view to taking IGP public by way of an IPO. Ordinary life experience and common sense tells us that Mr. Winokur would not do anything other than be enthusiastic about the prospects for IGP in attempting to gain Otto Spork as a client for Canaccord. This, in turn, persuades us to give little weight to the $400 million value suggested by him as the basis to raise $100 million by way of an IPO. The Canaccord letter cannot be relied upon as a valuation of IGP.

4. T.J.

[99] T.J. obtained a Bachelor of Arts from McMaster University and passed the Canadian Securities Course. He was employed at BurgeonVest Securities from 1995 through 2009, with a break of one year. He worked at the Hamilton office where he first met Dino Ekonomidis, who was a salesman with the firm. His evidence is found in Tr. Vol. 13, pp. 8-47.

[100] T.J. described their relationship as co-workers and friends. They socialized together, lunched together and shared their ideas. T.J. said that Dino Ekonomidis covered a lot of the smaller venture-listed type stocks, a world with which he, T.J., was not familiar. On the advice of Dino Ekonomidis, T.J invested in two junior companies and experienced a doubling or more of his investments and realised a paper profit of over $100,000.

[101] In February of 2006, Dino Ekonomidis recommended T.J. invest in a hedge fund that his brother-in-law was starting. This, of course, was Otto Spork. He described the holdings of the fund as commodities and commodity-based type investments. When asked if he was relying on this advice to determine whether to invest, T.J. replied:

> Yes, I mean, to make a long story short, I mean, I had such a big profit in his other recommendations I thought it was only the right thing to do to continue supporting him and so I decided to invest $40,000 dollars into the start-up of this hedge fund.
>
> (Tr. Vol. 13, p. 14, ll. 9-13)

[102] Following his investment, T.J. received promotional material from the hedge fund which reported on the success of the fund. Encouraged by the information he received, he invested a further $95,620 on July 6, 2007 and yet another sum of $62,953 on May 2, 2008. He explained the subsequent investments by saying the fund had been doing so well and that Dino had found him and said it was a good time to buy more of the fund and he proceeded to do so. He described his results as a "massive paper gain".

[103] Dino Ekonomidis gave T.J. information on IGP. The information included a business plan and other related documents promoting a private equity investment. He was persuaded to invest in IGP because he trusted Dino Ekonomidis and his track record was phenomenal as far as the paper returns were concerned. He said he and Dino Ekonomidis were friends and that he trusted him. T.J. invested $75,000 in IGP and had no idea of the price per share. He explained that the price of the shares was not an important factor to him and he did not negotiate the price, nor did he do any due diligence with respect to the price per share. He said the number of shares he was to receive were not an important factor to him.

[104] Staff produced to T.J. an e-mail sent from Otto Spork to Jason Kwiatkowski, a senior manager of BDO. Mr. Kwiatkowski had been looking for documentation to support the consideration of €1.85 per share for T.J.'s purchase. The e-mail response from Otto Spork to Mr. Kwiatkowski reads as follows:

> Tommy wired in $75,000 CDN into the Opportunities Funds' bank account on August 11/08. The conversion rate was approx. $1.56 CDN to the Euro and Tommy received about 25,950 shares. This works out to €1.85 per share.
>
> (Ex. 41)

[105] We can only conclude from the evidence of T.J. and the documents referred to in his evidence that the value of €1.85 per share was not established by an arm's length transaction between a willing vendor and a willing purchaser but rather established by Otto Spork himself. We take from T.J.'s evidence that he invested in IGP for two reasons: he trusted Dino Ekonomidis and his paper profits were extraordinary. He was indifferent as to the number of shares he was buying and invested $75,000 at the suggestion of Dino Ekonomidis. Moreover, as this was a small tranche share transaction, we find it to be an unreliable indication of the value of IGP particularly when considering T.J.'s explanation of how he came to pay $75,000 for his shares. The purchase price paid by T.J. we find to be worthless as support for a valuation of €1.85 per IGP share in August 2008.

5. J.G.

[106] J.G.'s background education included a Bachelor of Business Administration from York University in 1994, an M.B.A. in 1995 and a CFA designation since 2001. After working for the Toronto Dominion Bank, BC Enterprises and one or two small corporations, J.G., since 2006, has been the President and co-founder of F.M.I. His evidence is found in Tr. Vol. 13, pp. 48-90.

[107] He described F.M.I. as an investment bank operating in the exempt market that seeks to finance private companies and help them to go public. His co-founder is A.S., a securities lawyer. J.G. expanded on the activities of F.M.I. and described how it worked with junior mining and oil and gas private companies who want to move towards going public. Typically F.M.I. would do two or three rounds of financing for these companies on a private placement basis through its established connections and networks, primarily high net worth individuals and small institutions.

[108] J.G. then described F.O.I., an entity established by F.M.I. to invest in early stage companies F.M.I hoped to take public.

[109] J.G. became familiar with SCMI and Otto Spork in 2007 while F.M.I. was working with one of its first clients, a resource company. The Canadian Fund and the Hybrid Fund each invested on three occasions in that company and three other companies promoted by F.M.I. for a total of $1,175,000. (Ex. 42)

[110] J.G. and his partners became aware of IGP through their connections with Otto Spork. Otto Spork told them he was interested in taking IGP public at some time and was looking for brokers and for investors. They received a copy of the IGP business plan which may be found in Ex. 4-8-B, Tab 21. J.G. said they were looking at the business plan for two reasons – as a possible investment but also as an opportunity to work with Sextant and Otto Spork to assist the company in eventually going public. After various proposals were discussed and considered, a draft letter of engagement was put together by F.M.I in July, 2008. J.G. described the document as something that was intended to advance discussion (Ex. 4-8-B, Tab 23). He acknowledged that F.M.I. never entered into an engagement with IGP.

[111] Nevertheless, F.O.I. invested in IGP shares, a decision that was taken about 10 days or so after Otto Spork informed J.G. he was closing a financing and was offering F.O.I. a chance to participate as an investor.

[112] On August 22, 2008, F.O.I. purchased 100,000 shares in IGP for €150,000, a price per share of €1.50. J.G. said that there was no negotiation with respect to the price of the shares. The explanation was that the financing had already been

arranged, there was no opportunity to negotiate and the price of €1.50 was simply presented to F.O.I. He confirmed that F.O.I. made no attempt to negotiate a different price nor had it done any due diligence to determine whether or not it was an appropriate price, other than some preliminary review of information they had at the time. He also confirmed that when they made the investment there was still a possibility that F.M.I. would act for IGP in taking it public.

[113] J.G. said the decision to invest in IGP was partially prompted by an attempt to maintain a decent relationship with Otto Spork with the prospect of participating in an IPO for IGP.

[114] In October of 2008, F.M.I. began pursuing Otto Spork for completion of subscription agreements committed to by Otto Spork's companies which remained outstanding and for which payments had not been made. The funds were never delivered.

[115] We find that F.O.I.'s purchase of IGP shares cannot be relied upon as a valuation of IGP. There was no negotiation of price and limited due diligence performed - every indication was that F.M.I/F.O.I. hoped to get something in return from Otto Spork by way of acting as an underwriter in a prospective IPO for IGP. Moreover, while F.O.I. could be considered a sophisticated investor, this was a small tranche share transaction and thereby an unreliable indication of the value of IGP.

6. Antonio Tartaglia (BDO)

[116] Mr. Tartaglia is a Chartered Accountant since 1982 and joined BDO in 1988. He is a partner in the Hamilton office and first met Otto Spork in 2005. His evidence is found in Tr. Vol. 8, p. 35 and following.

[117] BDO were auditors for the Canadian Fund, for SCMI and produced tax returns and financial statements for Sextant GP He described SCMI as a very small entity with limited resources and unsophisticated from an accounting perspective. Its records were not well maintained, there were errors in their work; BDO always had difficulty in completing its audits.

[118] Mr. Tartaglia described IGP as a company in which the Canadian Fund had invested. He understood IGP to be in the business of obtaining water from a glacier in Iceland and bottling and selling it, as well as selling through bulk means. He was familiar with IGP's business plan found at Ex. 4-18, Tab 26, a document to which reference has been made throughout this hearing.

[119] He believed that Mr. Spork had an ownership in IGP as of December 31, 2007 indirectly through his holding company, Riambel. He thought Riambel owned 20% of IGP. He was aware that the Offshore Funds had an interest in IGP and believed at December 31, 2007 the three funds owned roughly 30% of IGP. He believed Otto Spork was the directing mind of IGP and managed it.

[120] In July of 2008, Mr. Tartaglia and his wife went to Iceland, their expenses paid by SCMI. He was part of a group that went to the town of Rif where he observed a large flat area that looked like it had been recently prepared for construction. He said the site was not ready to produce product at that point.

[121] Mr. Tartaglia visited Westmann Island where it was proposed that IGW capture water from a glacier for the purpose of bulk sales. He was familiar with IGW's business plan found at Ex. 4-19, Tab 1. He assumed that Otto Spork was the directing mind of IGW. He described the site on Westmann Island as more developed than the IGP site but didn't think it could produce product economically in July 2008.

[122] Mr Tartaglia was asked about the reports prepared by Hempstead and Spardata and the letter written by Canaccord. He described the reports as an estimation of value based on certain assumptions. He confirmed that the reports used management's (i.e. Otto Spork's) projections and calculated values based on those projections. Mr. Tartaglia concluded the Hempstead and Spardata reports were not sufficient for purposes of an audit. He said the Canaccord letter was not a valuation and was not sufficient to support BDO's audit.

[123] Mr. Tartaglia confirmed the retention of Cole & Partners, specifically Scott Davidson, by Otto Spork. Cole & Partners was to carry out a valuation of the IGP shares for the purposes of the December 31, 2007 audit. Mr. Tartaglia described the report prepared by Cole & Partners as unfinished and one that did not come to a conclusion. It was of no assistance to BDO in preparing its opinion for the 2007 audit of the Canadian Fund.

[124] Mr. Tartaglia was asked if BDO considered whether to keep the Sextant group of companies as a client, following the publicity surrounding the Commission's allegations. The identified reasons why the audit was continued included the difficulty of finding an alternative auditor, how that would affect investors and the possibility of being sued by Otto Spork. The delay in the audit might cause the Commission to appoint a receiver for the fund which in turn would result in negative consequences to the investors. In any event the decision was taken to finish the audit engagement, if possible. The internal view of the audit as reported by Mr. Tartaglia was as follows:

> The 2007 engagement will be rated at high risk and therefore will require concurring partner review. In addition, we will reexamine all the audit evidence to ensure that reliance on related party evidence and representations are minimized whenever possible.
>
> (Tr. Vol. 8, p. 76, ll. 4-9)

BDO ultimately decided to do "an assessment of the reasonableness of the value" of the IGP shares. This was done on the instruction of Mr. Tartaglia.

[125] In an internal memo approved by Mr. Tartaglia, the projections prepared by management and relied upon by Hempstead and Spardata were declared, "to be reasonable". Mr. Tartaglia agreed that this was a significant assumption. He further agreed that "…if the assumptions are incorrect then this work is incorrect." (Tr. Vol. 8, p. 83 ll. 12-13)

[126] Mr. Tartaglia spent considerable time attempting to describe "the Riambel transaction". BDO discovered a payment made by the Canadian Fund to Riambel. Initially Otto Spork told BDO that it was an additional investment in IGP made by the three Sextant Funds even though only one fund made the payment initially. However, instead of the money being invested directly, it went to Riambel who, in turn, was being repaid for money it had advanced to IGP. He then amended his view, stating that it was the Water Fund that made the payment, roughly US $1.2 million. An argument ensued about how this action should be recorded from an accounting point of view. Otto Spork insisted that there was no loan to Riambel. Mr. Tartaglia never saw any payments from Riambel to IGP. Ultimately the payments were treated by BDO as a loan receivable from IGP. The end result was that, for accounting purposes, the Sextant Funds assumed a debt owed by IGP to Riambel.

[127] Mr. Tartaglia then described the difficulty BDO had in obtaining from Otto Spork evidence to support the increases in the market values of IGP shares that were used to established the Canadian Fund's NAVs during 2007. Various explanations were provided by Otto Spork which were ultimately accepted by BDO.

[128] BDO completed its review of "the reasonableness of the value of IGP shares" on February 26, 2009. The 2007 audited financial statements for the Canadian Fund were dated February 17, 2009, some nine days earlier. Mr. Tartaglia reported to Otto Spork on May 19, 2009 that the audited financial statements had been "recently filed." (Ex. 4-9, Tab 11)

7. Scott Davidson (Cole & Partners)

[129] Scott Davidson was a partner with Cole & Partners during its interaction with Otto Spork. He is both a Chartered Accountant and a Chartered Business Valuator. His evidence may be found at Tr. Vol. 9, pp. 10-144.

[130] Mr. Davidson described how in May 2008, Mr. Tartaglia called him and explained BDO's requirement for a valuation of the IGP interest held by the Canadian Fund as of December 31, 2007. Mr. Davidson was referred to documents contained in Ex. 4-7 and 7A, which contain documents created by the engagement of Cole & Partners.

[131] Cole & Partners was asked to prepare "an estimate valuation report", which Mr. Davidson described as lying somewhere between a calculation and a comprehensive valuation report. He described the aims of such a report as follows:

> … I think what you're trying to do is you're trying to understand the financial position of the subject business as at or about the valuation date; you are trying to understand the operational, financial outlook for the business as at or about that date; you're trying to understand the market into which the business is selling, its competitors and the like.
>
> (Tr. Vol. 9, p. 19, ll. 12-18)

[132] Cole & Partners and Otto Spork signed an engagement letter dated May 15, 2008, which Mr. Davidson described as contemplating two phases in the preparation of the report. The first phase was to include a review of information, some research, and a preliminary analysis to develop a range of value, to be followed by a meeting to discuss progress to that date. The second phase would have involved a more detailed review and analysis leading to an estimate report. In late May 2008, Mr. Davidson received IGP's business plan and financial projections, the Hempstead and Spardata reports and a copy of an agreement between IGP and the town of Rif in Iceland.

[133] Mr. Davidson noted the projections showed the business growing from a "very small number, if not, zero" revenue to over $500 million after five years. He also noted that the projections used by Hempstead and Spardata were out by a year because of delay in getting the business started. Mr. Davidson felt that there was significant risk around the projections and testified that "the projections were very aggressive".

[134] In late June of 2008 Mr. Davidson e-mailed Otto Spork seeking a meeting with him and asking for IGP's current financial statements. Nothing of note was received from Otto Spork and Mr. Davidson e-mailed Otto Spork again on August 21, 2008.

[135] Mr. Davidson did describe in considerable detail the difficulties he was having with arriving at a valuation for the IGP interest held by the Canadian Fund:

> I had little indication or understanding as to the what the milestones were, what traction had been gained, what was happening, what the distribution plan was, what the marketing plan was, what had been arranged, what was in place, who were the management. I hadn't spoken to anyone. So I was going to at some point wrestle with the issue of did this projection make any sense?
>
> (Tr. Vol. 9, p. 68, ll. 11-18)

[136] Subsequent interactions with Otto Spork included Otto Spork's emphasis on the Hempstead and Spardata reports, the Canaccord letter, and the transactions involving T.J. and F.O.I. described earlier in these Reasons. Mr. Davidson said Otto Spork conveyed to him the idea that he had a business and it was going to progress as projected. Subsequently in late November 2008, Mr. Davidson received the financial statements for IGP for the 2007 year-end.

[137] Finally, Mr. Davidson sent an e-mail to Mr. Tartaglia on December 5, 2008. The third paragraph states:

> Based on the scope of our review to date, it appears that the fair market value of Sextant's interest in IGP at the valuation date is uncertain, if not speculative, and likely lies within a very wide range of potential values.
>
> (Ex. 4-7, Tab 22)

[138] In his testimony, Mr. Davidson developed his explanation for his conclusion in the e-mail to Mr. Tartaglia:

> I think the speculative part really goes into the question of whether this business was going to turn out the way it had been projected. It was a – in my mind, based on what I knew, based on what had not occurred in 2008 up to that point in time, based on a very cursory and limited understanding, virtually no explanation from management, as to what operationally had been done and what milestones had been hit and where they were at in terms of going to market, it was speculative as to whether or not they were going to be able to achieve that projection in the time frame in which it was projected.
>
> (Tr. Vol. 8, p. 95, ll. 5-16)

[139] Mr. Davidson prepared a draft report dated December xx, 2008 titled "Comments in Respect of The Possible Value of Sextant's Interest in IGP as at December 31, 2007" that can be found at Ex. 4-7, Tab 22. Mr. Davidson heard nothing further from Otto Spork. In a conversation with Mr. Tartaglia in January of 2009 it became clear that Mr. Davidson was unwilling to accept the projections provided by Otto Spork as the sole basis for determining an estimate of IGP's value.

[140] We find Mr. Davidson's evidence to confirm our own reaction to the business plan and financial projections of IGP. To Mr. Davidson's credit, his firm prepared a detailed analysis of the materials advanced by Otto Spork and was not coerced into providing a valuation opinion that would validate the IGP market values set by Otto Spork.

[141] The Cole & Partners report is of no assistance to us, other than to confirm our analysis of the reports prepared by Hempstead and Spardata and the share purchase transaction by T.J. and F.O.I.

8. Jason Kwiatkowski (BDO)

[142] Mr. Kwiatkowski is employed by BDO. His evidence is found in Tr. Vol. 4, p. 5 and following. Mr. Kwiatkowski has a Chartered Accountant designation, a Chartered Business Valuator designation, an Accredited Senior Appraiser designation and a Certified Exit Planning Adviser designation. He is a Senior Manager with BDO in the valuation and litigation support group.

[143] Early in 2009, he was asked to review the reasonableness of management's valuation of Sextant's investment in IGP as at December 31, 2007. The information was required so that BDO could complete its audit of the Canadian Fund for the year ending December 31, 2007. Mr. Kwiatkowski explained that where management has provided a value or representative value to BDO, BDO would conduct a review of how that value was determined so that it could conclude whether or not the value represented was reasonable. It is clear that the audit staff of BDO was having difficulty in justifying the values ascribed to the IGP shares held by the Sextant group. For this reason Mr. Kwiatkowski and his colleagues with valuation expertise became

involved. Mr. Kwiatkowski described in some detail how he arrived at his determination of the reasonableness of Otto Spork's valuation of the IGP shares held by the Sextant group.

[144] Jason Kwiatkowski and his colleagues in the valuation and litigation support group of BDO prepared a report on the "reasonableness of the value of Sextant's investment in Icelandic Glacier Products as at December 31, 2007" that met the needs of the audit group responsible for the Canadian Fund. The result is found in a memorandum dated February 26, 2009. (Ex. 4-18, Tab 1) Page one of the memorandum states the following conclusion:

> Based on the scope of our review, we are of the view that the value of Sextant's investment in IGP as at December 31, 2007 as represented by management is reasonable. See attached analysis' and memorandums for supporting commentary.

[145] The report states that it is not a valuation report and does not provide any conclusion as to value. The document was not to be circulated outside of BDO as it did not contain all the disclosures required by the Canadian Institute of Chartered Business Valuators, when providing a critique or a review of values provided by others. The memorandum points out a number of assumptions made underlying the various valuation reports referred to in the memorandum that significantly influenced the conclusions reached in those valuations. One such important assumption was the reliance on certain projections provided by management.

[146] On page two the report states the authors have reviewed and relied on the reports prepared by Hempstead and Spardata. Curiously, a footnote on page eight of the report states the authors have not considered the Spardata valuation because the discount rates apply therein may not accurately reflect the risk associated with the projections and because the Spardata valuation does not consider the value of the incremental water capacity.

[147] The authors assumed for the purposes of their analysis that management had made available all information requested and all information that management believed was relevant to the preparation of the memorandum.

[148] On page four of the memorandum, the authors note that Otto Spork valued Sextant's investment in IGP as at December 31, 2007 at €0.80 or US $1.17 per share. This indicated a value of US $23.3 million for the 19,955,000 shares or 30% of IGP held by the Sextant Funds at that time.

[149] In order to test the reasonableness of management's valuation of Sextant's interest in IGP as at December 31, 2007, BDO compared management's valuation (US $23.3 million) to:

(1) A probability-weighted sensitivity analysis based on the two Hempstead reports and applying discounts to reflect the then shareholder dispute and to reflect the minority interest in IGP and its illiquidity; and

(2) Subsequent transactions in 2008 (F.O.I.., T.J., G.P.) and the Canaccord letter. BDO chose not to include the purchase by the Sextant Funds in May 2008 of a 2/3 interest in IGP at €0.07 per share.

[150] In cross-examination, Mr. Kwiatkowski acknowledged that throughout the course of his engagement he became aware of some actions that had been taken by the Commission. At the time he wrote his report he knew that Tony Tartaglia, the lead person on the audit, had declared the audit of the Canadian Fund to be a "high-risk audit". He had no reason to doubt what Otto Spork, Sergiy Kaznadiy, Shahen Mirakian or Gunnar Jonsson told him. He told Respondents' counsel that he had no reason to question or doubt the conclusions contained in the memo. Mr. Kwiatkowski confirmed that he stood behind BDO's work as of the date he testified.

[151] At the conclusion of Mr. Kwiatkowski's evidence, the following exchange took place:

> Commissioner Perry: Okay, so my final question, then, is on page 8, in terms of your analysis or probability-weighted analysis, I have to tell you, and I would like to hear your response, I was struck by the exactness of your analysis being US $23.3 million, exactly equal to what was being carried by management in the books. I just – it just struck me very odd to guess.
>
> The Witness: It is weird, it is odd, it is sort of like, whoa, but it is purely coincidental.
>
> (Tr. Vol. 4, p. 93 l. 17 - p. 94 l. 2)

[152] We agree it is both "weird" and "odd". We don't agree that it was "purely coincidental." We find the figure was arrived at to allow BDO to complete an audit that had gone off the rails.

[153] BDO found management's valuation of the IGP shares held by the Canadian Fund as at December 31, 2007 to be reasonable. We disagree. Given our finding that the Hempstead reports cannot be relied upon for such a valuation, BDO's

reliance on those reports cannot justify the BDO conclusion as to the reasonableness of IGP's stated market value as of December 31, 2007. Similarly, its reliance on certain subsequent transactions in 2008, two of which we have found to be unreliable indications of IGP's value, cannot justify BDO's conclusion as to the reasonableness of the value represented by management.

E. Robert Levack

[154] Mr. Levack was named as a respondent in this matter and entered into a settlement agreement with Staff that was approved on June 1, 2010. His evidence is found in Tr. Vol. 9, p. 146, and Tr. Vol. 10, pp. 5-31.

[155] Mr. Levack completed a Bachelor of Arts degree in history, a Masters degree in history and a Bachelor of Education degree. At the time of his testimony, Mr. Levack was a Certified Financial Adviser and formerly had been a Certified Financial Planner. He had taken the Officers, Partners and Directors course and the Canadian Securities Course. From 1986 forward Mr. Levack worked as a portfolio manager, a client service representative and in portfolio management.

[156] He was hired by SCMI in February 2006 and remained there until July 17, 2009. SCMI was registered with the Commission as an investment counsel portfolio manager and limited market dealer for the province of Ontario. Mr. Levack's role with Sextant was Chief Compliance Officer and portfolio manager. He said his duties were largely on the administrative side in terms of keeping track of purchases and sales of client's subscriptions, and generally looking after the back office. He was responsible to ensure that the trades carried out by SCMI were in compliance with offering memoranda and with securities law. Although Otto Spork was not registered as a portfolio manager, Mr. Levack said that, in essence, Otto Spork carried out that role. Quite often Mr. Levack learned that Otto Spork made decisions on portfolio purchases about which Mr. Levack would find out after the fact. He said Otto Spork made all the investment decisions at Sextant.

[157] Mr. Levack described Otto Spork's role as out of the ordinary in the sense that Otto Spork's obligation was to report to Mr. Levack in the latter's role as Chief Compliance Officer. On occasion, Mr. Levack would receive a call looking for money to settle a particular purchase, a purchase he knew nothing about. He confronted Otto Spork with these situations and reminded him of his obligations; it "kind of went in one ear and out the other". Mr. Levack said that this attitude was consistent with his analysis of Otto Spork's personality as being somewhat grandiose in nature and perhaps a little too overly confident.

[158] Mr. Levack was invited to review his settlement agreement. In it he acknowledged that on more than one occasion there was insufficient working capital in terms of the regulations. When he brought this to the attention of Otto Spork, Otto Spork said: "No, we're not going to report it, and in any case, there's more than enough money here to cover any capital deficiency." (Tr. Vol. 9, p. 171, ll. 22-24) Mr. Levack did not report the deficiencies to the Commission.

[159] Mr. Levack was asked about the second matter covered in the settlement agreement, that of exceeding 20% exposure in any one investment as limited by the terms of the offering memorandum. Mr. Levack acknowledged that he received the portfolio valuation statements which had to be approved by Otto Spork. When he drew the over-concentration to Otto Spork's attention, Otto Spork made some reference to a potential IPO where he was thinking about taking IGP public and also that he was thinking of directing future cash flow into non-water areas. At the time the Canadian Fund was invested almost 90% in IGP, calculated on its NAV. Mr. Levack did not report this to the Commission.

[160] Mr. Levack was asked if he ever knew that Otto Spork had an ownership interest in IGP or IGW. Mr. Levack said he learned that in the latter part of 2008 that Otto Spork owned virtually all of IGP. This contravened the terms of the offering memorandum which provided that the Canadian Fund would not purchase securities from or sell securities to the Investment Adviser or any of its affiliates or any principal of any of them. Since Otto Spork was affiliated with the Investment Adviser and was selling shares of IGP to the Sextant Funds, his activities contravened the offering memorandum. Mr. Levack did not report this matter to the Commission.

[161] When asked about Otto Spork's attitude regarding compliance issues, Mr. Levack replied: "I almost got the impression, that, you know, the attitude was one of, well, yes, there are rules but somehow those rules don't seem to apply to me". (Tr. Vol. 9, p. 189, ll. 22-25)

[162] Asked about Dino Ekonomidis, Mr. Levack recalled that he joined Sextant in May of 2006 as VP of Corporate Development. He would assist with the marketing and sales of the Sextant Funds and was in charge of a group of, perhaps three or four, who worked to sell the Canadian Fund. He recalled that Dino Ekonomidis was out of the office traveling for periods of time both in London and in western Europe generally.

[163] Mr. Levack was asked about Natalie Spork. She joined the office in 2006 on an intermittent basis and was there full time starting sometime in the middle of 2007. Her job description was that of marketing assistant but Mr. Levack's recollection was that she did little marketing and that he was unsure of what her responsibilities were. He remembers receiving an e-mail from a law clerk at McMillan Binch saying that Natalie Spork had been approved as president and secretary of the company as of early July of 2008. This coincided with Otto and Helen Spork's departure for Europe. He said Natalie Spork's role changed in

a sense that she was on the telephone much more of the time, speaking to Otto Spork as far as Mr. Levack could determine. She made no investment decisions in Mr. Levack's opinion. In Mr. Levack's opinion, Natalie Spork was not qualified for the roles of president and secretary of the company and he had the distinct impression that she didn't really want to be there. Her attendance at the office was sporadic and two or three days might pass and "you wouldn't see her". His impression was that the office was effectively run from afar by Otto Spork. Mr. Levack remembered that it was about this time that the Canadian Fund holdings of Otto and Helen Spork were transferred to their holding companies, one being Arctic Preservation and the other, Eleni Holding. At this point the hearing adjourned to October 5, 2010.

[164] On the resumption of the hearing, Mr. Levack was asked to describe the circumstances surrounding his departure from SCMI. Mr. Levack said that on May 17, 2009 the landlord, accompanied by security, came up to the office and informed them that they had 10 minutes to vacate the premises. He was asked why he stayed at SCMI as long as he did. He replied:

> That's a good question. I guess by the end of '07, I was certainly thinking about leaving. But, frankly, I think I was torn. Part of me, I think, wanted to leave and didn't – was starting to feel quite seriously that, you know, the business did not have long-term viability, but, I think, part of me wanted, you know, to see it succeed. And I felt like I needed to, for some reason, I needed to be there to help it succeed.
>
> (Tr. Vol. 10, p. 6, ll. 5-12)

[165] In cross-examination, Mr. Levack confirmed that he received a copy of the "detailed portfolio valuation reports" that IAS produced. He acknowledged reviewing them on a weekly and monthly basis. He confirmed that at all the time he was at Sextant he never declined to approve a trade. If he objected it was approved over his objection. However, he took no steps to cancel it. He acknowledged receiving and reviewing the Canadian Fund's monthly bank statement accounts. He either authored or approved the written portion of the performance charts that were published or sent to investors. He reviewed and approved the newsletters which were sent to investors on an interim basis.

[166] We accept Mr. Levack's evidence as it relates to the conduct of Otto Spork, and the roles played by Dino Ekonomidis and Natalie Spork in the operation of SCMI. Mr. Levack showed no overt animus towards Otto Spork and indeed, was almost tentative in his description of some of Otto Spork's activities. His evidence was uncontradicted in cross-examination and is consistent with the documents filed in this hearing. His conduct is but one example of many found in this proceeding where the force of Otto Spork's personality overbore the attempts of third parties to rein him in and regulate his conduct.

F. Gary Allen

[167] Gary Allen was a portfolio manager with many years experience dating back to 1964. Beginning in 1994 and leading up to 2006, Mr. Allen was a portfolio manager with Crystal Wealth where he was a 15% shareholder. Crystal Wealth invested $1.5 million in two of the Sextant Funds, as did Mr. Allen in the amount of $200,000. His evidence is found in Tr. Vol. 7, p. 132 and following.

[168] In August of 2006, Otto Spork was looking for a way to trade futures through his funds. He was unlicenced at the time and needed someone who could act as his supervisor while he obtained his futures trading licence. To obtain a licence, a person must have two years of direct supervision by a registered trader. Mr. Allen was hired by Otto Spork for a salary of $36,000 a year to carry out this function.

[169] When Mr. Allen joined SCMI, he described the office as "quite small" involving Otto Spork, Helen Spork, Dino Ekonomidis, Natalie Spork, Robert Levack and Christine Gan. He described Dino Ekonomidis as the chief salesperson and second-in-command to Otto Spork. There was no question that Otto Spork was the Chief Executive Officer and Chief Operating Officer. Mr. Allen confirmed other witness testimony to the effect that in 2008 Otto Spork spent more and more time in Europe and eventually moved to Iceland in June or July of that year. He confirmed that Natalie Spork became president of SCMI although Dino Ekonomidis continued to be very much in charge of the sales function and Otto Spork was still in control of the operation by telephone from Iceland. He considered Natalie Spork unqualified to act as president of the company.

[170] He was asked about the Hybrid2Hedge strategies and described them as a marketing tool "devised" by Otto Spork. When Mr. Allen first arrived at SCMI, the Canadian Fund might have carried out 4 to 6 trades a week but that tailed off in 2008. He thought the explanation for this was the increased interest in the water companies. Mr. Allen later learned that Otto Spork was actively involved in the water companies and went from being an investor to taking control and using the Sextant Funds and his personal funds to control them.

[171] When Mr. Allen joined the company and met Robert Levack, he inquired when he would get to see the Canadian Fund's portfolio. It was then he learned that he would never be able to see the portfolio, that only Otto Spork or Dino Ekonomidis had that information. He was asked if this was a problem for him as commodities trading manager. He replied that

it would be preferable to have seen the portfolio because he would have known the appropriateness and the size of the positions. We find his ability to act as the supervisor of Otto Spork's trading was compromised.

[172] Mr. Allen then described the efforts of the principals of Crystal Wealth to obtain more information about the operation of the Sextant Funds including obtaining the 2007 financial statements. He related a series of events that can only be described as the principals of Crystal Wealth being given the runaround by Dino Ekonomidis who cancelled scheduled meetings and refused to expose the difficulties that BDO was having in completing the 2007 audit of the Canadian Fund. Mr. Allen did his best to obtain the information for the shareholders of Crystal Wealth and for his efforts was discharged by Dino Ekonomidis on November 27, 2008.

G. Sergiy Kaznadiy

[173] Sergiy Kaznadiy has considerable experience in international sales. After acting as brand manager in Australia for Nestle and TetraPak Canada, Mr. Kaznadiy worked for the Cliffstar Corporation from 2006 to 2008 selling juices under private labels to five or six countries. Mr. Kaznadiy began working for iGlobal Water in February 2008 with the title of Sales Manager. He resigned almost exactly two years later in 2010. His evidence is found in Tr. Vol. 7, p. 14 and following.

[174] About two months after he started work, Natalie Spork told Mr. Kaznadiy that Otto Spork promoted him to Vice-President, Corporate Development. He was given a business card to that effect but none of the responsibilities that would go with such a position. In fact, he remained as Sales Manager with most of his job involving making sales and marketing iGlobal Water as best he could. Most of his activity centered on promoting IGP and IGW, focusing on bottled water and medium bulk water sales respectively.

[175] Mr. Kaznadiy described the state of readiness for the sale of bottled water and medium bulk water. As late as May 2008, the filling station for medium bulk sales was unfinished and there were no bottles available for the sale of bottled water. In his experience he said it would take a minimum of one year, sometimes a year and a half to bring a new brand to production.

[176] Mr. Kaznadiy described the difficulty in establishing a realistic timetable for obtaining bottles. He felt that most of the months of February and March, 2008 were practically lost for any development of the bottled water business or for any other effort. Otto Spork directed Mr. Kaznadiy to find a company with bottling experience with a view to establishing a business partnership. Mr. Kaznadiy attempted to do so but no agreement was reached with either Corona or Heineken.

[177] Mr. Kaznadiy described the office space provided for iGlobal Water as he found it in early 2008. It was very small and inadequate for a full-fledged operational water company. For seven months, three or four iGlobal Water employees shared part of a long table in the Sextant office.

[178] Also early in 2008, Mr. Kaznadiy was called by Otto Spork from a Starbucks in the Royal Bank Tower. He was summoned to a meeting about which he had no prior knowledge. Present were two men from Empire Valuation Consultants and Otto Spork directed Mr. Kaznadiy to tell them about his sales efforts and his work history. He described to them what he saw as the basic sales strategy for concentrating on bottled water and also possibly medium bulk and big bulk water. After the meeting, he learned that the men were actually valuation consultants.

[179] From April to September 2008, Mr. Kaznadiy concentrated on a design for the bottle that would be sold to consumers. Considerable work was done on the design of the bottle but Otto Spork noted that nothing had been done for bulk water and that there should be a focus on that as well. Mr. Kaznadiy found this strange because with only three people working for iGlobal Water it would be very tough to develop the big bulk and medium bulk water businesses as well the bottled water business. Otto Spork was anxious to have a price established for a cubic meter of water. Despite Mr. Kaznadiy's view that maritime engineering consultants should be hired to define how to bring bulk water in tankers to the market, Otto Spork refused to take any steps in that direction. Otto Spork opined that defining how much one cubic meter in a tanker would cost was a relatively easy task. During this period Mr. Kaznadiy consulted widely with people in the tanker industry and in the softdrink industry and also attempted to hire people in Europe. He attended trade conferences in effort to develop sales contracts.

[180] Staff produced to Mr. Kaznadiy the Sales Plan which Otto Spork had given to Canaccord (Ex. 7). The figures in the Sales Plan were news to Mr. Kaznadiy, particularly the projected sale of 3.2 billion litres of water in 2009 rising to 32 billion litres in 2014. He described the price of $0.50 per litre rising to $0.90 per litre in 2014 which was "obviously too high". (Tr. Vol. 7, p. 71, l. 6)

[181] Mr. Kaznadiy was asked to estimate the total revenues of all the water sales during his two years of employment as the person responsible for IGP sales. He estimated total sales at €5,000 for bottled water sales only. He said no medium or large bulk water sales took place during his employment at iGlobal Water.

[182] We took from Mr. Kaznadiy's evidence that his usefulness to Otto Spork consisted mainly of telling investors and valuators of Mr. Kaznadiy's qualifications to validate the IGP business plan and financial projections.

H. J.P.L.

[183] J.P.L. is normally resident in Geneva, Switzerland. His evidence is found in Tr. Vol. 12, pp. 6-74. He was examined by way of video teleconference from a hotel in Crete.

[184] In 1960 J.P.L. became a partner in a family bank and remained with it until 1997. The bank was mainly involved in fund and asset management for clients.

[185] From 1997 until 2008 J.P.L. was chair of an asset management company which had $53 billion under management with approximately 75 to 100 different funds.

[186] Also in 1997 J.P.L. started his own company. This latter company started managing assets for customers, for clients and mainly for friends. At its peak it had $100 million under management. He described the companies' clients as friends of a certain age who asked him to take care of them and he basically invested their funds in hedge funds and bonds. He had full authority to make decisions on behalf of the clients.

[187] J.P.L. first heard about the Sextant Funds in 2006. He had been seeking information on funds that were invested in water and resources. He met with Otto Spork three times before he invested in the Offshore Funds in May 2007, November 2007 and April 2008. Meetings took place in the Sextant offices in Toronto and Dino Ekonomidis was also present. Messrs. Spork and Ekonomidis talked about many potential investments they were thinking of making, not restricted to investments in water companies. Reference was made to the two Offshore Funds based in the Cayman Islands.

[188] J.P.L. testified that based upon the representations of Messrs. Spork and Ekonomidis and after reviewing the performance charts provided by Otto Spork, he decided to invest USD $1 million and €4.4 million of his clients' money in the two Offshore Funds.

[189] Subsequent to the investment, J.P.L. attempted to learn from Dino Ekonomidis details of the two Offshore Funds' assets. A series of e-mails were produced to him which outline in detail his repeated attempts to obtain information from Dino Ekonomidis. Finally after several exchanges, Dino Ekonomidis provided information which we find to have completely misrepresented the actual state of affairs of the two Offshore Funds. He misstated the number of holdings by the Water Fund as 15 when they were actually six. He overstated the assets in the Water Fund as being $90-108 million when the actual figure was $40 million in July 2008. He misstated the percentage split of publicly-listed to private companies held by the Water Fund in July 2008 as 70:30 when the actual split was 6:89. With respect to the Hybrid Fund, Dino Ekonomidis misstated the assets under management as somewhere between $90 million to $103 million when the actual figure was approximately $35 million in July 2008. He told J.P.L. that the percentage split of publicly-listed to private companies held by the Hybrid Fund in July 2008 was 70:30 when the actual split was 20:80.

[190] We find these misrepresentations were intentionally made by Dino Ekonomidis to dissuade J.P.L. from pursuing his investigations of the two Offshore Funds. J.P.L.'s attempt to redeem the units purchased on behalf of his clients were frustrated by Dino Ekonomidis finally advising him that the board of directors had not approved the redemptions. It was at that point that J.P.L. sought and obtained a mareva injunction against the two Offshore Funds in the Superior Court of Justice (Ontario) in February 2009.

I. W.G.

[191] W.G. is a retail broker with a securities firm. He services approximately 200 client households to whom he gives financial advice. One of his clients was J.G., a witness in the hearing.

[192] W.G. learned of the Canadian Fund while having lunch with Dino Ekonomidis in late 2006 or early 2007. He learned that the fund was going to be positioned largely as a resource-oriented fund with diversification into different kinds of companies. There was no discussion at that point about the water industry. W.G. did not invest in the Canadian Fund at that point.

[193] In August 2008, W.G. became aware that the Canadian Fund had been awarded the "hedge fund of the year" prize. In late August, he spoke with Dino Ekonomidis who told him that about a third of the fund was in some private water companies, a third in public and/or private placements in the mining resource area and another third in commodities which were hedged using Hybrid2Hedge, a proprietary tool. Dino Ekonomidis also told him that a third party valuation of the Canadian Fund's units was done independently by IAS. Further, he was told that "nobody in Sextant would even touch the valuations." As we have learned, that was not the case. Dino Ekonomidis also told him that there were plans to take IGP public. W.G. put family members and clients into the Canadian Fund for a total investment of approximately $2 million. He said he was horrified to learn that 95% of the fund was invested in one private water company. He then described his efforts to get an explanation for the events which led to the loss of the investment.

VII. THE CONSTITUTIONAL MOTION

A. Overview

[194] Otto Spork submits that s. 126.1 of the *Act* is unconstitutional. Both the Ministry of the Attorney General of Ontario and the Attorney General of Canada were served with Notice of a Constitutional Question, but neither appeared.

[195] In Addition, Otto Spork submits that the tripartite structure of the Commission gives rise to a reasonable apprehension of institutional bias or lack of independence which violates s. 11(d) of the *Charter* or constitutes a denial of natural justice and procedural fairness under the common law.

B. The *Mens Rea* Argument

[196] Otto Spork submits that since *mens rea* is an essential element to make a finding of fraud before the Commission under s. 126.1, the proceeding is penal in nature since fraud is by definition a "criminal offence" or a "true crime." For this proposition, reliance is placed on *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154 ("*Wholesale Travel*"), *R. v. Wigglesworth*, [1987] 2 S.C.R. 541 ("*Wigglesworth*") and *R. v. Shubley*, [1990] 1 S.C.R. 3 ("*Shubley*").

[197] We reject this submission. *Wholesale Travel* is authority for the proposition that "there is a rational basis for distinguishing between crimes and regulatory offences". (*Wholesale Travel*, above, para. 128)

[198] *Wigglesworth* and *Shubley* established that proceedings are characterized as criminal or penal when they either: (1) are penal in their very nature or, (2) involve the imposition of true penal consequences. However, it is the nature of the proceeding, not the nature of the conduct (fraud), which governs the applicability of s. 11(d) of the *Charter*:

> Applying the double test set forth in *Wigglesworth*, the first question in whether the proceedings in question are, by their very nature, criminal proceedings.
>
> … The question of whether proceedings are criminal in nature is concerned with, not the nature of the act which gave rise to the proceedings, but the nature of the proceedings themselves. Section 11(h) provides protection against the duplication in proceedings of a criminal nature. It does not preclude two different proceedings, one criminal and the other not criminal, flowing from the same act.
>
> (*Shubley*, above at paras. 33 and 34)

[199] Otto Spork's submission rests on the nature of the conduct (fraud) in order to characterize Commission proceedings as penal or criminal. Our highest court finds this to be an error:

> … it is true that ascertained forfeiture is intended to produce a deterrent effect. This is completely understandable in a self-reporting system. Fraud must be discouraged, and offences punished severely, for the system to be viable. However, actions in civil liability and disciplinary proceedings, which are also aimed at deterring potential offenders, nevertheless do not constitute criminal proceedings.
>
> (*Martineau v. Canada (Minister of National Revenue)*, [2004] 3 S.C.R. 737 at para. 38 ("*Martineau*"))

[200] It is open to the Commission to take proceedings under s. 126.1 both before the Commission and before the Ontario Court of Justice. Section 126.1 can be involved in either a regulatory or a criminal forum with different legal consequences. This was explained in *Martineau* where the Supreme Court cited the Saskatchewan Court of Appeal judgment in *Wigglesworth*:

> … the fact that the false statements could result in criminal prosecution does not in itself mean that a notice of ascertained forfeiture can properly be characterized as a penal proceeding. The fact that a single violation can give rise to both a notice of ascertained forfeiture and a criminal prosecution is irrelevant. The appropriate test is the nature of the proceedings, not the nature of the act.
>
> …
>
> > A single act may have more than one aspect, and it may give rise to more than one legal consequence. It may, if it constitutes a breach of the duty a person owes to society, amount to a crime, for which the actor must answer to the public. At the same time, the

> act may, if it involves injury and a breach of one's duty to another, constitute a private cause of action for damaged for which the actor must answer to the person he injured. And that same act may have still another aspect to it: it may also involve a breach of the duties of one's office or calling, in which event the actor must account to his professional peers.
>
> (*R. v. Wigglesworth* (1984), 31 Sask. R. 153, at para. 11)

(*Martineau*, *above* at paras. 31 and 32)

[201] *Martineau* is conclusive – conduct amounting to "fraud" may attract non-criminal proceedings without depriving them of their regulatory and administrative nature. (*Martineau*, above at para. 38)

[202] The regulatory nature and mandate of securities acts in Canada was underscored in *Pezim*:

> It is important to note from the outset that the [British Columbia Securities] Act is regulatory in nature. In fact, it is part of a much larger framework which regulates the securities industry throughout Canada. Its primary goal is the protection of the investor but other goals include capital market efficiency and ensuring public confidence in the system…
>
> (*Pezim v. British Columbia (Superintendant of Brokers)*, [1994] 2 S.C.R. 557 ("*Pezim*"), at para. 59)

[203] The Commission in *Re Rowan*, (2010), 33 O.S.C.B. 91 (aff'd *Re Rowan* (2010), 103 O.R. (3d) 484 (Div. Ct.)) has considered the issue of the characterization of its proceedings and came to the conclusion that Commission proceedings are regulatory in nature. The Commission relied on *Wigglesworth*, which also recognized that Commission proceedings have a regulatory objective and are not subject to s. 11 *Charter* protections generally:

> Proceedings under section 127 of the Act are "intended to regulate conduct within a private sphere of activity". In reviewing examples of such regulatory proceedings, the *Wigglesworth* decision itself cites two cases involving securities commissions, including the Commission. Both of these cases affirmed that securities commission proceedings are regulatory in nature and are therefore not subject to section 11 of the Charter (See: *Re Malartic Hygrade Gold Mines (Canada) Ltd. and Ontario Securities Commission* (1986), 54 O.R. (2d) 544, (H.C.J.); and *Barry v. Alberta (Securities Commission)*, (1986), 25 D.L.R. (4th) 730 (Alta. C.A.)).
>
> (*Rowan*, above at para. 37)

[204] We find a hearing held pursuant to s. 127 of the *Act* which includes allegations of fraud under s. 126.1 of the *Act* is fundamentally regulatory and does not meet the "criminal by nature" test.

C. Commission Proceedings – Criminal or Penal Consequences?

[205] In oral argument counsel for Otto Spork submitted that the imposition of an administrative penalty leads to penal consequences, particularly where the funds are paid into the Consolidated Revenue Fund pursuant to s. 3.4(2) of the Act.

[206] Otto Spork takes the position that since disgorgement and administrative penalties may be ordered as sanctions and that since, according to Otto Spork, these funds are paid into the Consolidated Revenue Fund pursuant to s. 3.4(2) of the *Act*, this demonstrates that the purpose of these sanctions is to redress harm to society done at large and thus entails a penal or criminal consequence. Mr. Spork relies on *Wigglesworth* at paragraph 33, which states that:

> ... the possibility of a fine may be fully consonant with the maintenance of discipline and order within a limited private sphere of activity and thus may not attract the application of s. 11. It is my view that if a body or an official has an unlimited power to fine, and if it odes not afford the rights enumerated under s. 11, it cannot impose fines designed to redress the harm done to society at large. Instead, it is restricted to the power to impose fines in order to achieve the particular private purpose. One indicium of the purpose of a particular fine is how the body is to dispose of the fines that it collects.

[207] While s. 3.4(2) of the *Act* provides that funds ordered by the Commission be paid to the Consolidated Revenue Fund, there is an exception to this stipulated in s. 3.4(2)(a) and (b) of the *Act*, which provides that any funds ordered may reimburse the Commission for costs or be designated to or for the benefit of third parties. In fact, monetary orders made by the Commission refer to s. 3.4(2)(b) of the *Act*. As explained in *Re Rowan et al* (2010), 33 O.S.C.B. 91 at paras. 58 and 59:

> In the case of the Commission's administrative penalty, subsection 3.4(2) of the Act provides that the sums collected as administrative penalties may be designated to or for the benefit of third parties. Only if there is no specific designation would the funds collected go to the Consolidated Revenue Fund.
>
> Administrative penalties that have been imposed by the Commission to date have contained a clause providing that the administrative penalty funds be distributed to or for the benefit of third parties (See for example: *Re Crombie* (2009), 32 O.S.C.B. 1628; *Re Research in Motion Ltd.*, *supra*; *Re Biovail Corp.* (2009), 32 O.S.C.B. 563; *Re McCaffrey* (2009), 32 O.S.C.B. 827; *Re Devendranauth Misir* (2009), 32 O.S.C.B. 1807; *Re Limelight Entertainment Inc.*, *supra*; *Re First Global Ventures, S.A.* (2008), 31 O.S.C.B. 10869; *Re Duic* (2008), 31 O.S.C.B. 8551; *Re Leung* (2008), 31 O.S.C.B. 6759; *Re Lee* (2008), 31 O.S.C.B. 8730; *Re Stern* (2008), 31 O.S.C.B. 4029; *Re Momentas Corp.* (2007), 30 O.S.C.B. 6674; *Re Melnyk* (2007), 30 O.S.C.B. 4695 (Order); *Re Griffiths* (2006), 29 O.S.C.B. 9529; *Re Bennett Environmental Inc.* (2006), 29 O.S.C.B. 9527; *Re Mountain Inn at Ribbon Creek Limited Partnership* (2005), 28 O.S.C.B. 9489; and *Re Wells Fargo Financial Canada Corp.* (2005), 28 O.S.C.B. 1062 (Order)).

[208] Based on the finding in *Re Rowan* (above), which has been upheld by the Divisional Court, we find that the possibility that a monetary sanction may be imposed (such as an administrative penalty or disgorgement) does not create a penal or criminal consequence. Therefore, s. 11(d) of the *Charter* is not invoked.

D. Institutional or Structural Bias

[209] Otto Spork submits that he faces what is, in nature, a criminal proceeding with respect to the fraud charges in the Act. He says the very structure of the Commission and the nature of the hearing afforded to him give rise to a reasonable apprehension of bias and therefore offends s. 11(d) of the *Charter*. He further submits that s. 126.1 of the Act can only be considered by a tribunal that does not have the tripartite structure of the Commission.

[210] In support of his submissions, Mr. Spork continues to refer to this hearing as a "criminal proceeding" or is "criminal in nature". He repeats his submission that s. 126.1 creates a "penal offence" to which the *Charter* applies. These allegations of "criminal" proceedings and "penal" consequences have already been dealt with earlier in these Reasons. We have found the proceedings to be administrative and regulatory in nature.

[211] This issue has been settled by the Commission in *Re Norshield et al.* (2009), 32 O.S.C.B. 1249 ("*Norshield*") and the Supreme Court of Canada in *Brosseau v. Alberta (Securities Commission)*, [1989] 1 S.C.R. 301 ("*Brosseau*"). The Commission's tripartite structure does not give rise to a reasonable apprehension of bias.

[212] Otto Spork also claims that the proceedings have been subject to structural bias as a result of a motion brought by him that required a mid-hearing ruling. Otto Spork's motion was denied by the Panel.

[213] The rightness or wrongness of the mid-hearing ruling has no connection with structural bias. Were this so, every ruling in an administrative proceeding that went against a particular party could be the subject of an allegation of structural bias. If Otto Spork is dissatisfied with the ruling, his course is clear.

[214] We find no merit in the submission that Otto Spork has been denied natural justice and procedural fairness by virtue of the tripartite structure of the Commission.

[215] Given our previous findings, we find in unnecessary for us to address s. 1 *Charter* arguments. We find no need to apply the "*Oakes*" test.

[216] We find our task is to consider and apply s. 126.1 of the *Act* in the context of an administrative proceeding where the Commission must decide on a balance of probabilities, based on clear and cogent evidence, whether the section has been breached.

VIII. THE ALLEGATIONS

[217] The foregoing conduct engaged in by the Respondents constituted breaches of Ontario securities law and/or was contrary to the public interest:

(a) by engaging in the conduct described above, Otto Spork, SCMI and Sextant GP perpetrated a fraud on investors contrary to s. 126.1 of the *Act*;

(b) by engaging in the conduct described above, all of the Respondents breached their duties as investment fund managers contrary to s. 116 of the *Act*;

(c) by engaging in the conduct described above, SCMI, Otto Spork, Dino Ekonomidis and Natalie Spork, breached their duties pursuant to Rule 31-505;

(d) by engaging in the conduct described above, SCMI and Sextant GP failed to maintain proper books and records contrary to s. 19 of the *Act*; and

(e) by engaging in the conduct described above, all of the Respondents acted contrary to the public interest.

A. Fraud (s. 126)

[218] Staff allege that Otto Spork, SCMI and Sextant GP contravened s. 126.1 of the Act which provides as follows:

> 126.1 A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company. 2002, c. 22, s. 182.

[219] In several recent cases the Commission has accepted the definition of fraud established by the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)* (2004) BCCA 7 at para. 27 [*Anderson*], leave to appeal denied [2004] S.C.C.A. No. 81:

> … the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

[220] It is important to note that in Ontario, as it is in British Columbia, the legislature has chosen to impose liability under the *Act* where a person "ought reasonably to know … that their conduct perpetrates a fraud on any person or company". Commission cases adopting the definition of fraud in *Anderson* include *Re Al-Tar Energy Corp* (2010), 33 O.S.C.B. 5535; *Re Lehman Cohort Global Group Inc.* (2010), 33 O.S.C.B. 7041; and *Re Global Partners Capital* (2010), 33 O.S.C.B. 7783

1. The *Actus Reus* of Fraud

[221] The *actus reus* requires proof of (a) a dishonest act involving "deceit, falsehood or other fraudulent means" which (b) causes a detriment or deprivation to the victim. A "deprivation" includes circumstances where a mere "risk of prejudice" is caused to the victim's economic interests. (*R. v. Théroux*, [1993] 2 S.C.R. 5, at paras. 16 and 27)

[222] To find "deceit" or "falsehood" the trier of fact must determine whether there was an actual representation that a situation was of a certain character, when, in reality, it was not. (*Théroux*, above, para. 18)

[223] "Other fraudulent means" include all other dishonest situations which cannot be characterized as "deceit" or "falsehood". The issue is "determined objectively, by reference to what a reasonable person would consider to be a dishonest act." It describes underhanded conduct which has the effect, or which creates a risk of depriving others of their property. If the wrongful use of someone else's property results in the loss of that property or creates a risk of such a loss, the conduct is wrongful if it constitutes conduct which reasonable decent persons would consider dishonest and unscrupulous.

[224] Courts have found "other fraudulent means" to include the concealment of important facts, the unauthorized diversion of funds and the unauthorized taking of funds or property. (*Théroux*, above, at paras. 17-18)

[225] The unauthorized use of an investor's funds constitutes "other fraudulent means." (*R. v. Currie*, [1984] O.J. No. 147 (Ont. CA) pp. 3-4)

[226] The element of "deprivation" is satisfied on proof of: (i) actual loss to the victim; (ii) prejudice to a victim's economic interest; or merely (iii) the risk of prejudice to the economic interests of a victim. (*Théroux*, above, at paras. 16-17)

[227] "Prejudice" may be established by proof that a victim faced a risk of economic loss even if no loss took place. If through an act of dishonesty, someone makes an investment or borrows money, even if that action did not cause an actual loss, it constitutes prejudice.

2. The *Mens Rea* of Fraud

[228] The *mens rea* of fraud requires a person to be aware of the risk posed to another's interests. The subjective awareness can be inferred from the evidence. It may also be established by evidence showing that the perpetrator was "wilfully blind" or "reckless" as to the conduct and the truth or falsity of any statements made. (*Théroux*, above, at paras. 26 and 28)

[229] A sincere belief or hope that no risk or deprivation would ultimately materialize does not establish an absence of fraud:

> A person who deprives another person of what the latter has should not escape criminal responsibility merely because, according to his moral or her personal code, he or she was doing nothing wrong or because of a sanguine belief that all will come out right in the end. Many frauds are perpetrated by people who think there is nothing wrong in what they are doing or who sincerely believe that their act of placing other people's property at risk will not ultimately result in actual loss to those persons. If any offence of fraud is to catch those who actually practise fraud, its *mens rea* cannot be cast so narrowly as this.
>
> (*Théroux*, *above*, at paras. 24, 35, 36)

[230] For a corporation, it is sufficient to show that its directing minds know or reasonably ought to have known that the corporation perpetrated a fraud to prove a breach of subsection 126.1(b) of the *Act*. (*Al-Tar*, above, para. 221); (*Lehman*, above, para. 99); (*Global Partners*, above, para. 245)

[231] We find Otto Spork, SCMI and Sextant GP to have committed several acts of fraud for the following reasons.

(i) Inflation of IGP Market Values

[232] We reject any suggestion that Otto Spork was over his head, unsophisticated or disorganized, as suggested by his counsel in cross-examination of witnesses. We do so for three reasons:

- First, Otto Spork was an experienced investor and had been a registrant with the Commission.
- Second, Otto Spork created a web of inter-related companies designed more to conceal than reveal his financial operations. A cursory look at the Sextant organization chart annexed to these Reasons as Exhibit "A" is enough to dispel any suggestion that Otto Spork was a neophyte in the investment business.
- Third, Otto Spork's self-description in the OM and newsletters to investors could leave no doubt in the reader's mind of his talents as a trader and investment manager.

[233] On a consistent and regular basis Otto Spork inflated the value of IGP from €0.321 per share on July 31, 2007 to €2.45 per share on November 30, 2008. Counsel submits on his behalf that was reasonable for him to do so based on the "valuations" he obtained and other factors. While the explanations for his valuations vary from time to time, the pattern of increases remained constant. Starting in 2008 formal board minutes were prepared to record the rationale of the Fund Manager for its continued increases in the market values ascribed to IGP shares from €0.80 per share as at December 31, 2007 to €2.45 per share by November 30, 2008. The explanations included:

- Repeated reliance on the reports prepared by Spardata and Hempstead. They are referred to as a basis for the "market price quotes" of IGP in all of the 2008 minutes dealing with that issue. We have found those not to be independent valuations but rather calculations of values based on financial projections provided by Otto Spork and adopted by Spardata and Hempstead without verification.

- Repeated claims that IGP continued to meet and make progress in its business plan. We find this statement to be unsupported by any evidence to that effect.

- The reliance on the sale of 100,000 shares of IGP to F.O.I at €1.50 per share in August 2008. As found earlier in these Reasons found that sale to be an unreliable indication of the value of IGP.

- In August 2, 2008 reference is made to the sale of 25,950 shares of IGP to TJ at €1.85 per share. We found this sale to be an unreliable indication of the value of IGP.

- In October of 2008, the market price of IGP shares was raised from €1.85 to €2.15 per share, the increase being attributed to the "valuation" of Canaccord. We earlier found that the Canaccord letter was not a valuation.

- Despite representations to the contrary, at no time up to and including December 31, 2008, was IGP in a position to carry on business as contemplated by the business plan and financial projections. There were no "significant water contracts pending". The "attainment of internal milestones" was nothing more than employee hirings. Sergiy Kaznadiy estimated total revenues of perhaps €5,000 during his two-year employment head of sales ending in February of 2010. No medium or large bulk water orders were received during his time at Sextant. The Receiver's evidence confirmed that only one of two planned pipelines from the glacier to the bottling facility site had been prepared. No bottling facility had been constructed. There was no apparent source of funds to complete the necessary construction estimated to cost US $20 million. Beyond its glacier contract with the town of Rif and its capitalized costs, IGP had no material assets.

[234] We find that Otto Spork knew or ought to have known that the increases ascribed to IGP's market value were totally unreasonable and were not based on any formal independent valuations. Otto Spork set those values and directed IAS to use those values to calculate the Canadian Fund's NAV. He thereby committed an act or acts of fraud.

[235] Reports were distributed monthly to investors showing the NAV and historical performance of the Canadian Fund. None of the performance reports disclosed to investors the holdings of the Canadian Fund nor the concentration of IGP shares in the portfolio. The performance report for July 2008 underlines how Otto Spork's inflation of IGP's market value and the Canadian Fund's NAV allowed him to mislead investors and enrich himself. In the July 2008 report the NAV was shown as having increased to $57.95 per unit, 73% higher than the prior month. A return of 479% was reported for those investors who invested $10 per unit at the inception of the Canadian Fund in February 2006. Investors were invited to add "to your existing position" or "initiate an investment now". It was in July 2008 that Otto Spork increased the market price of the IGP shares held by the Canadian Fund by 50% from €1.00 to €1.50 per share. His justification for the €1.50 market price was the 100,000 share purchase transaction arranged with F.O.I. This 50% price increase, combined with the purchase in July 2008 of more than 5 million shares of IGP at €0.07 per share, had the effect of increasing the "market value" of the IGP investment held by the Canadian Fund from $11 million to $25 million. The corresponding month-to-month increase in the NAV was $12 million on which Otto Spork, through the Fund Manager received performance and management fees.

[236] As a result of the wrongful inflation of the "market price" of IGP, Otto Spork, SCMI and Sextant GP received significant economic benefits. Compensation to the Fund Manager in the form of management fees was calculated as 2% of the NAV paid monthly in 1/12th instalments. Performance fees were calculated at 20% of the month-to-month increase in the NAV subject to a "high-water mark" provision to protect investors against a decrease in the NAV.

[237] In the period from July 31, 2007 to December 31, 2008, the Canadian Fund paid management fees totalling $602,831 and performance fees totalling $6,331,356, which Otto Spork benefitted from directly or indirectly. We find Otto Spork knew or ought to have known that the payments were unreasonable. We find that these payments made to Otto Spork through SCMI and Sextant GP constitute acts of fraud.

(ii) Advanced Payments

[238] To make matters worse, SCMI repeatedly took advances against the performance fees it anticipated receiving and did so at Otto Spork's direction. These fee advances were tracked by IAS and recorded variously as "advanced payments" or "due from Fund Manager".

[239] As of March 2008 there was a zero balance owing from the Fund Manager to the Canadian Fund since SCMI had "caught up" on the advances by submitting performance and management fee calculations. However in April 2008 SCMI took advances of $4,033,599 when only $28,411 of management fees had been earned by the Fund Manager. On April 30, 2008 the Fund Manager owed the Canadian Fund $4,027,135. At June 30, 2008 the Fund Manager owed the Canadian Fund $4,880,744. During the balance of 2008, this latter amount was largely offset by performance and management fees and operating expenses allegedly incurred by the Canadian Fund. Ms. Lee testified it was Otto Spork who instructed IAS to offset the advances by crystallized management and performance fees from time to time. (Tr. Vol. 11, p. 77)

[240] There is no evidence to support the actions of the Fund Manager in taking advances from the Canadian Fund. The OM does not authorize advances or loans from the Canadian Fund to the Fund Manager, nor do the terms of the LP Agreement. Ms. Lee had no other clients that advanced or pre-paid their performance or management fees. Otto Spork's own counsel, Shahen Mirakian, was of the view that the advances on the fees was "a prohibited loan." (Ex. 4-18, Tab 52, p. 306)

[241] We agree with Staff's submission that these advances were prohibited loans taken by Otto Spork for his benefit to the detriment of investors in breach of s. 126.1 of the Act. We find that he knew or ought to have known there was the risk of prejudice to the economic interests of the investors in the Canadian Fund who lost the use of their money during the period when it was advanced to SCMI and Sextant GP, that is to say, to Otto Spork. We find by taking these advances Otto Spork committed acts of fraud.

[242] Pursuant to the authority noted above in para. 230 we find SCMI and Sextant GP have committed fraud contrary to s. 126(1)(b) of the Act in that Otto Spork, their directing mind, knew or reasonably ought to have known that the two corporations were committing a fraud.

(iii) The Riambel Payment

[243] During its audit of the 2007 financial statements for the Canadian Fund, Katie Girimonte of BDO discovered that on October 24, 2007, the Water Fund had paid €881,576 (US $1,258,000) to Riambel Holdings S.A., Otto Spork's private holding company. Ms. Girimonte determined that in fact this payment had been made on behalf of all three Sextant Funds and subsequently the Canadian Fund and the Hybrid Fund each transferred US $414,975 to the Water Fund for their share. Otto Spork instructed IAS to record the payment as an investment by the three Sextant Funds in IGP although none of the funds received any additional shares in IGP. When BDO requested an explanation for this transaction Otto Spork explained that the payment was a reimbursement of certain expenses incurred by Riambel on behalf of IGP. An argument ensued between Mr. Spork and BDO over the characterization of the payment. Ultimately, BDO determined to treat the payment as a loan owed by IGP to the Sextant Funds although there were no terms, due date or interest rate. The result was that the three Sextant Funds were now owed the sum previously owed to Riambel, a sum which IGP could not pay. Riambel got paid and the Sextant Funds were left with a worthless IOU, as matters turned out.

[244] We find that Otto Spork knew or ought to have known that this action was prejudicial to the economic interest of the unitholders by creating a risk of economic loss. This action was a fraud contrary to s. 126(1)(b) of the *Act*.

(iv) Failure to Testify

[245] Otto Spork did not testify. In non-criminal cases, an unfavorable inference may be drawn when, in the absence of an explanation, a party litigant does not testify, or fails to provide affidavit evidence on an application, or fails to call a witness who would have knowledge of the facts and would be assumed to be willing to assist that party (Sopinka Letterman and Bryant, *The Law of Evidence in Canada*, 3rd Ed. (Markham: Lexis Nexis Canada 2009), p. 337, para. 6.449).

[246] Otto Spork chose not to testify, provided no affidavit evidence, nor did he call any witnesses. We have found him guilty of fraud earlier in these Reasons. In addition to those stand-alone findings, we draw an adverse inference from his failure to testify, as confirmatory of those findings.

B. Breaches of s. 116 of the Act and Rule 31-505

[247] Staff submit that all of the Respondents (including Natalie Spork and Dino Ekonomidis) breached their duties to investors under s. 116 of the *Act* and Rule 31-505. Section 116 of the *Act* establishes duties of investment fund managers as follows:

> 116. Standard of care, investment fund managers – Every investment fund manager,
>
> (a) shall exercise the powers and discharge the duties of their office honestly, in good faith and in the best interests of the investment fund; and
>
> (b) shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

[248] Section 2.1 of Rule 31-505 provides as follows:

> 2.1 General Duties - (1) A registered dealer or adviser shall deal fairly, honestly and in good faith with its clients.

> (2) A registered salesperson, officer or partner of a registered dealer or a registered officer or partner of a registered adviser shall deal fairly, honestly and in good faith with his or her client.

[249] Rule 31-505, s. 1.3 as it was enforced at the applicable times in this matter sets out the duties and responsibilities of the Ultimately Responsible Person of a registered adviser:

1.3 Designation of Compliance Officer or Chief Compliance Officer and Ultimately Responsible Person

> (2) (a) A registered adviser shall designate an executive officer as the individual who is ultimately responsible for discharging the obligations of the registered adviser under Ontario securities law.
>
> …
>
> (c) The ultimately responsible person designated under paragraph (a) shall ensure that policies and procedures for the discharge of the obligations of the registered adviser under Ontario securities law are developed and implemented.

[250] We find it unnecessary to decide whether s. 116 imposes a fiduciary duty to investors on investment fund managers. The words employed "honestly, in good faith and in the best interests of the investment fund" can be applied to the conduct of the Respondents using their ordinary, every-day meaning. Also, the words describing the duty of care on an investment fund manager "to exercise the care, diligence and skill that a reasonably prudent person would exercise in the circumstances" may be applied in the circumstances of this case using their ordinary, every-day meaning.

[251] Staff and the Respondents take the view that the nature of the duties under Rule 31-505 are essentially similar or substantially overlap with the duties under s. 116 of the *Act*. We agree with this view.

1. 20% Restriction

[252] Staff submit that at all material times various revised versions of the Canadian Fund's OM established the following restriction on the concentration of the Canadian Fund's investments:

> The Fund may not invest more than 20% of its portfolio, based on the Net Asset Value of the Fund at the most recent Valuation Date, in any single class of securities of an issuer, where for the purposes of this restriction a long position is valued as the cost of the securities purchased and a short position is valued as the gross proceeds of the sale of the securities sold short.

The Respondents submit that the book value (purchase price) of the IGP shares paid by the Canadian Fund never exceeded 20% of the NAV. They submit "cost of the securities purchased" divided by the NAV is the proper manner to interpret the investment concentration restriction.

[253] In July 2007, according to the securities ledger for the Canadian Fund (Ex. 4-6, Tab 18) IAS recorded two transactions relating to the purchase of IGP shares by the Canadian Fund:

(a) first, 320,000 shares at a unit price of ?, a unit cost of CDN $0.00 and a cost of amount of CDN $0.00; and

(b) second, 6,575,350 shares at a unit price of €0.17082, a unit cost of CDN $0.267 and a cost amount of CDN $1,758,405

This CDN $1,758,405 cost amount was shown on the portfolio valuation statements as of July 31, 2007 as the book value for the 6,895,350 shares of IGP acquired in the two transactions. This would indicate the average cost of the IGP shares held by the Canadian Fund was CDN $0.255 per share as at July 31, 2007.

[254] The NAV as at July 31, 2007 was calculated by IAS as CDN $5,521,887.08. Dividing the $1,758,405 cost of the 6,575,350 shares by the NAV as at July 31, 2007 indicates the fund invested approximately 32% of its portfolio in shares of IGP.

[255] Even using the average cost of CDN $0.255 per share as the cost of the 6,575,350 shares purchased would only lower the percentage to approximately 30%.

[256] Counsel for the Respondents argued that the Canadian Fund held as at June 29, 2007, 320,000 shares of Icelandi PLC having a book value of £1.0 per share that, says counsel, equated to a book value of approximately CDN $682,656. It was argued that this amount should be deducted from the CDN $1,758,405 book value and thereby decrease the percentage to 19.48%. We find no merit in this argument.

[257] The portfolio valuation statements prepared by IAS as of June 29, 2007 show that the holding of 320,000 shares of Icelandi PLC had a book value of CDN $320,000 (CDN $1.00 per share). This is consistent with the information Mr. Mirikian provided to PWC (refer to table in para. 116 of the Receiver's report in para. 73 above) which showed a non-cashflow adjustment of CDN $320,000 to the Canadian Fund's book value for "free shares". It is presumed the 320,000 shares of Icelandi PLC were exchanged 1:1 for IGP shares in July 2007.

[258] The most favourable analysis to Otto Spork would be to deduct CDN $320,000 from the CDN $1,758,405 book value as at July 31, 2007 and treat the resulting amount of CDN $1,438,405 as the cost of the 6,575,350 shares purchased. Even this calculation only lowers the percentage to 26%.

[259] No explanations were provided as to the inconsistencies in the entries relating to the Icelandi PLC/IGP shares shown in the securities ledger and the portfolio statements. We are also not satisfied that the NAV as at July 31, 2007 was the "most recent Valuation Date" for purposes of calculating the investment concentration percentage at the time of investment. This NAV includes a market value for the IGP shares of CDN $3,232,638, almost double their purchase cost and representing 59% of the NAV. By using this month-end NAV which was calculated after the share purchase transaction, the resulting investment concentration percentage is skewed significantly downwards.

[260] We find Otto Spork contravened the restriction on investment concentration in the Canadian Fund. In doing so, he failed to act in the best interests of the investment fund and failed to exercise the degree of care that a reasonably prudent person would exercise in the circumstances. We find he contravened s. 116 of the Act and s. 2.1 of Rule 31-505.

2. Otto Spork's Self-Dealing

[261] The OM of the Canadian Fund established the following restrictions on self-dealing in the Canadian Fund's investments:

> The Fund will not purchase securities from, or sell securities to the Investment Advisor or any of its affiliates or any principal of any of them or any firm in which any principal of the Investment Advisor may have a direct or indirect material interest.

Contrary to this restriction the Canadian Fund held shares of IGP and IGW in which Otto Spork and Spork-related parties had an ownership interest. (see Schedule "A")

[262] Counsel for Otto Spork submits that the term "material interest" is not defined in the OM nor is it defined in Ontario securities law. Since Riambel was an 18% shareholder of IGP on July 31, 2007 (below the deemed control position under Ontario securities law) and Otto Spork was only one of four directors, the 18% interest was not material.

[263] We note IGP's business plan given to T.J. identified Otto Spork as President and CEO of IGP, and as a holder of stock options in IGP. Following the Sextant Funds' purchase of Eurofran's 2/3 interest in IGP in May 2008, Otto Spork directly controlled 37% of IGP through Riambel and Hermitage.

[264] We agree with Staff's submission that in a small, closely-held company, an 18% shareholding interest, a seat on the four-person Board of Directors and holding an executive position fixes Otto Spork with a material interest in IGP. The purpose of self-dealing restrictions is to prevent the fund manager from making decisions in its own interests rather than those of the investors. Otto Spork did just that – he made decisions in his own interest rather than those to his investors, to the ultimate detriment of those investors. In doing so he failed to exercise the powers of his office in the best interests of the investment fund and failed to exercise the degree of care that a reasonably prudent person would exercise in the circumstances. We find he contravened s. 116 of the *Act* and s. 2.1 of Rule 31-505.

3. Dino Ekonomidis

[265] Staff alleges that Dino Ekonomidis breached his duties as an investment fund manager as set out in s. 116 of the *Act* and his duties as set out in s. 2.1 of Rule 31-505.

[266] Counsel for Dino Ekonomidis submits that he was not an investment fund manager within the meaning of the *Act*, that is to say, "a person who directs the business operations or affairs of an investment fund."

[267] We reject this submission. Dino Ekonomidis was the vice-president of SCMI responsible for Corporate Development and was registered under the *Act* as a salesperson for SCMI. A corporate investment fund manager acts through human beings who occupy the offices of directors, officers and employees. Dino Ekonomidis had the responsibility of selling units in the Canadian Fund and was a qualified registrant in order to do so. In the absence of Otto Spork he assisted in the operation of the affairs of SCMI. Gary Allen described Dino Ekonomidis as the chief salesperson and second-in-command to Otto Spork. He further testified that although Natalie Spork became president of the Canadian Fund, Dino Ekonomidis continued to be very

much in charge of the sales function and Otto Spork was still in control of the operation by telephone from Iceland. We find Dino Ekonomidis to have been an investment fund manager within the meaning of s. 116 of the Act and breached his duties as described in that section.

[268] Staff alleges that Dino Ekonomidis also contravened s. 2.1(2) of Rule 31-505 which requires a registered salesperson, officer or partner of a registered dealer or adviser shall deal fairly, honestly and in good faith with his or her clients. Counsel for Dino Ekonomidis submits that the unitholders of the Canadian Fund cannot be found to be clients of Dino Ekonomidis by virtue of his positions with SCMI. He further submits that it is important to distinguish between references to "the funds" and the "Canadian Fund". Only the latter, it is submitted, is the subject of the allegations made by Staff. Nevertheless, the Canadian Fund was a client of SCMI and Dino Ekonomidis contravened s. 2.1(2) of Rule 31-505 by failing to deal fairly, honestly and in good faith with the Canadian Fund.

[269] Staff allege that Dino Ekonomidis misrepresented the state of affairs of the Canadian Fund to W.G. when he told the latter that about 1/3 of the Canadian Fund was in private water companies, 1/3 in public and/or private mining companies, and the other 1/3 invested in commodities and futures which were hedged pursuant to a proprietary investment tool. Counsel for Dino Ekonomidis submits that these statements are consistent with the book value of the portfolio. We reject this submission. W.G. was invited to purchase units of the Canadian Fund, based on its market value, not knowing the high concentration of IGP shares in the portfolio. Dino Ekonomidis concealed the high concentration of IGP in the portfolio from W.G. contrary to s. 2.1 of Rule 31-505.

[270] Staff further allege that Dino Ekonomidis misstated the composition of the Offshore Funds to J.P.L. Counsel for Dino Ekonomidis submits that he owed no duty of care to J.P.L. as the latter had no connection with the Canadian Fund. Assuming without deciding this analysis is correct, nevertheless we find, in effect, that Dino Ekonomidis lied to J.P.L. as to the composition of the Offshore Funds. We find in doing so he acted contrary to the public interest. Officers and registrants of companies subject to Ontario securities law must be held to account when guilty of egregious acts contrary to the public interest.

[271] We find Dino Ekonomidis acted contrary to the public interest in misstating the state of affairs in the Canadian Fund to W.G. and the state of affairs in the Offshore Funds to J.P.L. We adopt the following statement from paragraphs 382 and 383 of *Re Biovail Corp.*, (2010), 33 O.S.C.B. 8914:

> In our view, where market conduct engages the animating principles of the Act, the Commission does not have to conclude that an abuse has occurred in order to exercise its public interest jurisdiction. That is no doubt one of the reasons why the Commission concluded in *Re Standard Trustco Ltd.* (1992), 15 O.S.C.B. 4322 (Ont. Securities Comm.) that the issue of a misleading news release is itself injurious to capital markets. We should not interpret or constrain our public interest jurisdiction in a manner that condones inaccurate, misleading or untrue public disclosure regardless of whether that disclosure contravenes Ontario securities law. The issues raised by this matter directly engage the fundamental principle recognized in the Act for timely, accurate and efficient disclosure.
>
> There should be no doubt in the minds of market participants that the Commission is entitled to exercise its public interest jurisdiction where any inaccurate, misleading or untrue public statement is made, whether or not that statement contravenes Ontario securities law. It is, of course, a separate question whether the Commission should exercise its public interest jurisdiction under section 127 of the Act in any particular circumstances.

[272] We have disregarded Dino Ekonomidis' compelled testimony and not taken it into account.

4. Natalie Spork

[273] Staff allege that Natalie Spork failed in her duties to act in good faith towards investors in the Canadian Fund, thereby breaching s. 116 of the *Act* and Rule 31-505.

[274] Counsel for Natalie Spork submits that she was not an investment fund manager because she did not fall within the definition of fund manager under s. 1 of the *Act* as "a person or company that directs the business operations or affairs of an investment fund." We would agree with a submission that Natalie Spork did not actually direct the business, operations or affairs of the Canadian Fund. Nevertheless, on May 28, 2008, Ms. Spork was given the title of President and Director of SCMI. The OSC approved her as an Officer and Director (non-advising, non-trading) and as the Ultimate Responsible Person in the categories of commodity trading manager, limited market dealer, investment counsel and portfolio manager with SCMI on July 7, 2008. Dino Ekonomidis, Mr. Allen and Mr. Levack all confirm that Natalie Spork was singularly unfit to carry out the responsibilities assigned to her by her father.

[275] We reject the submission that Natalie Spork was not an investment fund manager. We specifically reject the submission that in order to be an investment fund manager, one must actually exercise the power and authority that goes with the position in order to attract the duties that also go with the position. The submission is apparently based on the notion that someone could be found to be a *de facto* officer of a company if they act as though they are an officer and that therefore, the converse must be true that you can't be an officer unless you actually carry out the functions of that officer. We agree with Staff's submission that a person assuming the title of President and the responsibilities of an Ultimately Responsible Person, holds themselves to the world as being an investment fund manager and should be bound by the obligations that go with the office.

[276] Natalie Spork did nothing to either learn about her obligations or to discharge them. She was the person responsible for ensuring that there were policies and that they were implemented and followed. She failed to do so. To permit the use of phantom or nominal officers and directors would work considerable mischief in the securities industry. Persons sanctioned by the Commission might seek to use others who were prepared to take on roles of responsibility only in name. To permit such a tactic would be contrary to the public interest.

[277] We find Natalie Spork to have been an investment fund manager and that she failed in her duties to act in good faith towards investors in the Canadian Fund contrary to s. 116 of the *Act*. We further find that she contravened s. 1.3 of Rule 31-505 as it was in force at the applicable time in that she did not take any steps to discharge her obligations as the Ultimately Responsible Person.

[278] We have disregarded Natalie Spork's compelled testimony and not taken it into account.

5. SCMI and Sextant GP

[279] SCMI and Sextant GP were investment fund managers for the Canadian Fund and had duties pursuant to s. 116 of the *Act*. In addition, as a registered adviser and dealer, SCMI had a duty pursuant to s. 2.1(1) of Rule 31-505 to deal fairly, honestly and in good faith with the Canadian Fund. We find they both contravened s. 116 and SCMI also contravened s. 2.1(1) of Rule 31-505.

C. The Breach of s. 19 (Books and Records)

[280] Registrants are obliged to keep and maintain proper books and records as required by s. 19(1) of the *Act*:

> **(1) Record-keeping** – Every market participant shall keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs and the transactions that it executes on behalf of others and shall keep other books, records and documents as may otherwise be required under Ontario securities law.

[281] Sextant GP was obligated pursuant to s. 19 of the *Act* to keep or cause to be kept appropriate books and records with respect to the Canadian Fund and to issue audited financial statements for the Canadian Fund no later than March 31 of the following year. SCMI was contractually obligated to maintain accounting records for the Canadian Fund and to arrange for the preparation of the annual audited financial statements.

[282] Both Sextant GP and SCMI were obligated to keep such books and records as were necessary for the proper recording of their business transactions and financial affairs.

[283] A representative for PWC testified that the Receiver could not rely on the books and records of SCMI, Sextant GP and the Canadian Fund in preparing its report. Having examined the books and records the Receiver found that the information for the fiscal year ending 2008 was "minimal, draft, or incomplete". There was virtually no financial information available for the 2009 fiscal year. In Tr. Vol. 3 at pp. 54-66, PWC's representative set out in detail the shortcomings of the books and records.

[284] We find SCMI and Sextant GP contravened s. 19 of the Act.

IX. CONCLUSION

[285] We find:

(a) by engaging in the conduct described above, Otto Spork, SCMI and Sextant GP perpetrated a fraud on investors contrary to s. 126.1 of the Act;

(b) by engaging in the conduct described above, all of the Respondents breached their duties as investment fund managers contrary to s. 116 of the Act;

(c) by engaging in the conduct described above, SCMI, Otto Spork, Dino Ekonomidis and Natalie Spork, breached their duties pursuant to s. 2.1 of Rule 31-505;

(d) by engaging in the conduct described above, SCMI and Sextant GP failed to maintain proper books and records contrary to s. 19 of the Act; and

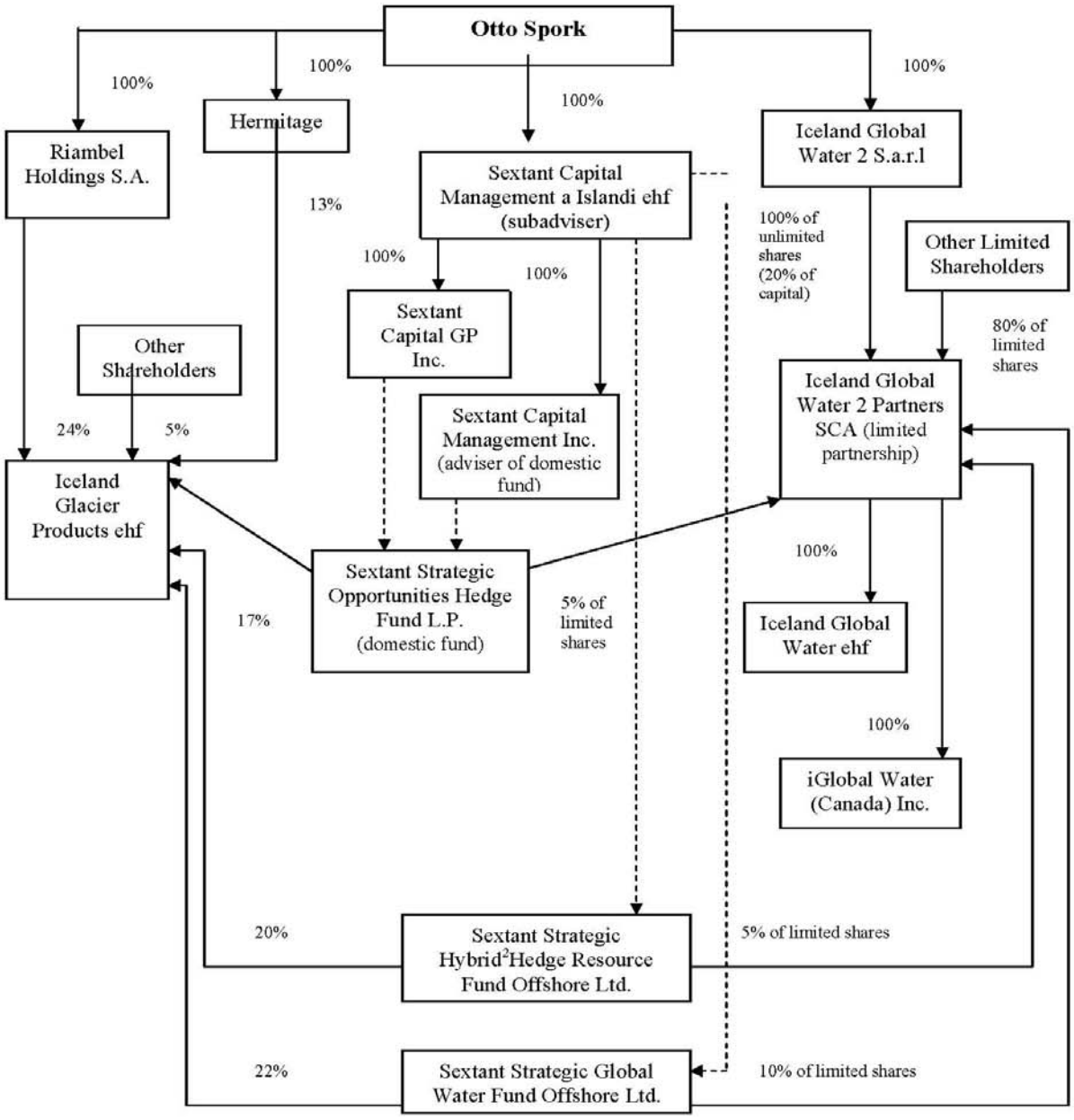
(e) by engaging in the conduct described above, all of the Respondents acted contrary to the public interest.

Dated this 17th day of May, 2011

"James D. Carnwath"
James D. Carnwath

"Carol S. Perry"
Carol S. Perry

Schedule "A"


Otto Spork
100%
100%
100%
100%
Riambel Holdings S.A.
Hermitage
Sextant Capital Management a Islandi ehf (subadviser)
Iceland Global Water 2 S.a.r.l
13%
100% of unlimited shares (20% of capital)
Other Limited Shareholders
100%
100%
80% of limited shares
Other Shareholders
Sextant Capital GP Inc.
Iceland Global Water 2 Partners SCA (limited partnership)
24%
5%
Sextant Capital Management Inc. (adviser of domestic fund)
Iceland Glacier Products ehf
100%
Sextant Strategic Opportunities Hedge Fund L.P. (domestic fund)
17%
5% of limited shares
Iceland Global Water ehf
100%
iGlobal Water (Canada) Inc.
20%
Sextant Strategic Hybrid²Hedge Resource Fund Offshore Ltd.
5% of limited shares
22%
Sextant Strategic Global Water Fund Offshore Ltd.
10% of limited shares

Schedule "B"

Sextant Strategic Opportunities Hedge Fund L.P. (the "Sextant Canadian Fund")
Source and Application of Funds
January 1, 2007 to December 31, 2008

Scope: All transactions over $9,999. (Coverage: 99% of total cash flow.)

Source of Funds (Note 1):			
Subscriptions by investors (Note 2)		$	22,998
Subscriptions by parties outlined in Note 2			4,681
Sextant Capital Management Inc. (**"SCMI"**)			979
Sextant Strategic Global Water Fund Offshore Ltd. (the **"Sextant Water Fund"**) (Note 3)			1,510
Other			75
Total		**$**	**30,243**

Application of Funds (Note 1):			
Investment and transfers Iceland Glacier Products (**"IGP"**)		$	2,907
SCMI	10,715		
Sextant Capital GP Inc. (Note 4)	5,648		16,363
Otto Spork (Note 5) and Otto J.			350
Sextant Strategic Hybrid Hedge Resource Fund Offshore Ltd.			1,399
Sextant Water Fund			416
Investor redemptions (Note 6)			3,912
Investments in other securities	7,934		
Less: Proceeds from sale of other securities	(4,154)		3,780
Other			228
Total		**$**	**29,355**

Schedule "B"

Sextant Strategic Opportunities Hedge Fund L.P. (the "Sextant Canadian Fund")
Source and Application of Funds
January 1, 2007 to December 31, 2008

Notes:

1 Includes transactions in the following accounts:
RBC 140-611-5
NBCN 26BB11E,V
NBCN 26BB11U
Newedge 198K3327

2 "Subscriptions by investors" excludes subscriptions received from the following:

Otto and/or Johanna Spork	700,000.00
1035316 Ontario Ltd	131,000.00
Dino Ekonomidis	70,000.00
Helen Ekonomidis	1,060,000.00
SCMI	2,600,000.00
J'Aime Spork	45,000.00
Natalie Spork	75,000.00
	4,681,000.00

3 Includes proceeds from the sale of Iceland Glacier Products shares to the Water Fund, on or about August 22, 2008, in the amount of $1,409,534.80.

4 Includes the following payments in the total amount of approximately $3.5 million which were reflected as an investment in IGP in the fund's accounting records:

	CAD	USD
25-Jul-2008	1,200,000.00	
25-Jul-2008		613,600.00
08-Aug-2008	12,675.00	
15-Sep-2008		357,550.00
16-Sep-2008	750,000.00	
25-Nov-2008		470,000.00
	1,962,675.00	1,441,150.00
Converted to CAD		1,572,325.02
Total in CAD	3,535,000.02	

5 Includes a $300,000 redemption payment to Otto John Spork on October 7, 2008.

6 Excludes a $300,000 redemption payment to Otto John Spork on October 7, 2008.

3.1.5 Nelson Financial Group Ltd. et al.

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

AND

**IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND STEPHANIE LOCKMAN SOBOL**

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of Stephanie Lockman Sobol (the "Respondent").

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission ("Staff") agree to recommend settlement of the proceeding commenced by Notice of Hearing dated May 12, 2010 (the "Proceeding") against the Respondent according to the terms and conditions set out in Part V of this Settlement Agreement. The Respondent agrees to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

3. Between December 19, 2006 and January 31, 2010 (the "Material Time"), Nelson Financial, through Nelson Investment, raised investor funds of over $50 million (net of redemptions) from approximately 500 Ontario investors by issuing non-prospectus qualified securities. Although Nelson Financial purported to rely upon the Accredited Investor Exemption in selling securities of Nelson Financial, a significant number of investors were not accredited. Sobol was not a salesperson in the offering of non-prospectus qualified securities and did not receive a commission for the sale of any Nelson Investment or Nelson Financial products.

4. Throughout the Material Time, Nelson Financial sustained operating losses each year and operated at an ever-increasing deficit. It was unable to meet its obligations to investors without the receipt of new investor capital. Nelson Financial deposited investor funds in the Nelson Financial operating account. These funds were then used to fund Consumer Loans (defined below), but also to fund operational expenses and to pay investors the returns on their investment. Nelson Financial continued to accept additional investor funds after the point at which it was insolvent and while it continued to inform investors that it was having unprecedented financial success.

5. At no time did Nelson Financial, or Sobol, advise investors that it was operating with a deficit or that their funds would be used either in whole or in part to pay interest or repay other investors. Marc Boutet was the directing mind of the Nelson Entities. Boutet was responsible for the strategic initiatives for the Nelson Entities and projected, with a consultant's advice, that the companies would be profitable in 4-5 years beyond the Material Time. Sobol did not raise any concerns about this projection with Boutet during the Material Time. In fact, Sobol invested $30,000 of her own funds in Nelson Investments.

II. THE RESPONDENTS

6. Nelson Financial was incorporated in Ontario on September 14, 1990. Nelson Financial is not a reporting issuer and is not registered under the Act. Nelson Financial provides vendor assisted financing for the purchase of home consumable products, either through a vendor (or an aggregator of vendors), or directly to the consumer (the "Consumer Loans").

7. Nelson Investment was incorporated in Ontario on September 14, 2006 and sold securities of Nelson Financial. On December 19, 2006, Nelson Investment obtained registration under the Act as a dealer in the category of limited market dealer ("LMD"), now exempt market dealer ("EMD").

8. Boutet is a resident of Ontario and was at all material times listed as the sole officer and director of Nelson Financial and Nelson Investment (together, the "Nelson Entities"). Boutet was the directing mind of the Nelson Entities. Throughout the Material Time, Boutet was registered with the Commission: first as a trading officer under the category of LMD with Nelson Investment and then subsequently as the ultimate designated person and chief compliance officer under the firm registration category of EMD.

9. Sobol was hired as the corporate controller for Nelson Financial in May, 2007, and was promoted to General Manager in May, 2008. Sobol replaced the Chief Operating Officer as General Manager and her role was to oversee the operations of Nelson Financial, including the loan department, collections and legal. As the senior finance employee at Nelson Financial and a Certified Management Accountant, Sobol was the *de facto* chief operating officer of Nelson Financial. Sobol was a key member of the management team of Nelson Financial. She continues to be employed as the General Manager of the successor corporation to Nelson Financial, Provider Capital Group. Sobol is not and has never been registered with the Commission.

III. BACKGROUND AND PARTICULARS

10. During the Material Time and through Nelson Investment, Nelson Financial raised approximately $82 million through the sale and distribution of securities of Nelson Financial to (almost exclusively) Ontario investors. As of February 28, 2010, there were approximately 500 Nelson investors with a total investment amount outstanding of approximately $51.2 million, net of redemptions.

11. The securities sold and distributed by Nelson Financial were in the form of fixed term promissory notes and preferred shares and were offered by Nelson Financial at fixed/guaranteed annual rates of return of 12% and 10%, respectively, typically paid to investors on a monthly basis.

12. Nelson Financial relied on investors' funds for liquidity throughout the relevant period.

13. In soliciting investors, Nelson Investment and Nelson Financial expressly and implicitly represented to investors that Nelson Financial's business model, and consequently the success of the Nelson Financial investments, was premised upon applying investor capital to fund the Consumer Loans so that Nelson Financial would generate a higher return on the Consumer Loans than the returns promised to investors, as follows: a) investors' funds are used directly to fund the Consumer Loans; b) the Consumer Loans are extended at interest rates ranging from 29.9%; c) the fixed rates of return of 10-12% on the securities are paid to investors from the high interest rates earned on the Consumer Loans; and d) the "remaining spread" is used by Nelson Financial for "portfolio management, administration, underwriting and profit".

14. Throughout the Material Time, Nelson Financial made all of its monthly interest and "dividend" payments to investors and, for those who elected to redeem their investments upon maturity or otherwise, Nelson Financial repaid investors their full principal.

15. Throughout the Material Time, however, Nelson Financial's operations did not generate sufficient revenue for it to cover its operating expenses, nor its interest, "dividend", and principal repayment obligations to investors. During the Material Time, Nelson Financial relied on the receipt of new investor capital to meet its obligations to investors.

16. In addition to its ongoing working capital requirements, Nelson Financial used at least part of the new investor funds that it obtained to offset its growing accumulated losses, to pay other investors their monthly returns and to repay investors their principal upon redemption.

17. Nelson Financial's continued acceptance of new investor funds in order to meet its obligations to investors was contrary to investor interests and the public interest. By using new investor funds in this fashion, during the Material Time, new investor funds were at risk because the total amount due to investors always exceeded Nelson Financial's total assets.

18. While Nelson Financial was making statements to investors that it was successful, at no time did Sobol advise investors that Nelson Financial was in fact operating at a deficit or that their funds would be used either in whole or in part to pay interest or repay other investors. Moreover, Sobol did not raise concerns with her direct report, Boutet, about continuing to offer securities during the Material Time .

19. On or about January 31, 2010, due to regulatory concerns raised by Staff following its on-site compliance review, Nelson Financial temporarily suspended the distribution of any of its securities.

20. On March 23, 2010, less than two months after suspending its capital raising activities, Nelson Financial was required to seek an order for creditor protection and restructuring under the *Companies' Creditors Arrangement Act* on the basis that it was insolvent.

21. On November 22, 2010, the Court made an order approving certain heads of agreement (the "Heads of Agreement") between Boutet, A. John Page & Associates Inc. and Representative Counsel which provided for the resignation of Boutet as a director, officer and employee of Nelson Financial and the appointment of Sherry Townsend, a member of the Noteholders' Committee, as the Interim Operating Officer of Nelson Financial to direct and manage the business operations of the company and to manage its efforts to develop a restructuring plan under the CCAA. Amongst other things and in addition to the above, the Heads of Agreement required Boutet to surrender his ownership interest in Nelson Financial and to surrender and release any and all claims Boutet might otherwise have against Nelson Financial under the CCAA.

22. On March 4, 2011, the Ontario Superior Court accepted for filing a Plan of Compromise and Arrangement in respect of Nelson Financial. The purpose of the Plan of Compromise and Arrangement is to "enable the business...to continue as a going concern" in its reorganized form.

IV. CONDUCT CONTRARY TO THE PUBLIC INTEREST

23. By engaging in the conduct described above, Sobol has acted contrary to the public interest.

24. Sobol, as a key member of the management team of the Nelson Entities and as a de facto chief operating officer of Nelson Financial acquiesced in Nelson Financial's continued distribution of securities and continued acceptance of new investor capital in circumstances where it was contrary to the public interest.

PART V – TERMS OF SETTLEMENT

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

26. The Commission will make an order pursuant to section 127(1) of the Act that:

    (a) The settlement agreement is approved;

    (b) Sobol shall be permitted to continue her employment as General Manager of Provider Capital Group (the successor corporation of Nelson Financial) until June 13, 2011 but shall be otherwise be prohibited from acting as a director or officer of an issuer for a period of 6 years from the date of the order approving the settlement;

    (c) Sobol shall make a voluntary payment of $10,000 to the Commission to be made by certified cheque at the time of the settlement hearing, to be distributed to or for the benefit of third parties as though it were a payment made pursuant to section 3.4(2)(b) of the Act.

PART VI – STAFF COMMITMENT

27. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding against the Respondent under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 26 below.

28. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

29. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for May 18, 2011, or on another date agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's Rules of Practice.

30. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

31. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

32. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

33. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART X – DISCLOSURE OF SETTLEMENT AGREEMENT

34. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

    i. this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and

    ii. Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.

35. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

36. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

37. A fax copy of any signature will be treated as an original signature.

"Stephanie Lockman Sobol"
Stephanie Lockman Sobol
Respondent

"Joanna Raffa"
Joanna Raffa
Witness

"Tom Atkinson"
Tom Atkinson
Director, Enforcement Branch

SCHEDULE "A"

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

AND

IN THE MATTER OF
NELSON FINANCIAL GROUP LTD.,
NELSON INVESTMENT GROUP LTD.,
MARC D. BOUTET, STEPHANIE LOCKMAN SOBOL,
PAUL MANUEL TORRES, H. W. PETER KNOLL

ORDER

WHEREAS on May 12, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and a Statement of Allegations in this matter pursuant to section 127 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act");

AND WHEREAS on November 10, 2010, the Staff of the Commission amended the Statement of Allegations;

AND WHEREAS Stephanie Lockman Sobol ("Sobol") entered into a settlement agreement with Staff of the Commission ("Staff") dated May 16, 2011 (the "Settlement Agreement") subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and Sobol.

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

IT IS ORDERED THAT

1. The Settlement Agreement is approved;

2. Pursuant to clause 8 of s. 127(1) of the Act, Sobol shall be prohibited from acting as a director or officer of an issuer for a period of 6 years from the date of the order approving the settlement, save and except in relation to her employment as general manager of Provider Capital Group until June 13, 2011.

DATED at Toronto this 18th day of May, 2011.

_____

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
Interactive Capital Partners Corporation	04 May 11	16 May 11		18 May 11
Parlay Entertainment Inc.	05 May 11	17 May 11	17 May 11	
Cathay Forest Products Corp.	06 May 11	18 May 11	18 May 11	
Aztech Innovations Inc.	06 May 11	18 May 11	18 May 11	
Banff Rocky Mountain Resort Limited Partnership	12 May 11	24 May 11		
Churchill 10 Real Estate Limited Partnership	12 May 11	24 May 11		
Range Gold Corp	13 May 11	25 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		
Dia Bras Exploration Inc.	09 May 11	20 May 11			
Canada Lithium Corp.	10 May 11	20 May 11			
Process Capital Corp.	11 May 11	24 May 11			
Enssolutions Group Inc.	11 May 11	24 May 11			

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesScource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 8

Notice of Exempt Financings

REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/04/2011	2	1109672 Ontario Limited - Loans	11,850,000.00	11,850,000.00
03/15/2011 to 03/22/2011	111	1583542 Alberta Ltd. - Units	10,886,445.00	N/A
02/23/2011	1	1719187 Ontario Inc (Easton & York) - Units	3,000,000.00	3,000,000.00
02/28/2011	1	2010 Winston Park Drive LP - Units	4,133,860.01	4,133,860.01
03/11/2011	19	2232419 Ontario Inc. - Common Shares	900,000.00	1,407,692.00
04/26/2011	11	2266470 Ontario Inc. - Units	150,000.00	666,660.00
03/11/2011	3	2267582 Ontario Inc. - Receipts	1,150,000.00	2,300,000.00
01/20/2011	2	22nd Century Limited, LLC - Units	675,308.00	680,000.00
03/11/2011	1	3D Systems Corporation - Common Shares	220,000.00	2,040,000.00
04/01/2011	3	44170 Yukon Inc. - Receipts	6,025,310.00	6,493,000.00
04/29/2011	3	ABRY Partners VII, L.P. - Limited Partnership Interest	2,845,800.00	3.00
03/24/2011	1	Acacia Research Corporation - Common Shares	767,655.00	25,000.00
03/24/2011	59	Acadia Resources Corp. - Special Shares	3,000,000.00	40,000,000.00
03/21/2011	66	AccelRate Power Systems Inc. - Receipts	6,000,000.00	20,000,000.00
04/30/2011	40	ACM Commercial Mortgage Fund - Units	2,464,379.64	22,393.63
03/15/2011	49	Afri-Can Marine Minerals Corporation - Units	1,800,225.00	25,717,500.00
03/31/2011	26	Agcapita Farmland Appreciation Fund II - Units	47,700.00	9,540.00
03/31/2011	26	Agcapita Farmland Principal Return Fund II - Units	429,300.00	85,860.00
04/21/2011	33	Alix Resources Corp. - Units	1,725,000.00	6,900,000.00
04/04/2011	27	Alliance Mining Corp. - Units	331,200.00	1,870,000.00
03/25/2011	12	Ally Financial Inc. - Common Shares	26,460,000.00	1,080,000.00
02/04/2011	143	American Manganese Inc. - Units	4,178,088.30	13,992,294.00
03/08/2011	14	American Manganese Inc. - Units	5,040,000.00	7,200,000.00
03/16/2011	86	Americas Petrogas Inc. - Common Shares	50,011,760.00	20,162,000.00
03/10/2011 to 03/17/2011	22	Appella Resources Inc. - Units	741,350.00	3,406,750.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
03/16/2011	3	Applewood II Hotel Holdings Inc & Combo Construction Limited - Units	1,659,834.00	1,659,834.00
04/04/2011	1	Aramark Holdings Corporation - Note	1,916,442.00	1.00
02/04/2011	3	Arezzo Industria E Comercio S.A. - Common Shares	3,643,250.00	325,000.00
04/28/2011	1	Argentum Silver Corp. - Common Shares	450,000.00	1,500,000.00
04/26/2011	16	Argonaut Exploration Inc. - Units	223,750.00	1,590,000.00
03/30/2011	71	Augyva Mining Resources Inc. - Units	8,000,000.00	N/A
03/18/2011	1	Axela Inc. - Debenture	50,100.00	1.00
03/17/2011	35	Azimut Exploration Inc. - Units	4,799,999.70	5,333,333.00
04/18/2011	1	Baillie Gifford Global Alpha Fund - Units	62,192,715.62	4,883,490.43
04/11/2011	10	Bard Ventures Inc. - Units	520,000.00	6,500,000.00
03/04/2011	25	Belmont Resources Inc. - Common Shares	385,950.00	5,146,000.00
04/04/2011	1	Belmont Resources Inc. - Common Shares	5,000.00	100,000.00
04/26/2011	37	Bison Gold Resources Inc. - Units	1,975,920.00	4,644,800.00
03/31/2011	1	Bison Properties Ltd. - Bonds	500,000.00	500.00
04/18/2011	15	Black Isle Resources Corporation - Units	390,000.00	6,000,000.00
04/08/2011	7	Blue Ant Media Inc. - Common Shares	18,000,000.00	18,000,000.00
04/11/2011	1	Blue Fin Ltd. - Notes	1,432,050.00	1,500.00
04/01/2011	44	BMW Canada Inc. - Notes	574,913,000.00	N/A
03/18/2011 to 03/21/2011	6	BNP Paribas Arbitrage Issuance B.V. - Certificates	383,565.34	372.00
03/04/2011	18	BNP Paribas Arbitrage Issuance B.V. - Certificates	4,460,000.00	4,460.00
03/04/2011	36	BNP Paribas Arbitrage Issuance B.V. - Certificates	5,642,000.00	5,642.00
03/28/2011	5	Boart Longyear Management Pty Limited - Notes	821,623.60	N/A
03/24/2011	85	Braeval Mining Limited - Common Shares	7,995,000.00	15,990,000.00
03/24/2011	32	Bralorne Gold Mines Ltd. - Units	1,338,350.00	1,029,500.00
04/30/2010 to 08/31/2010	1	Brevan Howard Credit Catalysts Fund Limited - Common Shares	6,453,647.97	53,731.74
12/31/2009 to 11/30/2010	5	Brevan Howard Fund Limited - Common Shares	422,934,104.75	3,707,024.98
03/07/2011	1	Bumble Bee Holdco S.C.A. - Notes	238,916.96	N/A
03/31/2011	1	Caisse D'Amortissement De La Dette Sociale - Note	24,166,722.40	1.00
03/21/2011	36	Canada Rare Earths Inc. - Units	2,262,734.50	3,481,130.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
03/31/2011	34	Canada Safeway Limited - Notes	299,751,000.00	299,751.00
02/28/2011	11	Canada Zinc Metals Corp. - Units	3,730,650.00	4,845,000.00
03/24/2011	23	Canadian Horizons Blended Mortage Investment Corporation - Preferred Shares	599,373.00	599,373.00
03/10/2011 to 03/11/2011	31	Canadian Horizons Blended Mortgage Investment Corporation - Preferred Shares	614,026.00	614,026.00
04/13/2011	20	Canadian Horizons Blended Mortgage Investment Corporation - Preferred Shares	757,597.00	757,597.00
03/24/2011	55	Canadian Horizons First Mortgage Investment Corporation - Preferred Shares	2,969,821.00	2,969,821.00
04/13/2011	48	Canadian Horizons First Mortgage Investment Corporation - Preferred Shares	1,324,959.00	1,324,959.00
03/10/2011	42	Canadian Mining Company Inc. - Units	707,500.00	14,150,000.00
04/08/2011	110	CanAm Coal Corp. - Receipts	11,500,000.00	11,500.00
04/04/2011	12	Canamex Resources Corp. - Units	750,000.00	5,000,000.00
04/13/2011 to 04/21/2011	5	Cap-Ex Ventures Ltd. - Common Shares	1,060,500.00	N/A
03/03/2011	110	Cap-Ex Ventures Ltd. - Flow-Through Units	7,750,000.00	5,000,000.00
03/30/2011	46	Cap-Ex Ventures Ltd. - Flow-Through Units	4,932,439.80	2,400,000.00
05/02/2011	2	Capital Direct I Income Trust - Trust Units	52,000.00	5,200.00
03/24/2011	26	CareVest Blended Mortgage Investment Corporation - Preferred Shares	427,888.00	427,888.00
03/10/2011	52	CareVest Capital Blended Mortgage Investment Corp. - Preferred Shares	1,210,194.00	1,210,194.00
03/24/2011	31	CareVest Capital Blended Mortgage Investment Corp. - Preferred Shares	528,561.00	528,561.00
04/13/2011	22	CareVest Capital Blended Mortgage Investment Corp. - Preferred Shares	397,247.00	397,247.00
04/13/2011	8	CareVest Capital First Mortgage Investment Corp. - Preferred Shares	107,807.00	107,807.00
04/13/2011	11	CareVest First Mortgage Investment Corporation - Preferred Shares	604,981.00	604,981.00
03/24/2011	12	CareVest First Mortgage Investment Corporation - Preferred Shares	218,344.00	218,344.00
03/31/2011	4	Carp Retirement Properties Limited Partnership - Units	200,000.00	N/A
03/04/2011	195	Castle Peak Mining Ltd. - Units	6,151,650.90	17,576,143.00
04/01/2011	1	Caterpillar Financial Services Corporation - Notes	9,629,000.00	10,000,000.00
03/08/2011	158	Cedar Mountain Exploration Inc. - Units	4,347,250.00	17,389,000.00
03/25/2011	1	Centretown Citizens Ottawa Corporation - Debentures	993,489.00	993.40

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
03/31/2011	77	Centurion Apartment Real Estate Investment Trust - Units	1,670,728.59	225,854.60
03/09/2011	30	Century Iron Ore Holdings Inc. - Receipts	32,500,000.00	13,000,000.00
04/29/2011	35	Chemaphor Inc. - Common Shares	586,000.00	5,860,000.00
04/20/2011	25	Chesstown Capital Inc. - Units	1,235,000.00	5,625,000.00
04/11/2011	90	Cinram International Income Fund, Cinram (U.S) Holding's Inc. and Cinram, Inc. - Rights	0.00	3,665,140.00
03/24/2011	5	Clean Harbors, Inc. - Notes	859,754.11	5.00
05/04/2011	4	Cleanfield Alternative Energy Inc. - Common Shares	87,537.78	1,094,222.00
04/18/2011	18	Clear Sky Capital US Real Estate Opportunity Limited Partnership - Limited Partnership Units	3,189,783.60	32,960.00
03/09/2011	8	Clearview Resources Ltd. - Common Shares	300,000.00	3,000.00
03/28/2011 to 03/31/2011	12	Colwood City Centre Limited Partnership - Notes	366,000.00	366,000.00
04/29/2011	8	Colwood City Centre Limited Partnership - Notes	455,000.00	455,000.00
03/21/2011 to 03/25/2011	32	Colwood City Centre Limited Partnership - Notes	1,369,000.00	1,369,000.00
02/17/2011	2	CommunityLend Inc. - Loan Agreements	10,000.00	2.00
02/23/2011	1	CommunityLend Inc. - Loan	1,000.00	1.00
03/05/2011	11	CommunityLend Inc. - Loans	51,699.99	N/A
03/04/2011	44	Compass Gold Corporation - Common Shares	1,999,999.92	16,666,666.00
03/30/2011	2	Conway Resources Inc. - Flow-Through Shares	771,000.00	7,342,858.00
04/21/2011	41	Cooper Minerals Inc. - Common Shares	1,350,500.00	21,810,000.00
03/16/2011	83	Copper Fox Metals Inc. - Flow-Through Units	3,750,000.00	3,000,000.00
04/28/2011	70	Copper One Inc. - Units	4,499,999.80	12,321,428.00
03/28/2011	1	CORE Biofuel, Inc. - Common Shares	199,999.50	133,333.00
04/01/2010 to 03/31/2011	3	Counsel Canadian Dividend - Trust Units	8,745,268.14	623,821.34
04/01/2010 to 03/31/2011	4	Counsel Canadian Value - Trust Units	6,262,216.29	445,572.73
04/01/2010 to 03/31/2011	4	Counsel Fixed Income - Trust Units	52,371,631.93	4,160,006.74
04/01/2010 to 03/31/2011	6	Counsel Global Real Estate - Trust Units	15,897,248.70	1,323,016.68
04/01/2010 to 03/31/2011	5	Counsel Global Small Cap - Trust Units	22,429,859.47	2,071,032.66

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/01/2010 to 03/31/2011	7	Counsel International Growth - Trust Units	9,194,552.48	715,026.06
04/01/2010 to 03/31/2011	7	Counsel International Value - Trust Units	5,767,431.20	500,767.04
03/30/2011	48	Crescent Resources Corp. - Units	3,500,000.00	10,000,000.00
04/01/2011	1	Crestwood Midstream Partners LP and Crestwood Midstream Finance Corporation - Note	9,629,000.00	1.00
04/01/2011	15	Crexus Investment Corporation - Common Shares	21,804,000.00	1,975,000.00
04/21/2011	9	Critical Outcome Technologies Inc. - Units	345,600.00	2,160,000.00
03/10/2011	49	Crown Point Ventures Ltd. - Common Shares	25,008,750.65	12,825,000.00
04/26/2011	1	CRP Opportunities Fund (Offshore) LP - Units	470,350.00	500.00
04/07/2011	1	CVR Partners, LP - Units	291,627.20	19,000.00
04/14/2011	40	Daimler Canada Finance Inc. - Notes	499,945,000.00	N/A
03/14/2011	66	DataLink Corporation - Common Shares	23,935,000.00	4,266,500.00
04/01/2011	16	Desiree Resources Inc. - Units	192,000.00	960,000.00
04/26/2011	1	Detour Gold Corporation - Common Shares	1,588,500.00	50,000.00
03/16/2011	5	DIRTT Environmental Solutions Ltd. - Units	21,999,999.00	7,333,333.00
03/31/2011	4	Ditem Explorations Inc. - Units	578,000.00	7,225,000.00
03/18/2011	27	Donnybrook Energy Inc. - Common Shares	5,025,000.00	6,700,000.00
03/11/2011 to 03/21/2011	96	Douglas Lake Minerals Inc. - Units	5,194,552.12	14,862,262.00
03/22/2011	1	Dresser-Rand - Notes	488,000.00	375,000,000.00
03/25/2011	6	DuPont - E.I. du pont de Nemours and Company - Notes	5,867,593.20	6.00
05/02/2011	13	Eagle Hill Exploration Corporation - Common Shares	4,000,000.00	16,000,000.00
04/11/2011	152	Earth Energy Resources Inc. - Common Shares	12,585,600.00	10,500,000.00
02/25/2011	4	East Coast Energy Inc. - Units	25,000.00	166,665.00
03/24/2011 to 04/01/2011	2	East Coast Energy Inc. - Units	200,000.00	1,333,333.33
03/18/2011	14	EcoMax Energy Services Ltd. - Common Shares	200,000.00	4,000,000.00
02/28/2011	57	Econo-Malls Limited Partnership #12 - Limited Partnership Interest	6,155,000.00	N/A
04/05/2011	139	Element Financial Corporation - Units	75,000,000.00	18,750,000.00
04/13/2011	1	Elster Group SE - American Depository Shares	1,084,500.00	75,000.00
03/28/2011	41	Ely Gold & Minerals Inc. - Units	2,464,000.00	9,856,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
03/08/2011	3	Energate Inc. - Debentures	3,807,669.00	N/A
03/03/2011	70	Enertopia Corp. - Units	872,900.00	8,729,000.00
12/30/2010	53	EquiGenesis 2010 Preferred Investment LP - Limited Partnership Interest	24,812,016.00	724.65
02/08/2011 to 03/03/2011	9	eSight Corp. - Common Shares	235,862.50	1,048,277.00
03/14/2011 to 03/18/2011	203	Eurasian Minerals Inc. - Units	13,745,000.00	3,960,000.00
03/22/2011	66	EV Energy Partners, L.P. and EV Energy Finance Corp. - Notes	294,000,000.00	N/A
01/06/2011	1	EVOenergy, LLC - Common Shares	19,860.00	N/A
03/15/2011	1	Exelixis, Inc. - Common Shares	1,081.00	100.00
03/08/2011	34	Exito Energy Inc. - Common Shares	325,000.00	6,500,000.00
03/10/2011	4	Expedition Mining Inc. - Flow-Through Units	2,170,000.00	6,125,000.00
04/12/2011	1	Express, Inc. - Common Shares	1,371,562.50	19,800,000.00
04/15/2011	2	F4T Entretenimento S.A. - Common Shares	6,344,000.00	650,000.00
04/30/2010 to 03/31/2011	75	FAM Balanced Fund - Trust Units	36,891,423.00	352,059.42
02/28/2010 to 03/31/2011	151	FAM Registered Balanced Fund - Trust Units	19,157,497.00	208,943.61
03/29/2011	13	Finavera Wind Energy Inc. - Common Shares	4,303,583.20	4,578,280.00
04/18/2011	1	Finavera Wind Energy Inc. - Common Shares	400,000.08	425,532.00
04/01/2011	2	First Leaside Expansion Limited Partnership - Limited Partnership Interest	226,800.00	226,800.00
04/07/2011	3	First Leaside Expansion Limited Partnership - Units	390,000.00	390,000.00
03/30/2011	1	First Leaside Global Limited Partnership - Limited Partnership Interest	50,000.00	50,632.00
03/09/2011	1	First Leaside Global Limited Partnership - Units	100,000.00	100,000.00
04/29/2011 to 05/02/2011	3	First Leaside Global Limited Partnership - Units	379,500.00	400,000.00
03/09/2011 to 03/10/2011	2	First Leaside Mortgage Fund - Trust Units	32,920.00	32,920.00
03/09/2011 to 03/10/2011	2	First Leaside Venture Limited Partnership - Units	110,000.00	110,000.00
04/08/2011	1	First Leaside Venture Limited Partnership - Units	47,160.00	47,160.00
03/09/2011 to 03/15/2011	41	First Leaside Wealth Management Fund - Limited Partnership Interest	438,983.00	438,938.00
04/29/2011 to 05/03/2011	4	First Leaside Wealth Management Fund - Limited Partnership Interest	18,089.00	18,089.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
02/24/2011	241	Fission Energy Corp. - Common Shares	7,500,000.00	9,375,000.00
04/19/2011	3	Fleet Leasing Receivables Trust - Notes	283,262,708.97	3.00
05/03/2011	23	Flemish Gold Corp. - Units	10,000,000.00	10,000,000.00
03/29/2011	5	Foodsteps International Inc. - Units	29,250.00	194,334.00
04/21/2011	1	Ford Auto Securitization Trust - Notes	46,515,000.00	N/A
03/14/2011	1	Foundation Group Capital Trust - Units	54,996.00	4,583.00
03/21/2011	2	Foundation Group Capital Trust - Units	288,960.00	24,080.00
02/09/2011	6	Frontline Gold Corporation - Flow-Through Shares	554,059.92	3,259,176.00
02/09/2011	13	Frontline Gold Corporation - Units	266,000.00	1,900,000.00
04/15/2011	1	Fuel Trust - Note	1,923,000.00	1.00
03/13/2011	190	Gallic Energy Ltd. - Units	23,000,000.00	57,500,000.00
03/14/2011	1	Gateway Green Energy Holdings, LLC - Units	1,024.70	466.00
02/18/2011	3	GDV Resources Inc. - Common Shares	123,850.00	2,477,000.00
12/08/2010 to 12/31/2010	2	GE Asset Management Canada Fund - Canada Equity - Units	5,624,948.82	447,160.23
12/31/2010	3	GE Asset Management Canada Fund - China Equity - Units	268,190.22	24,462.00
12/31/2010	4	GE Asset Management Canada Fund - Global Equity - Units	2,401,136.77	299,737.24
01/29/2010 to 12/31/2010	6	GE Asset Management Canada Fund - International Equity - Units	11,334,882.81	1,085,126.43
12/31/2010	1	GE Asset Management Canada Fund - Multistyle Equity - Units	2,166,176.06	232,855.02
03/24/2011	83	Gem International Resources Inc. - Units	2,136,600.00	5,935,000.00
04/27/2011	24	Geo Minerals Ltd. - Units	1,100,000.00	18,333,332.00
03/07/2011	1	GMAC Capital Trust I - Preferred Shares	9,729,000.00	400,000.00
03/30/2011	194	Golden Band Resources Inc. - Units	8,420,124.15	16,875,687.00
04/15/2011	9	Golden Band Resources Inc. - Units	1,924,725.00	4,238,500.00
04/20/2011	11	Golden Share Mining Corporation - Common Shares	3,600,200.00	17,910,000.00
04/21/2011	9	Golden Tag Resources Ltd. - Units	2,750,000.00	5,000,000.00
03/22/2011	9	Goldspike Exploration Inc. - Common Shares	2,500,000.00	10,000,000.00
04/19/2011	4	GoldTrain Resources Inc. - Units	162,000.00	3,240,000.00
05/02/2011	4	GPM Real Property (12) Limited Partnership - Units	54,000,500.00	54,000,500.00
03/31/2011	4	GPM Real Property (12) Limited Partnership - Units	110,250,000.00	110,250,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
03/04/2011	22	Grand River Ironsands Incorporated - Flow-Through Shares	1,161,000.00	880,286.00
03/16/2011	14	Grand River Ironsands Incorporated - Units	391,940.00	391,940.00
02/24/2011	1	Greencore Composites Inc. - Debentures	200,000.00	N/A
02/25/2011	37	Griffiths Energy International Inc. - Common Shares	73,695,000.00	14,739,000.00
04/18/2011 to 04/20/2011	70	Grizzly Discoveries Inc. - Units	7,131,699.36	13,727,856.00
04/06/2011	1	GTU Portfolio Trust - Units	1,026,034.97	84,053.00
03/24/2011	84	Guinea Ore Limited - Common Shares	1,722,500.00	17,225,000.00
03/30/2011	3	Gulfport Energy Corporation - Common Shares	3,970,000.00	125,000.00
04/13/2011	49	Gulfside Minerals Ltd. - Units	824,000.00	8,240,000.00
06/04/2010	2	Guyana Frontier Mining Corp. - Common Shares	0.00	200,000.00
02/28/2011 to 03/03/2011	12	Guyana Frontier Mining corp. - Units	3,000,000.00	8,700,000.00
05/05/2010	2	Guyana Frontier Mining Corp. - Common Shares	0.00	150,000.00
04/01/2010 to 03/31/2011	2	GWLIM Canadian Growth Fund - Units	10,698,139.00	1,234,461.00
04/01/2010 to 03/31/2011	4	GWLIM Corporate Bond Fund - Units	9,913,344.00	931,050.00
04/01/2010 to 03/31/2011	1	GWLIM North American Mid Cap Fund - Units	283,954.00	33,593.00
03/04/2011	124	Harbour First Mortgage Fund Limited Partnership - Units	124,000.00	124.00
03/25/2011	124	Harbour Lloydminster Limited Partnership - Units	4,968,932.00	4,622.41
04/29/2011	48	Hemishphere Energy Corporation - Units	1,030,140.00	3,955,350.00
03/16/2011	3	Holle Potash Corp. - Units	3,520,000.00	14,080,000.00
04/01/2010 to 03/31/2011	13	Howson Tattersall Canadian Bond Pool - Trust Units	18,638,685.29	1,730,532.00
04/01/2010 to 03/31/2011	7	Howson Tattersall Canadian Value Equity Pool - Trust Units	42,541,781.85	3,228,716.00
04/01/2010 to 03/31/2011	7	Howson Tattersall Global Value Equity Pool - Trust Units	2,951,485.42	1,924,345.00
04/01/2010 to 03/31/2011	5	Howson Tattersall Short Term Pool - Trust Units	6,938,081.44	693,808.00
03/31/2011	15	HRG Healthcare Resource Group Inc. - Common Shares	472,500.00	629,999.00
04/19/2011	45	HT Capital Inc. - Units	40,115,520.00	20,288,800.00
03/08/2011 to 03/11/2011	4	IGW Real Estate Investment Trust - Units	667,802.46	N/A

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/04/2011 to 04/08/2011	9	IGW Real Estate Investment Trust - Units	181,792.02	177,058.78
03/21/2011 to 03/25/2011	19	IGW Real Estate Investment Trust - Units	598,437.39	570,082.80
03/28/2011 to 04/01/2011	25	IGW Real Estate Investment Trust - Units	1,163,173.94	7,147,000.00
03/22/2011	6	Intelsat Jackson Holdings S.A. - Notes	36,630,000.00	30,500.00
03/29/2011	3	InterDigital, Inc. - Notes	732,075.00	750.00
04/06/2011	2	IntraLinks Holdings, Inc. - Common Shares	2,933,928.00	120,000.00
03/10/2011	297	Iona Energy Company Limited - Receipts	69,818,759.40	116,485,090.00
04/29/2011	32	IOU Financial Inc. - Units	966,584.80	2,416,462.00
04/15/2011	150	Iron Horse Trust - Units	195,000.00	195.00
03/25/2011	29	Iskander Energy Corp. - Common Shares	1,505,000.00	6,500,000.00
02/11/2011 to 03/14/2011	22	Jig-A-World Inc/Jig-A-Monde Inc.. - Debentures	1,950,000.00	N/A
03/08/2011	2	J.P. Morgan Structured Products B.V. - Certificates	1,023,960.00	1,050.00
03/21/2011	1	J.P. Morgan Structured Products B.V. - Certificates	76,222.08	70,000.00
03/23/2011	1	Kabel BW Erste Beteiligungs GmbH and Kabel Baden-Wurttemberg GmbH & Co. - Notes	2,946,300.00	N/A
04/19/2011	17	Kent Exploration Inc. - Units	300,000.00	3,000,000.00
04/01/2010 to 03/31/2011	5	Keystone AGF Equity Fund - Units	2,759,353.00	328,921.00
04/01/2010 to 03/31/2011	1	Keystone Balanced Growth Portfolio Fund - Units	87,294.00	6,740.00
04/01/2010 to 03/31/2011	1	Keystone Balanced Portfolio Fund - Units	255,330.00	20,456.00
04/01/2010 to 03/31/2011	3	Keystone Beutel Goodman Bond Fund - Units	7,960,069.00	756,941.00
04/01/2010 to 03/31/2011	1	Keystone Conservative Portfolio Fund - Units	119,872.00	10,128.00
04/01/2010 to 03/31/2011	3	Keystone Dynamic Power Small-Cap Class - Common Shares	394,132.00	24,018.00
04/01/2010 to 03/31/2011	1	Keystone Growth Portfolio Fund - Units	30,057.00	2,333.00
04/01/2010 to 03/31/2011	4	Keystone Manulife High Income Fund - Units	3,251,554.00	364,053.00
04/01/2010 to 03/31/2011	5	Keystone Manulife U.S. Value Fund - Units	2,818,206.00	408,685.00
04/01/2010 to 03/31/2011	1	Keystone Maximum Growth Portfolio Fund - Units	26,337.00	2,023.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/29/2011	2	Klass Capital Fund I, LP - Limited Partnership Interest	700,000.00	700,000.00
02/10/2011 to 03/04/2011	3	KmX Corp. - Debentures	491,725.00	N/A
03/09/2011	1	Koffman Enterprises Limited - Units	2,566,762.00	2,566,762.00
03/23/2011	6	La Quinta Resources Corporation - Units	255,000.00	3,187,500.00
03/07/2011	6	Lake Victoria Mining Company, Inc. - Units	242,963.05	1,663,333.00
04/04/2011	35	Lakeside Mineral Corp - Units	405,000.00	2,050,000.00
02/28/2011	69	Living Well Fund I, Limited Partnership - Units	48,695,000.00	50,000,000.00
04/05/2011	1	Lloyds TSB Bank plc - Notes	3,000,000.00	3,000,000.00
03/04/2011	6	Lomiko Metals Inc. - Common Share Purchase Warrant	400,000.00	7,500,000.00
04/01/2010 to 03/31/2011	3	London Capital Canadian Bond Fund - Units	10,276,283.00	971,432.00
04/01/2010 to 03/31/2011	5	London Capital Canadian Diversified Equity Fund - Units	10,119,171.00	1,186,769.00
04/01/2010 to 03/31/2011	6	London Capital Canadian Dividend Fund - Units	84,716,486.00	9,446,267.00
04/01/2010 to 03/31/2011	1	London Capital Global Real Estate Fund - Units	301,500.00	28,352.00
04/01/2010 to 03/31/2011	4	London Capital Income Plus Fund - Units	2,621,978.00	259,928.00
04/01/2010 to 03/31/2011	2	London Capital U.S. Value Fund - Units	1,828,798.00	261,455.00
04/01/2010 to 03/31/2011	1	Mackenzie All-Sector Canadian Equity Fund - Units	287,161.00	26,755.00
04/01/2010 to 03/31/2011	1	Mackenzie Cundill Canadian Balanced Fund - Units	3,491,286.00	264,931.00
04/01/2010 to 03/31/2011	1	Mackenzie Cundill Canadian Security Class - Common Shares	1,553,439.00	154,192.00
04/01/2010 to 03/31/2011	1	Mackenzie Cundill Canadian Security Fund - Units	491,260.00	34,141.00
04/01/2010 to 03/31/2011	1	Mackenzie Cundill Emerging Markets Value Class - Common Shares	1,860,998.00	146,232.00
04/01/2010 to 03/31/2011	1	Mackenzie Cundill Global Balanced Fund - Units	193,721.00	14,064.00
04/01/2010 to 03/31/2011	6	Mackenzie Cundill International Class - Common Shares	4,863,053.00	460,453.00
04/01/2010 to 03/31/2011	4	Mackenzie Cundill Recovery Fund - Units	6,178,922.00	913,750.00
04/01/2010 to 03/31/2011	1	Mackenzie Cundill Value Class - Common Shares	123,134.00	9,686.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/01/2010 to 03/31/2011	9	Mackenzie Cundill Value Fund - Units	357,861,735.00	35,585,507.00
04/01/2010 to 03/31/2011	3	Mackenzie Cundill World Fund - Units	8,308,065.00	664,330.00
04/01/2010 to 03/31/2011	2	Mackenzie Focus Far East Class - Common Shares	9,780,377.00	510,290.00
04/01/2010 to 03/31/2011	1	Mackenzie Focus Fund - Units	38,535.00	3,085.00
04/01/2010 to 03/31/2011	2	Mackenzie Focus Japan Class - Common Shares	8,859,567.00	1,142,455.00
04/01/2010 to 03/31/2011	1	Mackenzie Founders Income & Growth Fund - Units	1,729,724.00	127,245.00
04/01/2010 to 03/31/2011	2	Mackenzie Growth Fund - Units	4,941,567.00	752,354.00
04/01/2010 to 03/31/2011	1	Mackenzie Ivy Canadian Fund - Units	111,882.00	10,356.00
04/01/2010 to 03/31/2011	5	Mackenzie Ivy Enterprise Class - Common Shares	2,565,283.00	194,353.00
04/01/2010 to 03/31/2011	1	Mackenzie Ivy Enterprise Fund - Units	20,592.00	1,490.00
04/01/2010 to 03/31/2011	1	Mackenzie Ivy European Fund - Units	59,675.00	6,611.00
04/01/2010 to 03/31/2011	1	Mackenzie Ivy Foreign Equity Class - Common Shares	2,494,950.00	203,670.00
04/01/2010 to 03/31/2011	7	Mackenzie Ivy Foreign Equity Fund - Units	99,494,041.00	8,351,178.00
04/01/2010 to 03/31/2011	3	Mackenzie Ivy Global Balanced Fund - Units	988,150.00	92,033.00
04/01/2010 to 03/31/2011	1	Mackenzie Ivy Growth & Income Fund - Units	776,269.00	72,304.00
04/01/2010 to 03/31/2011	6	Mackenzie Maxxum All-Canadian Equity Class - Common Shares	45,580,183.00	4,432,346.00
04/01/2010 to 03/31/2011	6	Mackenzie Maxxum Canadian Balanced Fund - Units	21,215,848.00	1,790,821.00
04/01/2010 to 03/31/2011	6	Mackenzie Maxxum Canadian Equity Growth Fund - Units	21,269,394.00	1,260,846.00
04/01/2010 to 03/31/2011	8	Mackenzie Maxxum Dividend Fund - Units	51,656,301.00	3,545,140.00
04/01/2010 to 03/31/2011	4	Mackenzie Maxxum Dividend Growth Fund - Units	9,710,124.00	1,449,241.00
04/01/2010 to 03/31/2011	1	Mackenzie Maxxum Monthly Income Fund - Units	340,387.00	30,040.00
04/01/2010 to 03/31/2011	2	Mackenzie Saxon Balanced Fund - Trust Units	63,145,551.00	5,747,459.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/01/2010 to 03/31/2011	1	Mackenzie Saxon Dividend Income Fund - Trust Units	10,114,800.00	1,012,966.00
04/01/2010 to 03/31/2011	1	Mackenzie Saxon Microcap Fund - Trust Units	1,516,923.00	146,523.00
04/01/2010 to 03/31/2011	3	Mackenzie Saxon Small Cap Fund - Trust Units	6,444,835.00	394,884.00
04/01/2010 to 03/31/2011	4	Mackenzie Saxon Stock Fund - Trust Units	35,364,195.00	2,702,095.00
04/01/2010 to 03/31/2011	14	Mackenzie Sentinel Bond Fund - Trust Units	329,814,436.00	31,632,542.00
04/01/2010 to 03/31/2011	1	Mackenzie Sentinel Canadian Money Market Fund - Trust Units	315,547.00	33,471.00
04/01/2010 to 03/31/2011	11	Mackenzie Sentinel Canadian Short-Term Yield Corporate Class - Common Shares	534,077,116.00	52,663,908.00
04/01/2010 to 03/31/2011	1	Mackenzie Sentinel Cash Management Fund - Trust Units	4,210,859.00	421,086.00
04/01/2010 to 03/31/2011	4	Mackenzie Sentinel Corporate Bond Fund - Trust Units	29,894,254.00	3,191,988.00
04/01/2010 to 03/31/2011	2	Mackenzie Sentinel Income Fund - Trust Units	4,069,129.00	268,069.00
04/01/2010 to 03/31/2011	1	Mackenzie Sentinel Money Market Fund - Trust Units	1,862,005.00	186,201.00
04/01/2010 to 03/31/2011	1	Mackenzie Sentinel Real Return Bond Fund - Trust Units	388,263.00	34,487.00
04/01/2010 to 03/31/2011	1	Mackenzie Sentinel Registered North American Corporate Bond Fund - Trust Units	87,544,545.00	7,831,376.00
04/01/2010 to 03/31/2011	3	Mackenzie Sentinel Registered Strategic Income Fund - Trust Units	329,847,045.00	36,732,464.00
04/01/2010 to 03/31/2011	1	Mackenzie Sentinel U.S. Money Market Fund - Trust Units	2,685.00	269.00
04/01/2010 to 03/31/2011	1	Mackenzie Sentinel U.S. Short-Term Yield Corporate Class - Common Shares	6,780.00	677.00
04/01/2010 to 03/31/2011	1	Mackenzie Universal Canadian Balanced Fund - Trust Units	445,368.00	36,651.00
04/01/2010 to 03/31/2011	1	Mackenzie Universal Canadian Growth Fund - Trust Units	254,410.00	20,630.00
04/01/2010 to 03/31/2011	1	Mackenzie Universal Canadian Resource Class - Common Shares	14,068,784.00	905,088.00
04/01/2010 to 03/31/2011	8	Mackenzie Universal Canadian Resource Fund - Trust Units	127,651,424.00	6,627,918.00
04/01/2010 to 03/31/2011	3	Mackenzie Universal Emerging Markets Class - Common Shares	97,685,092.00	3,938,854.00
04/01/2010 to 03/31/2011	5	Mackenzie Universal Global Growth Class - Common Shares	1,541,761.00	131,686.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/01/2010 to 03/31/2011	7	Mackenzie Universal Global Growth Fund - Trust Units	33,316,235.00	3,363,058.00
04/01/2010 to 03/31/2011	6	Mackenzie Universal Global Infrastructure Fund - Trust Units	854,305.00	65,512.00
04/01/2010 to 03/31/2011	1	Mackenzie Universal Gold Bullion Class - Common Shares	946,011.00	91,566.00
04/01/2010 to 03/31/2011	1	Mackenzie Universal Health Sciences Class - Common Shares	550,652.00	45,537.00
04/01/2010 to 03/31/2011	4	Mackenzie Universal International Stock Fund - Trust Units	27,788,180.00	2,370,621.00
04/01/2010 to 03/31/2011	1	Mackenzie Universal North American Growth Class - Common Shares	28,680.00	2,058.00
04/01/2010 to 03/31/2011	4	Mackenzie Universal Precious Metals Fund - Trust Units	115,678,921.00	4,226,653.00
04/01/2010 to 03/31/2011	1	Mackenzie Universal Technology Class - Common Shares	458,819.00	42,690.00
04/01/2010 to 03/31/2011	2	Mackenzie Universal U.S. Blue Chip Class - Common Shares	906,587.00	81,701.00
04/01/2010 to 03/31/2011	1	Mackenzie Universal U.S. Dividend Income Fund - Trust Units	1,900,064.00	239,162.00
04/01/2010 to 03/31/2011	3	Mackenzie Universal U.S. Emerging Growth Class - Common Shares	1,021,789.00	79,411.00
04/01/2010 to 03/31/2011	5	Mackenzie Universal U.S. Growth Leaders Fund - Trust Units	7,466,286.00	848,305.00
04/01/2010 to 03/31/2011	3	Mackenzie Universal U.S.Growth Leaders Class - Common Shares	1,080,569.00	113,589.00
04/01/2010 to 03/31/2011	6	Mackenzie Universal World Real Estate Class - Common Shares	1,666,220.00	277,230.00
04/01/2010 to 03/31/2011	1	Mackenzie Universal World Resource Class - Common Shares	441,049.00	33,980.00
04/13/2011	22	Madeira Minerals Ltd. - Common Shares	150,000.00	3,000,000.00
04/14/2011	1	Madison Minerals Inc. - Common Shares	120,000.00	1,000,000.00
04/20/2011	1	Manning & Napier Advisors, Inc. - Units	47,503,003.48	4,398,141.18
04/12/2011	147	MatRRIX Energy Technologies Inc. - Common Shares	22,500,000.00	22,500,000.00
04/28/2011	18	MatRRIX Energy Technologies Inc. - Common Shares	2,000,000.00	2,000,000.00
03/14/2011	21	McBiotech, LLC - Units	1,497,187.00	199,996.00
04/11/2011 to 04/14/2011	5	Member-Partners Solar Energy Limited Partnership - Units	502,500.00	502,500.00
03/21/2011 to 03/25/2011	16	Member-Partners Solar Energy Limited Partnership - Units	315,500.00	315,500.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/04/2011 to 04/07/2011	8	Member-Partners Solar Energy Limited Partnership - Units	599,967.12	599,967.12
03/28/2011 to 04/01/2011	45	Member-Partners Solar Energy Limited Partnership - Units	1,560,052.42	1,560,052.42
04/25/2011 to 04/28/2011	13	Member-Partners Solar Energy Limited Partnership - Units	277,000.00	277,000.00
05/04/2011	12	Mercury Capital limited - Common Shares	150,000.00	750,000.00
03/31/2011	17	Merrex Gold Inc. - Units	10,170,000.00	N/A
03/14/2011	1	Merrill Lynch International & Co. C.V. - Warrants	901,467.00	150.00
03/24/2011	1	Merrill Lynch International & Co. C.V. - Warrants	1,983,227.40	330.00
03/14/2011	1	Merrill Lynch Investment Solutions - York Event Driven UCITS Fund - Common Shares	392,000.00	3,432.30
03/08/2011	1	MetLife Inc. - Common Shares	1,048,812.50	25,000.00
04/06/2011	171	Midas Gold Corp. - Common Shares	15,324,500.00	6,129,800.00
04/07/2011	19	Millar Western Forest Products Ltd. - Notes	81,780,325.00	N/A
03/11/2011	1	MiMedia, Inc. - Stock Option	48,652.48	1,297,624.00
04/19/2011	6	Mineral Mountain Resources Ltd. - Common Shares	142,500.00	300,000.00
04/18/2011	444	MineralFields 2011 Super Flow-Through Limited Partnership - Limited Partnership Units	16,607,600.00	166,076.00
03/10/2011	13	Miraculins Inc. - Warrants	0.00	2,770,000.00
02/28/2011 to 03/09/2011	8	Mitomics Inc. - Notes	831,000.00	8.00
03/22/2011	48	MKR Exploration Inc. - Common Shares	487,289.20	5,000,000.00
03/10/2011 to 03/15/2011	32	Moimstone Corporation - Common Shares	1,282,875.00	1,710,500.00
02/21/2011	18	Monster Uranium Corp. - Units	300,000.00	3,000,000.00
04/26/2011	10	Mooncor Oil & Gas Corp. - Units	220,690.08	1,176,056.00
01/27/2011	33	Morrison Laurier Mortgage Corporation - Preferred Shares	830,000.00	83,000.00
04/29/2011	1	Moss Lake Gold Mines Ltd. - Note	2,000,000.00	1.00
03/29/2011	31	MPT Mustard Products & Technologies Inc. - Common Shares	670,649.35	1,896,141.00
04/06/2011	1	Navios South American Logistics Inc. and Navios logistics Finance (US) Inc. - Notes	5,752,800.00	6,000.00
03/24/2011	185	Network 2011 Mutual Fund Trust - Trust Units	4,514,000.00	45,140.00
03/28/2011	4	New Nadina Exploration Limited - Flow-Through Units	700,000.00	7,000,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
03/04/2011 to 03/11/2011	49	New World Resource Corp. - Common Shares	2,560,800.00	6,402,000.00
03/14/2011	4	Newbaska Gold and Copper Mines Ltd. - Common Shares	29,915.70	199,438.00
04/18/2011 to 04/27/2011	8	Newport Balanced Fund - Trust Units	142,009.17	753.00
04/07/2011 to 04/15/2011	3	Newport Balanced Fund - Trust Units	27,714.55	277.00
04/18/2011 to 04/27/2011	4	Newport Canadian Equity Fund - Trust Units	107,271.96	762.00
04/07/2011 to 04/15/2011	4	Newport Canadian Equity Fund - Trust Units	222,109.58	1,570.00
04/18/2011 to 04/27/2011	1	Newport Fixed Income Fund - Trust Units	25,000.00	236.00
04/07/2011 to 04/15/2011	2	Newport Fixed Income Fund - Trust Units	648,832.73	6,156.00
04/18/2011 to 04/27/2011	2	Newport Global Equity Fund - Trust Units	35,000.00	567.00
04/18/2011 to 04/27/2011	2	Newport Real Estate LPU - Trust Units	1,890,302.68	195,072.00
04/18/2011 to 04/27/2011	12	Newport Yield Fund - Trust Units	1,455,669.78	4,019.00
04/07/2011 to 04/15/2011	9	Newport Yield Fund - Trust Units	1,903,327.60	16,131.00
02/28/2011	3	Newstart Canada - Notes	145,000.00	3.00
04/07/2011	45	Next Gen Metals Inc. - Common Shares	1,331,500.00	N/A
03/10/2011	42	Nextraction Energy Corp. - Common Shares	3,499,998.88	1,620,369.00
03/24/2011	7	Nextraction Energy Corp. - Units	2,499,984.00	1,157,400.00
03/22/2011	1	Nichromet Extraction Inc. - Units	485,000.00	4,850,000.00
03/29/2011	21	NII Capital Corp. - Notes	29,288,856.60	N/A
03/15/2011	16	NMC Mining Corp. - Common Shares	1,214,500.00	2,429,000.00
03/09/2011	89	North Country Gold Corp. - Flow-Through Shares	25,000,380.00	16,420,000.00
04/26/2011	1	Northern Gold Mining Inc. - Common Shares	45,000.00	100,000.00
04/25/2011	3	Northern Gold Mining Inc. - Common Shares	51,692.16	107,692.00
02/25/2011	41	Northrock Resources Inc. - Units	1,250,000.00	6,805,555.00
04/13/2011	10	Norvista Resources Corporation - Common Shares	447,000.95	812,729.00
05/02/2011	91	NQ Exploration Inc. - Units	2,075,000.00	16,093,750.00
03/02/2011	3	Oak Bay Limited Partnership - Limited Partnership Units	300,000.00	300.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
03/24/2011	85	Oban Exploration Limited - Common Shares	7,995,000.00	15,990,000.00
03/22/2011	1	Open Access Limited - Common Shares	200,000.00	500,000.00
03/28/2011	1	Origin Energy Limited - Common Shares	2,463,699.37	189,079.00
03/30/2011	1	Orogen Energy Inc. - Common Shares	499,950.00	N/A
02/23/2011	9	OSE Corp. - Common Shares	500,000.00	10,000,000.00
03/09/2011	1	Oven IV L.P. - Capital Commitment	13,647,120.00	13,647,120.00
03/09/2011	4	Overland Resources Limited - Common Shares	1,768,560.00	1,768,560.00
04/13/2011	4	Overland Resources Limited - Common Shares	2,235,567.65	8,831,000.00
05/02/2011	50	Pacific Rim Mining Corp. - Units	3,696,000.00	17,600,000.00
02/25/2011	106	Pacific Wildcat Resources Corp. - Units	4,502,271.84	15,464,872.00
03/08/2011	95	Pan Orient Energy Corp. - Common Shares	49,500,079.20	7,557,264.00
04/21/2011	22	Pan Terra Industries Inc. - Common Shares	1,600,000.00	8,000,000.00
04/27/2011	1	Pangaea Two Parallel, LP - Limited Partnership Interest	19,098,000.00	1.00
04/27/2011	1	Pangaea Two, LP - Limited Partnership Interest	2,864,700.00	1.00
03/09/2011	233	Papuan Precious Metals Corp. - Common Shares	7,020,000.00	15,600,000.00
03/31/2011	4	Park-Ohio Industries, Inc. - Notes	10,689,800.00	11,000.00
04/29/2011	23	Parkside Resources Corporation - Common Shares	430,000.00	4,800,000.00
03/30/2011	10	Pathocept Corporation - Common Shares	579,400.00	536,481.00
04/06/2011	1	Pebblebrook Hotel Trust - Common Shares	2,071,000.00	9,500,000.00
04/05/2011	3	Penn Virginia Corporation - Notes	1,445,400.00	1,500,000.00
04/05/2011	34	Petro Vista Energy Corp. - Units	1,650,000.00	8,250,000.00
03/30/2011	65	Petrocapita Income Trust - Units	684,615.00	684,615.00
12/23/2010 to 01/12/2011	143	Petrosands Resources (Canada) Inc. - Common Shares	6,999,999.20	6,041,818.00
03/11/2011 to 03/18/2011	3	Pier 21 Global Value Pool - Units	2,250,000.00	226,790.61
04/05/2011	35	Pinestar Gold Inc. - Units	1,980,000.00	8,608,695.00
03/31/2011	54	Placencia Capital Trust I - Trust Units	1,041,715.00	1,041,715.00
03/24/2011	3	Plains Exploration & Production - Notes	2,437,000.00	2,500,000.00
03/16/2011	1	Plasco Energy Group Inc. - Common Shares	10,005,000.00	5,654,639.00
04/15/2011	2	PPL Corporation - Common Shares	2,525,379.75	80,000,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/28/2011	5	Pramerica Real Estate Capital I (Scots Feeder II) Limited Partnership - Limited Partnership Interest	237,000,000.00	23,700,000.00
04/21/2011	50	Probe Mines Limited - Units	25,002,900.00	18,520,000.00
03/30/2011	1	Prodigy Gold Incorporated - Common Shares	25,000.00	80,000.00
04/08/2011	2	Production Resources Group Inc. - Notes	9,566,000.00	10,000.00
04/01/2011	7	Proforma Capital Bond (II) Corporation - Bonds	807,400.00	8,074.00
03/21/2011	2	Proforma Capital Bond (II) Corporation - Bonds	175,000.00	1,750.00
03/14/2011	3	Providence Resources PLC - Common Shares	407,745.00	99,938.00
03/30/2011	1	Qihoo 360 Technology Co. Ltd. - American Depository Shares	985,971.00	70,000.00
04/01/2010 to 03/31/2011	4	Quadrus AIM Canadian Equity Growth Fund - Trust Units	15,650,859.00	1,273,707.00
04/01/2010 to 03/31/2011	3	Quadrus Eaton Vance U.S. Value Corporate Class - Common Shares	4,223,397.00	534,943.00
04/01/2010 to 03/31/2011	5	Quadrus Laketon Fixed Income Fund - Trust Units	172,172,776.00	25,296,207.00
04/01/2010 to 03/31/2011	3	Quadrus Setanta Global Dividend Corporate Class - Common Shares	15,470,069.00	2,186,003.00
04/01/2010 to 03/31/2011	2	Quadrus Sionna Canadian Value Corporate Class - Common Shares	9,159,923.00	925,279.00
04/01/2010 to 03/31/2011	5	Quadrus Templeton International Equity Fund - Trust Units	12,017,467.00	1,829,985.00
04/01/2010 to 03/31/2011	1	Quadrus Trimark Balanced Fund - Trust Units	6,451,069.00	621,593.00
04/01/2010 to 03/31/2011	4	Quadrus Trimark Global Equity Fund - Trust Units	1,126,988.00	184,243.00
03/14/2011	2	Rainchief Energy Inc. - Common Shares	59,041.95	403,333.00
04/18/2011	1	Rainy River Resources Ltd. - Common Shares	92,700.00	10,000.00
04/27/2011	1	Responsys, Inc. - Common Shares	57,000.00	5,000.00
03/11/2011	73	Ringbolt Ventures Ltd. - Units	3,094,000.00	11,900,000.00
03/28/2011	6	RioCan White Shield Limited Partnership - Limited Partnership Units	12,997,110.96	553,304.00
02/17/2011	1	ROI Private Capital Trust Series R - Trust Units	1,500,000.00	1,500,000.00
04/26/2011	6	Royal Bank of Canada - Notes	285,210.00	300.00
04/04/2011	2	Royal Bank of Canada - Notes	2,011,800.00	2,000.00
05/06/2011	2	Royal Bank of Canada - Notes	2,830,194.80	2,944.00
04/15/2011	1	Rupert Peace Power Holdings Ltd. - Common Shares	300,000.00	20,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
03/28/2011	39	Savary Capital Corp. - Common Shares	750,000.00	15,000,000.00
03/25/2011	5	Seaforth Energy Inc. - Common Shares	110,071.50	1,100,715.00
07/07/2010 to 12/31/2010	9	Secure Capital MIC Inc. - Preferred Shares	452,237.00	452,237.00
03/18/2011	4	Seymour Ventures Corp. - Receipts	423,919.60	652,184.00
03/16/2011	2	Shinsei Bank, Limited - Common Shares	4,675,903.00	3,500,000.00
05/05/2011	13	Shoal Point Energy Ltd. - Units	405,050.50	8,478,900.00
05/05/2011	14	Shoal Point Energy Ltd. - Units	495,050.50	1,047,890.00
03/17/2011	40	Shona Energy Company - Warrants	10,318,100.10	14,740,143.00
02/28/2011	12	Sigma Dek Ltd. - Common Shares	467,400.00	116,850.00
04/18/2011	1	Silvercove Capital (Canada) Inc. - Common Shares	302,500.00	550,000.00
03/28/2011	1	Silvore Fox Minerals Corp. - Units	50,000.00	555,556.00
03/10/2011	108	Simba Gold Corp. - Units	6,037,650.00	17,250,429.00
04/15/2011	52	Skyline Apartment Real Estate Investment Trust - Units	7,732,054.00	702,914.00
03/31/2011	7	Solantro Semiconductor Corp. - Preferred Shares	402,113.25	123,727.00
03/15/2011	18	Souche Holding Inc. - Common Shares	570,999.90	3,806,666.00
03/31/2011	32	SPIRE Real Estate Limited Partnership - Units	9,814,540.00	9,259.00
12/31/2010	62	StageVentures 2010 Limited Partnership - Limited Partnership Units	9,272,620.00	8,666.00
03/11/2011	1	STHI Holdings Corp. - Note	2,433,500.00	1.00
03/31/2011	1	Storage Capital 2 LP - Loans	1,800,000.00	1,800,000.00
04/28/2011	4	Strive Energy Services Ltd. - Common Shares	261,000.00	1,044,000.00
03/21/2011	19	St. Vincent Minerals Inc. - Common Shares	964,999.86	16,083,331.00
04/06/2011	1	St. Vincent Minerals Inc. - Common Shares	30,000.00	500,000.00
04/15/2011	2	Sugarhouse HSP Gaming Prop. Mezz, L.P. /Sugarhouse HSP Gaming Finance Corp. - Notes	2,880,000.00	N/A
03/11/2011	1	Summit Partners Growth Equity Fund VIII-B, L.P. - Limited Partnership Interest	9,734,000.00	1.00
03/23/2011	15	SunTrust Banks, Inc. - Common Shares	45,494,343.15	1,570,395.00
04/20/2011	25	Supreme Resources Ltd. - Units	399,599.92	3,471,666.00
04/01/2010 to 03/31/2011	5	Symmetry Equity Class - Common Shares	173,685,411.00	12,164,373.00
04/01/2010 to 03/31/2011	4	Symmetry Equity Corporate Class - Common Shares	46,103,531.00	3,256,690.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/01/2010 to 03/31/2011	5	Symmetry Fixed Income Corporate Class - Common Shares	77,002,125.00	6,526,923.00
04/01/2010 to 03/31/2011	5	Symmetry Registered Fixed Income Fund - Trust Units	185,196,741.00	16,195,533.00
04/01/2011	11	Taia Lion Resources - Units	1,144,000.00	2,288,000.00
04/21/2011	57	Tajiri Resources Corp - Units	700,000.00	7,000,000.00
02/24/2011	12	Taranis Resources Inc. - Common Shares	600,000.00	3,000,000.00
04/27/2011	3	Tartisan Resources Corp. - Common Shares	127,500.00	364,286.00
03/18/2011	1	Tartisan Resources Corp. - Units	35,000.00	100,000.00
03/23/2011 to 03/31/2011	3	Tartisan Resources Corp. - Units	27,475.00	N/A
03/21/2011	1	Teva Pharaceuticals Finance III B.V. - Note	4,887,000.00	1.00
04/14/2011	1	Texas Competitive Electric Holdings Company LLC - Note	962,600.00	1.00
05/03/2011	2	The Goldman Sachs Group, Inc. - Notes	5,720,534.04	6,000,000.00
04/26/2011	2	The Goldman Sachs Group, Inc. - Notes	38,134,858.68	4,000,000.00
05/03/2011	45	The Goldman Sachs Group, Inc. - Notes	499,210,000.00	5,000,000.00
03/31/2011	4	The Goodyear Tire & Rubber Company - Preferred Shares	242,950.00	5,000.00
03/31/2011	1	The Home Depot, Inc. - Notes	4,836,065.52	5,000,000.00
03/31/2011	6	The Home Depot, Inc. - Notes	6,790,627.42	7,000,000.00
01/04/2011	5	The Presbyterian Church in Canada - Units	520,136.05	9,998.77
01/04/2011	5	The Presbyterian Church in Canada - Units	520,136.05	999.00
04/01/2011 to 04/08/2011	4	The Toronto United Church Council - Notes	216,417.21	216,417.21
03/29/2011	101	TheraVitae Inc - Debentures	767,909.00	N/A
02/25/2011 to 03/03/2011	18	Thundermin Resources Inc. - Flow-Through Shares	1,007,310.00	3,864,270.00
03/28/2011	157	Tosca Mining Corp. - Units	5,258,574.65	15,024,499.00
04/28/2011	45	Trican Well Service Ltd. - Notes	297,775,000.00	N/A
04/13/2011	36	Trident Exploration Corp. - Notes	175,000,000.00	N/A
04/05/2011	32	TSO Energy Corporation - Common Shares	2,015,000.00	2,015,000.00
05/06/2011	14	Turf Resources Inc. - Common Shares	190,000.00	1,525,000.00
03/16/2011	10	Two Harbors Investment Corp. - Common Shares	16,883,100.00	1,740,000.00
04/29/2011	37	Twoco Petroleums Ltd. - Common Shares	3,050,907.48	11,152,324.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
03/29/2011	1	UBS AG, Jersey Branch - Notes	264,777.67	250.00
03/23/2011	18	UBS AG, Jersey Branch - Notes	3,000,000.00	3,000.00
03/29/2011	1	UBS AG, Jersey Branch - Notes	262,816.16	250.00
03/14/2011 to 03/16/2011	2	UBS AG, Jersey Branch - Notes	275,425.00	300.00
03/10/2011	2	UBS AG, Jersey Branch - Notes	482,824.78	500,000.00
03/22/2011 to 03/24/2011	2	UBS AG, Jersey Branch - Notes	593,715.48	610,000.00
03/09/2011 to 03/16/2011	2	UBS AG, London Branch - Certificates	93,353.26	100.00
03/29/2011	9	UBS AG, London Branch - Certificates	1,324,842.31	1,360.00
03/08/2011	3	United Refining Company - Notes	2,338,767.00	2,500,000.00
03/22/2011 to 03/29/2011	85	Valterra Resource Corporation - Common Shares	1,342,723.00	N/A
03/15/2011	33	Vampt Beverage Corp. - Common Shares	459,000.00	1,640,000.00
04/18/2011	58	Vesta Energy Corp. - Receipts	44,627,500.00	44,627,500.00
03/31/2011	3	Visteon Corporation - Notes	34,498,900.00	35,500.00
04/28/2011	15	Viva Source Corp. - Special Warrants	294,000.00	490,000.00
03/12/0201	1	Voice Enabling Systems Technology Inc. - Common Shares	20,410.48	709,548.00
03/23/2011	6	Vouchfor! Inc. - Common Shares	365,000.00	4,812,500.00
03/25/2011	14	Walton DC Region Land LP 1 - Limited Partnership Units	380,452.20	38,909.00
03/01/2011	1	Walton Land Opportunity Fund, LP - Common Shares	194,860.00	N/A
03/25/2011	262	Walton Silver Crossing IC - Common Shares	5,102,890.00	510,289.00
04/08/2011	51	Walton Silver Crossing IC - Common Shares	808,500.00	80,850.00
04/01/2011	50	Walton Silver Crossing IC - Common Shares	1,207,830.00	120,783.00
04/08/2011	10	Walton Silver Crossing LP - Limited Partnership Units	1,074,822.35	111,949.00
03/25/2011	31	Walton Southern US Land 2 IC - Common Shares	687,660.00	68,766.00
04/08/2011	31	Walton Southern US Land 2 IC - Common Shares	734,590.00	73,459.00
04/01/2011	28	Walton Southern US Land 2 IC - Common Shares	538,710.00	53,871.00
03/18/2011	29	Walton Southern U.S. Land 2 Investment Corporation - Common Shares	579,500.00	57,950.00
03/16/2011 to 03/18/2011	3	Wesbrooke Retirement Limited Partnership - Units	100,000.00	100,000.00

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
04/11/2011 to 04/12/2011	4	Wesbrooke Retirement Limited Partnership - Units	120,000.00	120,000.00
03/23/2011 to 03/25/2011	17	Wesbrooke Retirement Limited Partnership - Units	459,000.00	459,000.00
02/24/2011	10	Wescan Goldfields Inc. - Units	1,553,764.00	N/A
02/25/2011	1	Wescom Inc. - Preferred Shares	23,565,398.00	2,255,062.00
03/31/2011	232	West African Iron Ore Corp. - Units	19,460,000.00	45,000,000.00
03/09/2011 to 03/10/2011	3	Wimberly Fund - Trust Units	94,160.00	94,160.00
04/20/2011	17	Wind River Energy Corp. - Common Shares	328,405.70	888,302.00
04/20/2011	17	Wind River Energy Corp. - Units	310,905.70	888,302.00
03/14/2011	1	Windstream Corporation - Notes	967,273.04	N/A
03/02/2011 to 03/10/2011	2	WireIE Holdings International Inc. - Common Shares	3,500,000.00	2,500,000.00
04/05/2011	75	Yellowhead Mining Inc. - Units	20,487,999.75	14,129,655.00
02/09/2011	1	Yukon-Nevada Gold Corp. - Common Shares	20,044.00	29,476.00
03/22/2011	2	Zhongpin Inc. - Common Shares	1,173,850.00	85,000.00
02/17/2011	11	ZoomMed Inc. - Common Shares	700,000.00	3,500,000.00

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Chapter 9

Legislation

9.1.1 Bill 173, Better Tomorrow for Ontario Act (Budget Measures), 2011

BETTER TOMORROW FOR ONTARIO ACT (BUDGET MEASURES), 2011

Schedules 5 and 38 of the *Better Tomorrow for Ontario Act (Budget Measures), 2011* contain amendments to the *Commodity Futures Act* and the *Securities Act*. Bill 173 received Royal Assent on May 12, 2011. Bill 173 has become chapter 9, Statutes of Ontario, 2011. The sole amendment to the *Commodity Futures Act* and the amendment to subsection 3.1(5) of the *Securities Act* came into force on the same date. The remaining amendments come into force on one or more days to be named by proclamation of the Lieutenant Governor of Ontario.

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

The Explanatory Notes in Bill 173 provided a summary of these amendments. Relevant extracts are reproduced below.

SCHEDULE 5
COMMODITY FUTURES ACT

Part I of the *Commodity Futures Act* is repealed, dissolving the Commodity Futures Advisory Board.

SCHEDULE 38
SECURITIES ACT

The *Securities Act* is amended as follows:

1. Subsection 3.5 (3) of the Act is amended to allow one member of the Commission to conduct hearings.

2. Sections 71, 133 and 143 of the Act are amended to provide that, in the case of the purchase and sale of an investment fund security offered in a distribution, the dealer may be required by the regulations to send or deliver a prescribed disclosure document, instead of a prospectus, at the time and in the manner provided in the regulations.

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Asher Resources Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated May 11, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
$750,000.00 - 3,750,000 Common Shares PRICE: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Norman Eyolfson
Project #1744139

Issuer Name:
Barisan Gold Corporation
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated May 9, 2011
NP 11-202 Receipt dated May 11, 2011
Offering Price and Description:
Distribution by East Asia Minerals Corporation of * Common Shares of Barisan Gold Corporation
as a Dividend-in-Kind – and - Rights Offering to Holders of Common Shares of Barisan Gold Corporation
of * Units (each Unit comprising of 1 Common Share and one half of 1 Common Share Purchase Warrant)
Underwriter(s) or Distributor(s):
-
Promoter(s):
EAST ASIA MINERALS CORPORATION
Project #1732058

Issuer Name:
Blue River Resources Ltd.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Long Form dated May 11, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
$1,500,000.00 - 7,500,000 Shares Price: $0.20 per Share
Underwriter(s) or Distributor(s):
Union Securities Ltd.
Promoter(s):
Robin Bjorklund
Cathy Edwards
Griffin Jones
Richard Silas
Project #1690077

Issuer Name:
Canada Pacific Capital Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Non-Offering Prospectus dated May 13, 2011
NP 11-202 Receipt dated May 16, 2011
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Shen Dapeng
Project #1745604

Issuer Name:
Catch the Wind Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 12, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
$ * - * COMMON SHARES - Price: $ * per Offered Share
Underwriter(s) or Distributor(s):
Jacob Securities Inc.
Promoter(s):
-
Project #1744598

Issuer Name:
Claymore Advantaged Convertible Bond ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 13, 2011
NP 11-202 Receipt dated May 16, 2011
Offering Price and Description:
Common and Advisor Class Units
Underwriter(s) or Distributor(s):
Claymore Investments, Inc.
Promoter(s):
Claymore Investments Inc.
Project #1745804

Issuer Name:
East Asia Energy Corporation
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated May 9, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
Distribution by East Asia Minerals Corporation of * Common Shares of East Asia Energy Corporation as a Dividend-in-Kind
Underwriter(s) or Distributor(s):
-
Promoter(s):
EAST ASIA MINERALS CORPORATION
Project #1732071

Issuer Name:
George Weston Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated May 13, 2011
NP 11-202 Receipt dated May 16, 2011
Offering Price and Description:
$1,500,000,000.00 - Debt Securities (unsecured) Preferred Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1745632

Issuer Name:
Gibson Energy Inc.
Principal Regulator - Alberta
Type and Date:
Amended and Restated Preliminary Long Form PREP Prospectus dated May 13, 2011
NP 11-202 Receipt dated May 13, 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:
Goldspike Exploration Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 13, 2011
NP 11-202 Receipt dated May 16, 2011
Offering Price and Description:
$4,000,000.00 - 16,000,000 UNITS PRICE: $0.25 PER UNIT
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
R. Bruce Durham
Project #1745827

Issuer Name:
Lone Pine Resources Inc.
Principal Regulator - Alberta
Type and Date:
Fifth Amended and Restated Preliminary Long Form PREP Prospectus dated May 11, 2011
NP 11-202 Receipt dated May 11, 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 (Canda), 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:
Nautilus Minerals Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 12, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
CREDIT SUISSE SECURITIES (CANADA), INC.
Promoter(s):
-
Project #1744644

Issuer Name:
NexGen Financial Corporation
Type and Date:
Preliminary Long Form Prospectus dated May 13, 2011
Receipted on May 17, 2011
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1746307

Issuer Name:
NorSerCo Inc.
Northern Property Real Estate Investment Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated May 11, 2011
NP 11-202 Receipt dated May 11, 2011
Offering Price and Description:
$50,745,000.00 - 1,700,000 Stapled Units Price: $29.85 per Stapled Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
DUNDEE SECURITIES LTD.
GMP SECURITIES LP
MACQUARIE CAPITAL MARKETS CANADA LTD.
TD SECURITIES INC.
Promoter(s):
-
Project #1744106/1744104

Issuer Name:
Pender Small Cap Opportunities Fund
Principal Regulator - British Columbia
Type and Date:
Preliminary Simplified Prospectus dated May 11, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
Class O Units
Underwriter(s) or Distributor(s):
PenderFund Capital Management Ltd.
Promoter(s):
PenderFund Capital Management Ltd.
Project #1738781

Issuer Name:
Sangihe Gold Corporation
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated May 9, 2011
NP 11-202 Receipt dated May 11, 2011
Offering Price and Description:
Distribution by East Asia Minerals Corporation of * Common Shares of Sangihe Gold Corporation
as a Dividend-in-Kind and Rights Offering to Holders of Common Shares of Sangihe Gold Corporation
of * Units (each Unit comprising of 1 Common Share and one half of 1 Common Share Purchase Warrant)
Underwriter(s) or Distributor(s):
-
Promoter(s):
East Asia Minerals Corporation
Project #1732105

Issuer Name:
Taggart Capital Corp.
Type and Date:
Preliminary CPC Prospectus dated May 12, 2011
Receipted on May 12, 2011
Offering Price and Description:
Minimum of $400,000
2,000,000 Common Shares
Maximum of $600,000.00 - 3,000,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
John FitzGerald
Project #1744679

Issuer Name:
Torquay Oil Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated May 17, 2011
NP 11-202 Receipt dated May 17, 2011
Offering Price and Description:
$7,262,500.00 - 4,150,000 Offered Shares and
$6,000,000.00 - 3,000,000 Flow-Through Shares
Price: $1.75 per Offered Share and $2.00 per Flow-Through Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Canaccord Genuity Corp.
Jennings Capital Inc.
Acumen Capital Finance Partners Limited
Promoter(s):
-
Project #1747025

Issuer Name:
Trelawney Mining and Exploration Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 16, 2011
NP 11-202 Receipt dated May 16, 2011
Offering Price and Description:
$50,000,000.00 - 12,500,000 Common Shares Price: $4.00 per Offered Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
JENNINGS CAPITAL INC.
BMO NESBITT BURNS INC.
STIFEL NICOLAUS CANADA INC.
Promoter(s):
-
Project #1746181

Issuer Name:
WesternOne Equity Income Fund
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 17, 2011
NP 11-202 Receipt dated May 17, 2011
Offering Price and Description:
$75,000,000.00 - 75,000 8% Extendible Convertible Series 2 Unsecured Subordinated Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
DUNDEE SECURITIES LTD.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
CIBC WORLD MARKETS INC.
HSBC SECURITIES (CANADA) INC.
RAYMOND JAMES LTD.
MACQUARIE CAPITAL MARKETS CANADA LTD.
UNION SECURITIES LTD.
M PARTNERS INC.
Promoter(s):
-
Project #1747074

Issuer Name:
Aureus Mining Inc.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 12, 2011
NP 11-202 Receipt dated May 13, 2011
Offering Price and Description:
$35,100,000.00 - 27,000,000 Common Shares Price: $1.30 per Common Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
GMP SECURITIES L.P.
CLARUS SECURITIES INC.
JENNINGS CAPITAL INC.
RAYMOND JAMES LTD
Promoter(s):
AFFERRO MINING INC.
Project #1731811

Issuer Name:
Can-60 Income ETF
Can-Energy Income ETF
Can-Financials Income ETF
Can-Materials Income ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 17, 2011
NP 11-202 Receipt dated May 17, 2011
Offering Price and Description:
Common Units and Advisor Class Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
XTF Capital Corp.
Project #1713630

Issuer Name:
Canso Credit Income Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 17, 2011
NP 11-202 Receipt dated May 17, 2011
Offering Price and Description:
Maximum $75,000,032 - (Maximum 5,332,840 Class A Units and 2,036,264 Class F Units)
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
GMP Securities L.P.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
HSBC Securities (Canada) Inc.
Raymond James Ltd.
MGI Securities Inc.
Wellington West Capital Markets Inc.
Promoter(s):
Lysander Funds Limited
Project #1741127

Issuer Name:
Common Units and Advisor Class Units (unless otherwise indicated) of:
Claymore Canadian Fundamental Index ETF
Claymore US Fundamental Index ETF (non-hedged Common Units
and non-hedged Advisor Class Units)
Claymore International Fundamental Index ETF
Claymore Japan Fundamental Index ETF C$ hedged
Claymore S&P/TSX Canadian Dividend ETF
Claymore Global Monthly Advantaged Dividend ETF
Claymore S&P/TSX CDN Preferred Share ETF
Claymore S&P US Dividend Growers ETF (formerly Claymore US Dividend Growers ETF)
Claymore Oil Sands Sector ETF
Claymore S&P/TSX Global Mining ETF
Claymore S&P Global Water ETF
Claymore Global Real Estate ETF
Claymore Global Infrastructure ETF
Claymore Global Agriculture ETF
Claymore BRIC ETF
Claymore Broad Emerging Markets ETF
Claymore China ETF
Claymore Small-Mid Cap BRIC ETF
Claymore Balanced Income CorePortfolio ETF
Claymore Balanced Growth CorePortfolio ETF
Claymore Canadian Balanced Income CorePortfolio ETF
Claymore Conservative CorePortfolio ETF
Claymore Advantaged Canadian Bond ETF
Claymore Advantaged High Yield Bond ETF
Claymore Inverse 10 Yr Government Bond ETF
Claymore 1-5 Yr Laddered Government Bond ETF
Claymore 1-5 Yr Laddered Corporate Bond ETF
Claymore 1-10 Yr Laddered Government Bond ETF
Claymore 1-10 Yr Laddered Corporate Bond ETF
Claymore Advantaged Short Duration High Income ETF (formerly Claymore Short
Duration High Income ETF) (US dollar denominated Common and Advisor Class Units)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 12, 2011
NP 11-202 Receipt dated May 16, 2011
Offering Price and Description:
Common Units, Advisor Class Units, non-hedged Common Units and non-hedged Advisor Class Units and US dollar denominated Common and Advisor Class Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Claymore Investments, Inc.
Promoter(s):
Claymore Investments Inc.
Project #1726989

Issuer Name:
Escudo Capital Corporation
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated May 11, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
$300,000.00 - 1,500,000 Common Shares PRICE: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
John Boddie
Project #1732009

Issuer Name:
imaxx Global Equity Growth Fund
imaxx U.S. Equity Growth Fund
(A and F Class Units)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated May 1, 2011 to the Simplified Prospectuses and Annual Information Form dated May 28, 2010
NP 11-202 Receipt dated May 13, 2011
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
AEGON Fund Management Inc.
Project #1567798

Issuer Name:
Lakeside Steel Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 13, 2011
NP 11-202 Receipt dated May 13, 2011
Offering Price and Description:
$20,020,000.00 - 38,500,000 Common Shares Price: $0.52 per Common Share
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
NORTHERN SECURITIES INC.
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #1740468

Issuer Name:
Miocene Metals Limited
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 6, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
$7,200,000.00 - 10,000,000 Units at $0.36 per Unit - and - 9,000,000 Flow-Through Shares at $0.40 per Flow-Through Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Wallbridge Mining Company Limited
Project #1705053

Issuer Name:
NAL Energy Corporation
Principal Regulator - Alberta
Type and Date:
Final Base Shelf Prospectus dated May 12, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
$600,000,000.00:
Common Shares
Preferred Shares
Debt Securities
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1741893

Issuer Name:
NexJ Systems Inc.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 11, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
$43,650,000.00 - 4,850,000 Common Shares Price: $9.00 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Canaccord Genuity Corp.
Raymond James Ltd.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
NCP Northland Capital Partners Inc.
Promoter(s):
-
Project #1723695

Issuer Name:
Poynt Corporation
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated May 13, 2011
NP 11-202 Receipt dated May 13, 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
Underwriter(s) or Distributor(s):
Versant Partners Inc.
Promoter(s):
-
Project #1740167

Issuer Name:
Pure Industrial Real Estate Trust
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated May 16, 2011
NP 11-202 Receipt dated May 11, 2011
Offering Price and Description:
$52,070,000.00 - 12,700,000 Units Price: $4.10 Per Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
HSBC SECURITIES (CANADA) INC.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
GMP SECURITIES L.P.
MACQUARIE CAPITAL MARKETS CANADA LTD.
Promoter(s):
-
Project #1740712

Issuer Name:
Rock Energy Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated May 12, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
$20,000,000.00 - 4,000,000 Common Shares - and - $10,004,000.00 - 1,640,000 Flow-Through Common Shares Price: $5.00 per Common Share and $6.10 per Flow-Through Share
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
WELLINGTON WEST CAPITAL MARKETS INC.
FIRSTENERGY CAPITAL CORP.
MACKIE RESEARCH CAPITAL CORPORATION
ALTACORP CAPITAL INC.
DUNDEE SECURITIES LTD.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #1741386

Issuer Name:
SPROTT CANADIAN EQUITY FUND (Series A, Series F and Series I Units)
SPROTT DIVERSIFIED YIELD FUND (Series A, Series F, Series I and Series T Units)
SPROTT GOLD AND PRECIOUS MINERALS FUND (Series A, Series F and Series I Units)
SPROTT ENERGY FUND (Series A, Series F and Series I Units)
SPROTT GROWTH FUND (Series A, Series F and Series I Units)
SPROTT SHORT-TERM BOND FUND (Series A, Series F and Series I Units)
SPROTT SMALL CAP EQUITY FUND (Series A, Series F and Series I Units)
SPROTT ALL CAP FUND (Series A, Series F and Series I Units)
SPROTT TACTICAL BALANCED FUND (Series A, Series F, Series I, Series T and Series D Units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 11, 2011
NP 11-202 Receipt dated May 16, 2011
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Sprott Asset Management LP
Project #1726214

Issuer Name:
Tradex Bond Fund
Tradex Equity Fund Limited
Tradex Global Equity Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated May 12, 2011
NP 11-202 Receipt dated May 16, 2011
Offering Price and Description:
Mutual fund units/shares at net asset value
Underwriter(s) or Distributor(s):
Tradex Management Inc.
Promoter(s):
Tradex Management Inc.
Project #1726131

Issuer Name:
TransGlobe Apartment Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated May 11, 2011
NP 11-202 Receipt dated May 12, 2011
Offering Price and Description:
$750,000,000.00:
Trust Units
Debt Securities
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1741175

Issuer Name:
VENTURELINK INNOVATION FUND INC.
CLASS A SHARES, SERIES III,
CLASS A SHARES, SERIES IV AND CLASS A SHARES, SERIES VI
Type and Date:
Amendment #1 dated May 9, 2011 to the Long Form Prospectus dated October 14, 2010
Receipted on May 11, 2011
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
VL Advisors Inc.
Promoter(s):
VL Advisors Inc.
CFPA Sponsor Inc.,
Project #1640082

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	First Reliance Asset Management Inc.	Exempt Market Dealer	May 11, 2011
Consent to Suspension (Pending Surrender)	R.G. Shoniker & Associates Inc.	Exempt Market Dealer	May 13, 2011
Change of Registration Category	Rosseau Asset Management Ltd.	From: Exempt Market Dealer, Portfolio Manager To: Exempt Market Dealer, Portfolio Manager, Investment Fund Manager	May 16, 2011
Change of Registration Category	Kingwest & Company	From: Investment Dealer To: Investment Dealer, Investment Fund Manager	May 16, 2011
Change of Registration Category	RP Investment Advisors	From: Exempt Market Dealer, Portfolio Manager To: Exempt Market Dealer, Portfolio Manager, Investment Fund Manager	May 16, 2011
Consent to Suspension (Pending Surrender)	Gestion D'Actifs Holdun Inc. / Holdun Asset Management Inc.	Portfolio Manager	May 17, 2011
Change in Registration Category	Marret Asset Management 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 18, 2011

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 Request for Comments – Amendments to Permit Trading of Securities Listed on Other Canadian Exchanges

REQUEST FOR COMMENTS
AMENDMENTS TO PERMIT TRADING OF SECURITIES LISTED
ON OTHER CANADIAN EXCHANGES

The Board of Directors of TSX Inc. (TSX) has approved amendments (Amendments) to the Rules of the Toronto Stock Exchange (TSX Rules). The Amendments, shown as blacklined text, are attached at Schedule A.

The Amendments will be effective upon approval by the Ontario Securities Commission (Commission) following public notice and comment. Comments on the proposed amendments should be in writing and delivered no later than June 20, 2011 to:

Deanna Dobrowsky
Director, Regulatory Affairs
TMX Group Inc.
The Exchange Tower
130 King Street West, 3rd Floor
Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
e-mail: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Barbara Fydell
Senior Legal Counsel, Market Regulation
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario M5H 3S8
Fax: (416) 593-8940
e-mail: marketregulation@osc.gov.on.ca

Terms not defined in this Request for Comments are defined in the TSX Rules.

I Proposed Change

The Amendments confirm TSX's ability to facilitate trading in securities that are not listed by Toronto Stock Exchange, so long as the securities have been listed by another exchange that is recognized by a securities regulatory authority in a Canadian jurisdiction.

II Rationale for Amendments

As the multi-marketplace environment in Canada continues to increase its breadth and depth, TSX is in a unique position to meet the needs of its Participating Organizations (POs) and investors. Clarifying the TSX Rules to permit trading in securities that are not listed by Toronto Stock Exchange allows TSX to leverage its trade execution strength in the event that it determines to trade securities that are listed on another Canadian exchange.

For example, in the event that Alpha Exchange Inc. receives regulatory approval to operate an exchange, TSX may determine that it would be appropriate and beneficial to POs, investors and other stakeholders to trade those securities on TSX. If such decision is taken by TSX, appropriate notice will be given to market participants so that there is no confusion in the market regarding the securities being traded on TSX. The Amendments clarify the application of the TSX Rules in such an instance.

Given the framework for competitive trading in Canada, it is sensible from a policy perspective to enable TSX to trade the securities of issuers listed on other exchanges when ATSs are permitted to trade these securities.

III Description of the Amendments

There are three main categories of revisions made in the Amendments. First, definitions are revised and created in order to distinguish between (i) securities that are traded on TSX but not listed by Toronto Stock Exchange, and (ii) securities that are listed by Toronto Stock Exchange and traded on TSX. This distinction is important because certain TSX Rules will apply only to those securities that are listed by Toronto Stock Exchange.

Second, references throughout the TSX Rules are revised to clarify which rules apply to Toronto Stock Exchange-listed securities only, and which rules apply to all securities posted for trading – (whether or not they are listed by Toronto Stock Exchange).

Finally, a new section is added which states explicitly that TSX can trade securities that are listed by another exchange recognized in a Canadian jurisdiction.

Definitions

The definition of "listed security" in the TSX Rules is refined to confirm that a listed security is one that has been listed by Toronto Stock Exchange and posted for trading on TSX. A new definition of "security" is added to confirm that, when used to describe a security that trades on TSX, it means both securities that are listed by Toronto Stock Exchange, and securities that are not listed by Toronto Stock Exchange but are posted to trade on TSX. Other definitions have been modified to ensure that they capture the distinction between "listed security" and "security".

General Trading Rules

Terms are updated throughout the TSX Rules to confirm that most provisions apply to all securities. However, terminology in the market making section has not been revised as TSX will provide market-making functionality only for securities listed by Toronto Stock Exchange. Terminology in the issuer bid section of the TSX Rules also has not changed as our normal course issuer bid and debt issuer bid rules only apply to trading of issuers whose securities are listed by Toronto Stock Exchange. The buy-in provisions have been modified to confirm that buy-in procedures are provided only at TSX's discretion. This allows TSX to differentiate between buy-in services that it offers with respect to listed securities versus posted securities.

New TSX Rule 4-1201

A new section is inserted in the TSX Rules to confirm that TSX is permitted to trade securities that are not listed by Toronto Stock Exchange. TSX Rule 4-1201 includes clarifying provisions describing TSX's ability to remove a posted security from trading and to halt a posted security.

IV Impact

The impact to the market will be positive because an additional trading venue with a proven track record will be available to execute trades of securities listed by other exchanges. Once the Amendments are approved, if TSX determines that it will trade securities listed by another Canadian exchange, TSX will provide ample notice to market participants. No new connectivity will be required for POs and vendors that currently have access to TSX.

TSX will not operate separate "facilities" in the manner that CNSX Markets Inc. describes Pure Trading and the Canadian National Stock Exchange (CNSX). All securities traded on TSX, whether or not they are listed by Toronto Stock Exchange, will trade in the same book and all trades will be subject to the TSX Rules. Order entry on TSX will be identical for securities listed by Toronto Stock Exchange and securities listed by other exchanges.

It is anticipated that existing TMX data feed processes will be used to disseminate trade and quote data for securities listed by other exchanges. This means that the TSX real-time data feeds distributing beginning of day symbol status information will include a unique marker distinguishing the listing exchange for each security. Order and trade information regarding these securities will be contained in the data provided by TSX to the information processor and incorporated into the relevant existing TMX downstream systems such as CDS and IIROC feeds. Any downstream reporting compiled by TSX that includes symbol level information will distinguish other securities from Toronto Stock Exchange-listed securities.

In addition to the listing exchange identifier, securities listed on another exchange will be added to TMX systems as a separate stock group. This stock group structure is currently operating and it enables various users to access information that provides, among other things, the identity of the listing venue.

The Amendments will allow TSX to have the opportunity to add trading depth to the market in the event that other Canadian exchanges begin to list securities that TSX determines are appropriate for trading on TSX. These securities will be subject to the same allocation rules as Toronto Stock Exchange-listed securities, with the exception that securities that are not listed by

Toronto Stock Exchange will not receive the services of a designated Registered Trader and will therefore not participate in the Minimum Guarantee Fill rules. All other trading will be the same.

V Consultation and Review

TSX did not consult with customers on the Amendments. We believe that the Amendments will provide trading opportunities to all market participants.

VI Alternatives

No alternatives were considered.

VII Comparable Rules

CNSX Markets Inc. operates CNSX and an alternative facility, Pure Trading, and it trades both CNSX-listed securities and securities listed by Toronto Stock Exchange and TSX Venture Exchange. CNSX Markets Inc. offers this functionality under one set of public trading rules pursuant to the terms of the CNSX Markets Inc. stock exchange recognition order issued by the Commission. In the U.S. there are a number of exchanges trading securities that are listed by other U.S. exchanges. The Alpha application for exchange recognition appears to be structured in a way that affords Alpha Exchange the ability to trade both securities listed by Alpha Exchange and securities listed by other venues.

VIII Public Interest Assessment

We submit that in accordance with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals, the Amendments will be considered “public interest” in nature. The Amendments would, therefore, only become effective following public notice, a comment period and the approval of the Commission.

IX Questions

Questions concerning this notice should be directed to Deanna Dobrowsky, Director, Regulatory Affairs, TMX Group Inc. at (416) 947-4361.

SCHEDULE A

RULES (AS AT ●)	POLICIES
PART 1 – INTERPRETATION **1-101 Definitions (Amended)** (1) In all Exchange Requirements, unless the subject matter or context otherwise requires: (a) defined or interpreted in section 1 of the Securities Act has the meaning ascribed to it in that section; (b) defined in subsection 1(2) of the Regulation has the meaning ascribed to it in that subsection; (c) defined in subsection 1.1(3) of National Instrument 14-101 Definitions has the meaning ascribed to it in that subsection; (d) defined in subsection 1.1(2) of Ontario Securities Commission Rule 14-501 has the meaning ascribed to it in that subsection; and (e) defined or interpreted in UMIR has the meaning ascribed to it in that document. **Amended (April 1, 2002)**	
(2) In all Exchange Requirements, unless the subject matter or context otherwise requires: *****	
"ask price" or **"offer price"** means the lowest price of a committed order to sell at least one board lot of a particular ~~listed~~ security. **Amended (●)**	
***** **"better-priced limit order"** means a limit order entered prior to the opening of trading of a ~~listed~~ security to buy at a price that is higher than the opening price, or to sell at a price that is lower than the opening price. **Amended (●)**	
"bid price" means the highest price of a committed order to buy at least one board lot of a particular ~~listed~~ security. **Amended (●)**	
*****	
"board lot" means: ~~(a)~~ (a) 1,000 units of a ~~listed~~ security trading at less than $0.10 per unit; ~~(b)~~ (b) 500 units of a ~~listed~~ security trading at $0.10 or more per unit and less than $1.00 per unit; ~~(c)~~ (c) 100 units of a ~~listed~~ security trading at more than $1.00 per unit; and ~~(d)~~ (d) such other number of units of a ~~listed~~ security as	

RULES (AS AT ●)	POLICIES
may be specified by the Exchange from time to time in respect of a particular ~~listed~~ security or class of ~~listed~~ securities. **Amended (●)**	
"Book" means the electronic file of committed orders for ~~listed~~ securities but does not include the MOC Book. **Amended (~~March 29, 2004~~●)**	
*****	
"calculated opening price" or **"COP"** is the price of opening trades in a ~~listed~~ security calculated in the manner prescribed by the Board. **Amended (●)**	
*****	
"committed order" means an offer to buy or sell a specific number of shares or units of a ~~listed~~ security at a specific price that is entered in the Book and that is open for acceptance by any other Participating Organization. **Amended (●)**	
*****	
"Exchange Contract" means any contract: (a) to buy or sell any ~~listed~~ security, if such contract is made through the facilities of the Exchange; or (b) for delivery of and payment for any ~~listed security (or security which was a listed security~~security that was posted for trading on the Exchange when the contract was made~~),~~ arising from settlement through the Clearing Corporation. **Amended (●)**	
*****	
"Last Sale Price" means: (a) in respect of a MOC Security, the calculated closing price; and (b) in respect of any other ~~listed~~ security, the last board lot sale price of the security on the Exchange in the Regular Session. **Amended (~~March 10, 2006~~●)**	
*****	

RULES (AS AT ●)	POLICIES
"listed company" or "listed issuer" means an issuer which has one or more classes of its securities listed for trading by the Exchange. Amended (●)	
"listed security" means a security listed by the Exchange and posted for trading on the Exchange. Amended (●)	
*****	
"program trade" means one of a series of market orders in ~~listed~~ securities, including Index Participation Units, underlying an Index that is being undertaken in conjunction with a trade in derivatives the underlying interest of which is the Index that is traded in accordance with Exchange Requirements governing such trades. Amended (●)	
"Proprietary Electronic Trading System" or **"PETS"** means an electronic trading system operated or sponsored by a Participating Organization which matches buy and sell orders in ~~listed~~ securities, but does not include a system which solely matches orders of one Participating Organization and the clients of that Participating Organization. Amended (●)	
*****	
"security" when used to describe a security that trades on the Exchange means: (a) a listed security (as such term is defined herein); and (b) a security that is posted for trading on the Exchange, but not listed by the Exchange. Added (●)	
"settlement day" means any Trading Day on which settlements in ~~listed~~ securities may occur through the facilities of the Clearing Corporation. Amended (●)	
*****	
"Special Trading Session" means a Session during which trading in a ~~listed~~ security is limited to the execution of transactions at a single price. Amended (●)	
*****	
"trading system" includes all facilities and services provided by the Exchange to facilitate trading, including, but not limited to: electronic systems for trading ~~listed~~ securities; data entry services; any other computer-based trading systems and programs; communications facilities between a system operated or maintained by the Exchange and a trading or order routing system	

RULES (AS AT ●)	POLICIES
operated or maintained by a Participating Organization, another market or other person approved by the Exchange; and price quotations and other market information provided by or through the Exchange. Amended (●)	
*****	
PART 2 – ACCESS TO TRADING ***** DIVISION 4– SUPERVISION OF TRADING ***** 2-405 Confirmation (1) A Participating Organization that has acted in the purchase or sale of a ~~listed~~ security on the Exchange shall promptly send or deliver to its client, if any, a written confirmation of the purchase or sale setting forth the following: ***** Amended (●)	
PART 3 – GOVERNANCE OF TRADING SESSIONS DIVISION 1 – SESSIONS ***** 3-102 Trades Outside of Hours for Sessions Except as approved by a Market Surveillance Official, no trade in a ~~listed~~ security shall be made on the Exchange at a time prior to the dissemination by the Exchange on the trading system of a message opening the Session or at a time after the dissemination by the Exchange on the trading system of a message closing the Session. Amended (●) *****	
3-205 General Prescriptive Power The Board may prescribe such other terms and conditions, as the Board considers appropriate in the circumstances, related to: (a) trading in ~~listed~~ securities, including trading in listed securities either on or off the Exchange; and (b) settlement of ~~trades in listed~~ securities traded on the Exchange. Amended (●) *****	
PART 4 – TRADING OF ~~LISTED~~ SECURITIES DIVISION 1 - MARKET FOR ~~LISTED~~ SECURITIES *****	

RULES (AS AT ●)	POLICIES
4-104 Proprietary Electronic Trading Systems (1) A Participating Organization may operate or sponsor a PETS provided the Participating Organization has provided to the Exchange reasonable prior notice of: (a) the intention of the Participating Organization to operate or sponsor a PETS; (b) the functionality of the PETS; and (c) any material modifications to the operation or functionality of the PETS. (2) The operation of a PETS shall be: (a) limited to orders for more than: (i) 1,200 units of ~~a listed~~ security other than a debt security, and (ii) $10,000 in principal amount of a ~~listed security that is a~~ debt security; (b) subject to Exchange Requirements; and (c) integrated with the Exchange's market. Amended (●)	
***** DIVISION 4 – GENERAL TRADING RULES 4-401 Trading in the Book (1) The Book shall contain and display all committed orders to buy or sell a ~~listed~~ security that are made on the Exchange, unless otherwise provided by the Exchange. (2) Only committed orders shall participate in trading, except for trading in the special terms market. (3) All trades ~~in listed securities~~ on the Exchange shall be executed in the Book, unless otherwise provided by the Exchange. **Amended (~~March 10, 2006~~●)**	
***** 4-404 Minimum Ticks Until otherwise fixed by the Board, orders for ~~listed~~ securities shall only be entered on the Exchange at the following price increments: Increment Selling under $0.50……..... $0.005 Selling at $0.50 and over …..... $0.010 Amended (●)	
4-405 Approved Traders (Sub (4) Deleted) (1) Except as permitted by the Exchange, no person shall enter orders or trade ~~listed~~ securities for or on behalf of a Participating Organization (whether as principal or agent) on	*****

RULES (AS AT ●)	POLICIES
the Exchange by any means unless that person has been approved for access to the equities market as an Approved Trader by the Exchange. (2) The Exchange may delegate the authority to approve persons to enter orders and trade ~~listed~~ securities on the Exchange to another self-regulatory organization designated by the Board. ***** Amended (●)	
4-406 Trades on a "When Issued" Basis (1) The Exchange may post any security to trade on a when issued basis if such security is conditionally approved for listing ~~on the Exchange~~by a recognized exchange. (2) Unless otherwise specified, trades on a when issued basis are subject to all applicable Exchange Requirements relating to trading in a ~~listed~~ security, notwithstanding that the security is not listed. (3) All trades on a when issued basis shall be cancelled if the Exchange determines that the securities subject to such trades will not be issued. Amended (●)	
4-407 Advantage Goes with Securities Sold (1) Except as provided in Rule 4-407(2), in all trades of ~~listed~~ securities on the Exchange, all entitlements to receive dividends or any other distribution made or right given to holders of that security shall pass with the security and shall belong to the purchaser, unless otherwise provided by the Exchange or the parties to the trade by mutual agreement. (2) In all sales of ~~listed~~ bonds and debentures on the Exchange, all accrued interest shall belong to the seller unless otherwise provided by the Exchange or parties to the trade by mutual agreement. (3) Claims for dividends, rights or any other benefits to be distributed to holders of record of ~~listed~~these securities on a certain date shall be made in accordance with the procedures established by the Clearing Corporation. Amended (●) *****	
DIVISION 7 – OPENING 4-701 Execution of Trades at the Opening (1) Subject to Rule 4-702, ~~listed~~ securities shall open for trading at the opening time, and any opening trades shall be at the calculated opening price. Amended (●) *****	

RULES (AS AT ●)	POLICIES
4-702 Delayed Openings (Amended) (1) A security shall not open for trading if, at the opening time: (a) orders that are guaranteed to be filled pursuant to Rule 4-701 cannot be completely filled by offsetting orders; or (b) the COP exceeds price volatility parameters set by the Exchange. (2) The Market Maker or Market Surveillance Official may delay the opening of a security for trading on the Exchange if: (a) the COP differs from the previous closing price for the security or from the anticipated opening price on any other recognized stock exchange where the security is listed by an amount greater than the greater of 5% of the previous closing price for the security and $0.05; (b) the opening of another recognized ~~stock~~ exchange where the security is ~~interlisted~~listed for trading has been delayed; or (c) the COP is less than the permitted difference from the previous closing price for the security, but is otherwise unreasonable. (3) **Repeal proposed August 9, 2002 (pending regulatory approval)** (4) If the opening of the ~~listed~~ security is delayed, the Market Maker or Market Surveillance Official, as the case may be, shall open the security for trading according to Exchange Requirements. **Amended (~~July 23, 2004~~●)**	
***** DIVISION 9 – SPECIAL TRADING SESSION 4-901 General Provisions (Amended) (1) All ~~listed~~ securities shall be eligible for trading during the Special Trading Session, provided that a MOC Security shall not be eligible for trading until the completion of the Closing Call in respect of that MOC Security. **Amended (●)** *****	
DIVISION 10 – PROGRAM TRADING 4-1001 Short Sale Exemption A program trade is exempt from Rule 4-301 providing the short position is entered into within 30 minutes of the establishment of the corresponding long position and the sale is a reasonable hedge of the long position.	4-1001 Short Sale Exemption (1) Definition of Program Trading for Short Sale Exemption For purposes of Rule 4-1001, a program trade is: (a) a simultaneous trade in ~~listed~~ securities comprising at least 80 percent of the component share weighting of an Index that offsets a pre-existing position in: (i) a future, the underlying interest of

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	which is the Index, (ii) an option, the underlying interest of which is the Index, or (iii) an option, the underlying interest of which is the Index Participation Unit in respect of the Index; (b) a trade in Index Participation Units that offsets a pre-existing position in: (i) a future, the underlying interest of which is the Index in respect of the Index Participation Unit, (ii) an option, the underlying interest of which is the Index in respect of the Index Participation Unit, or (iii) ~~listed~~ securities comprising at least 80 percent of the component share weighting of the Index Participation Unit; or (c) a trade in units of a trust which is a mutual fund trust for the purposes of the *Income Tax Act* (Canada) where substantially all of the assets of the fund are the same as the underlying interest of an option or future listed on an exchange that offsets a pre-existing position in: (i) the applicable future, (ii) the applicable option, or (iii) ~~listed~~ securities comprising at least 80 percent of the component share weighting of the portfolio of the mutual fund. **Amended (●)** *****
***** 4-1003 Offsetting Orders on Expiry Orders in ~~listed~~ securities that offset an expiring Index derivatives position, or that substitute an equities position for an expiring Index derivatives position, shall be entered as prescribed by the Exchange. **Amended (●)**	4-1003 Offsetting Orders on Expiry (1) Definition of Program Trading for Must-Be-Filled Orders For purposes of Rule 4-1003, a program trade is a simultaneous trade undertaken on the expiry date of an option or future in ~~listed~~ securities comprising at least 70 percent of the component share weighting of an Index where such trade offsets a pre-existing position in a future or an option the underlying interest of which is the Index. (2) Must-Be-Filled Order Reporting Requirements The following requirements apply to Must-Be-Filled Orders: (a) Entry of Orders – A Must-Be-Filled Order shall be entered on the day prior to the

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	expiry date (normally a Thursday) during the Special Trading Session or at such other times as may be required or permitted by the Exchange (the "reporting time"). An order for a program trade may be entered at a time other than the reporting time only with the consent of the Exchange. A Must-Be-Filled Order may be cancelled prior to the end of the reporting time through normal cancellation and correction procedures. After the end of the reporting time, each Must-Be-Filled Order is committed and may be withdrawn from the trading system only with the consent of the Exchange. The Exchange may release a ticker notice regarding material imbalances in orders for a particular ~~listed~~ security after the end of the reporting time. **Amended (~~September 12, 2008~~●)** (b) Prearranged Trades – A Participating Organization with both sides of a program trade arranged may enter the orders at a time other than during the reporting time. The trading system will seek out such orders and will cross them automatically where possible. (c) Automatic matching – The trading system will automatically match all program trades, market orders and better-priced limit orders where possible. Any imbalance after matching of these orders will be included in the regular opening following the normal allocation rules and receive the calculated opening price. Market orders and better-priced limit orders will be filled first against an imbalance of large program trades.
***** DIVISION 11 — SPECIAL TERMS 4-1103 Exchange for Physicals and Contingent Option Trades Orders which are conditional upon a simultaneous trade in a derivative on another exchange shall be special terms trades and shall be traded in accordance with the prescribed procedures and conditions.	4-1103 Exchange for Physicals and Contingent Option Trades (1) Application This Policy applies to each person who has been granted trading access to the Exchange and who seeks to enter an order on the Exchange for a ~~listed~~ security which is contingent upon the execution of one or more trades in an option on the Montreal Exchange or who seeks to exchange an index futures contract that is ~~listed for trading~~traded on the Exchange for the equivalent number of ~~listed~~ securities underlying the futures contract (including an equivalent number of index participation units) on a contingent basis. (2) Procedure for Contingent Option Trade If a person to whom this Policy applies seeks to enter an order on the Exchange for a ~~listed~~ security which

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	is contingent upon the execution of one or more trades in an options market, the following rules shall apply: (a) the trade in the ~~listed~~ security and the offsetting option trades must be for the same account; (b) the option portion of the trade must be approved by a floor governor or other exchange official of the stock exchange on which the option is listed and such approval shall be evidenced by the initials of the governor or official on the options trade ticket; (c) the options trade ticket shall be time stamped; (d) the person shall telephone Trading and Client Services of the Exchange at (416) 947-4440 and provide the details of the contingent trade including the name of the person with trading access to the Exchange with whom the contingent trade has been made; (e) the trade in the ~~listed~~ security must be within the existing market for the ~~listed~~ security on the Exchange at the time of the telephone call to Trading and Client Services; (f) a copy of the options trade ticket as initialled by a floor governor or exchange official and time stamped shall be provided by facsimile transmission to Trading and Client Services at (416) 947-4280 within ten minutes following the time stamp on the ticket; and (g) provided the trade has been made and reported in accordance with the above rules, the Exchange shall manually execute the trade in the ~~listed~~ security as a special terms trade with the marker "MS" effective as of the time stamped on the option trade ticket. (3) Procedure for Exchange for Physicals If a person to whom this Policy applies seeks to exchange a futures contract for the equivalent number of ~~listed~~ securities underlying the futures contract (including an equivalent number of units of the applicable Index Participation Fund or mutual fund), the following provisions shall apply: (a) the trade in the ~~listed~~ security and the trade in the futures contract must be for the same account; (b) the equities component may be made as a cross or as a trade between persons

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	with trading access on the Exchange; (c) the futures portion of the trade must be approved by a floor governor or other exchange official of the stock exchange on which the future is listed and such approval shall be evidenced by the initials of the governor or official on the futures trade ticket; (d) the futures trade ticket shall be time stamped; (e) the person shall telephone Trading and Client Services of the Exchange at (416) 947-4440 and provide the details of the exchange including the name of the person with trading access to the Exchange with whom the exchange has been made; (f) the trade in the listed securities made during the Regular Session will be at the bid price of the listed securities on the Exchange at the time of the telephone call to Trading and Client Services and the trade in ~~listed~~ securities made after the end of the Regular Session will be at the last sale price of the ~~listed~~ securities on the Exchange provided that where the last sale price is outside of the closing quotes for any ~~listed~~ security the price for that ~~listed~~ security shall be the bid or offer which is closest to the last sale price; (g) a copy of the futures trade ticket as initialled by a floor governor or exchange official and time stamped shall be provided by facsimile transmission to Trading and Client Services at (416) 947-4280 within ten minutes following the time stamp on the ticket; and provided the trade has been made and reported in accordance with the above rules, the Exchange shall manually execute the trade in the ~~listed~~ securities as a special terms trade with the marker "MS" effective as of the time stamped on the futures trade ticket. **Amended (~~September 12, 2008~~●)**
DIVISION 12 – TRADING OF SECURITIES NOT LISTED BY THE EXCHANGE 4-1201 Requirements (1) The Exchange, in its discretion, may post for trading securities that are listed by another exchange recognized in a jurisdiction in Canada. (2) The Exchange may remove a posted security from trading at any time without prior notice.	

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(3) The Exchange will halt the trading of a posted security if: (a) the security is subject to a regulatory halt; or (b) the security is no longer listed by a recognized exchange or is suspended from trading by the recognized exchange. **Added (●)**	
PART 5 – CLEARING AND SETTLEMENT OF TRADES IN ~~LISTED~~ SECURITIES DIVISION 1 – GENERAL SETTLEMENT RULES 5-101 Definitions In this Part: **"Buy-In Notice"** means the written notice in the form required by the Exchange to be delivered by a Participating Organization which has failed to receive ~~listed~~ securities to which it is entitled from another Participating Organization. **"delivery"** or **"delivered"** means the transfer of ~~listed~~ securities through physical transfer of certificates evidencing the ~~listed~~ security, or by transfer of a book-based position in accordance with the rules of the Clearing Corporation. **"delivering Participating Organization"** means a Participating Organization obligated to make settlement by delivering ~~listed~~ securities against payment. **"depository eligible transaction"** means a transaction in securities for which affirmation and settlement can be performed through the facilities of a securities depository by book entry settlement or certificate based settlement. **"first settlement cycle"** means the settlement cycle through the Clearing Corporation for ~~listed~~ securities as prescribed in the written procedures of the Clearing Corporation. Amended (●)	
5-102 Clearing and Settlement (1) All Exchange trades in ~~listed~~ securities shall be reported, confirmed and settled through the Clearing Corporation pursuant to the Clearing Corporation's rules and procedures, unless otherwise authorized or directed by the Exchange, or unless the rules of the Clearing Corporation do not permit settlement of that trade through its facilities. (2) ~~Trades~~Exchange trades that are not confirmed and settled through the Clearing Corporation shall be governed by the Rules in Division 2 in addition to the Rules in this Division. Amended (●)	
5-103 Settlement of Exchange Trades (1) Exchange trades in ~~listed~~ securities shall settle on the third Settlement Day after the trade date, unless otherwise provided by the Exchange or the parties to the trade by	

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mutual agreement. (2) Notwithstanding Rule 5-103(1), unless otherwise provided by the Exchange or the parties to the trade by mutual agreement: (a) trades on a when issued basis made: (i) prior to the second Trading Day before the anticipated date of issue of the security shall be settled on the anticipated date of issue of such security, and (ii) on or after the second Trading Day before the anticipated date of issue of the security shall settle on the third settlement day after the trade date, provided if the security has not been issued on the date for settlement such trades shall be settled on the date that the security is actually issued; (b) trades for rights, warrants and □nstalment receipts made: (i) on the third Trading Day before the expiry or payment date shall be for special settlement on the Settlement Day before the expiry or payment date, (ii) on the second and first Trading Day before the expiry or payment date, shall be cash trades for next day settlement, and (iii) on expiry or payment date shall be cash trades for immediate settlement and trading shall cease at 12:00 Noon (unless the expiry or payment time is set prior to the close of business in which case trading shall cease at the close of business on the first Trading Day preceding the expiry or payment), provided selling Participating Organizations must have the securities that are being sold in their possession or credited to the selling account's position prior to such sale; (c) cash trades in ~~listed~~ securities for next day delivery shall be settled through the facilities of the Clearing Corporation on the first settlement cycle following the date of the trade or, if applicable, over-the-counter, by noon of the first settlement day following the trade; and (d) cash trades in ~~listed~~ securities that have been designated by the Exchange for same day settlement shall be settled by over-the-counter delivery no later that than 2:00 p.m. on the trade day. (3) Notwithstanding Rule 5-103(1), an Exchange Contract may specify delayed delivery which shall provide the seller with the option to deliver at any time within the period specified in the contract, and, if no time is specified, delivery shall take place at the option of the seller within thirty days from the date of the trade unless the parties by mutual agreement specify a delivery date more than thirty days from the date of the trade. Amended (●)	

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***** 5-108 When Security Delisted, Suspended or No Fair Market (1) The Exchange may postpone the time for delivery on Exchange Contracts if: (a) the listed security is delisted; (b) trading is suspended in the ~~listed~~ security; or (c) the Exchange is of the opinion that there is not a fair market in the ~~listed~~ security. (2) If the Exchange is of the opinion that a fair market in the ~~listed~~ security is not likely to exist the Exchange may provide that the Exchange Contracts be settled by payment of a fair settlement price and if the parties to the Exchange Contract can not agree on the amount, the Exchange shall fix the fair settlement price after providing each party with an opportunity to be heard. Amended (●)	
DIVISION 2 – OVER-THE-COUNTER SETTLEMENT 5-201 Delivering Participating Organization Responsible for Good Delivery Form (1) Delivering Participating Organization Responsible for Form of Certificate The delivering Participating Organization is responsible for the genuineness and complete regularity of the ~~listed~~ security, and a certificate that is not in proper negotiable form shall be replaced forthwith by one which is valid and in prior negotiable form, or by a certified lieu cheque, if a replacement certificate is not available. (2) Where Certificates Delivered Not Acceptable to Transfer Agents A Participating Organization that has received delivery of a certificate that is not acceptable as good transfer by the transfer agent shall return it to the delivering Participating Organization, which shall make delivery of a certificate that is good delivery or of a certified lieu cheque in place thereof. Amended (●)	
***** DIVISION 3 – CLOSING OUT CONTRACTS 5-301 Buy-ins (Amended) (1) Failed trade In the event that a Participating Organization fails to: (a) carry out an Exchange Contract within the time provided in the Exchange Requirements; or (b) settle a loan of securities as provided in Rule 5-301(2); or (c) deliver securities as provided in Rule 5-301(3), such Participating Organization is in default of the Exchange Contract and the trade may be closed out, at the	

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discretion of the Exchange, through the buy-in procedure set out in this Division. (2) Security Loans In the absence of any agreement to the contrary, a loan of ~~listed~~ securities between Participating Organizations may be called through service of notice in writing of termination of the loan to the borrowing Participating Organization and the borrowing Participating Organization shall return securities of the same class as those loaned in the specified quantity by the close of business on the third Settlement Day following the date of receipt of such notice. (3) Other Failed Positions In the absence of any agreement to the contrary, a Participating Organization shall deliver ~~listed~~ securities to another Participating Organization pursuant to an obligation to deliver that results from a reorganization of the issuer, an allocation of securities or any other obligation considered applicable by the Exchange. ***** Amended (April 3, 2000)	
5-302 Special Provisions for Buy-Ins from Securities Loans and Other Failed Positions In connection with a buy-in that is the result of a default pursuant to Rules 5-301(2) or (3), the following rules shall apply in addition to the provisions of Rule 5-301: 1. If the Participating Organization in default wishes to dispute the claim, the Participating Organization shall file a dispute in writing with the Exchange before 1:00 p.m. on the day that the Notice is effective and if the dispute is not resolved by agreement between the Participating Organizations or the buy-in is disapproved by a Market Surveillance Official, the dispute shall be determined by arbitration in accordance with Rule 2-308. 2. Where the Participating Organization in default delivers the ~~listed~~ securities subject to the Buy-In Notice prior to execution of the buy-in, the Participating Organization in default shall notify the Exchange and the buy-in will be cancelled upon confirmation by the Exchange of the delivery of the listed securities. 3. The Participating Organization which has issued a Buy-In Notice may extend the buy-in by delivering a notice of extension in writing to the Exchange before 3:00 p.m. on the day the buy-in is to be executed. 4. Failure to settle a trade that is the result of a buy-in that is the result of a default in accordance with the terms of the buy-in, if not resolved by the Participating Organizations concerned, shall be resolved by cancellation of the buy-in contract and issuance of a further buy-in and, in such case, the Participating Organization selling to the original buy-in shall be liable for any loss or damage resulting from failure to deliver.	

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5. Following execution of a buy-in, the Participating Organization that issued the Buy-In Notice shall notify the Participating Organization in default in writing of the amount of the difference between the amount to be paid on the Exchange Contract closed out, and the amount paid on the buy-in, if any, and such difference shall be paid to the Participating Organization entitled to receive the same within 24 hours of receipt of such notice. 6. Where more than one buy-in has been arranged in connection with the same ~~listed~~ securities, the Market Surveillance Official may combine any number of the trades. Amended (●)	
***** 5-304 Restrictions on Participating Organizations' Involvement in Buy-ins (1) No Participating Organization shall knowingly permit any person on whose behalf a Buy-In Notice has been issued to fill all or any part of such order by selling the securities for the account of that person or an associated account and prior to selling to a buy-in, the Participating Organization, shall receive written or verbal confirmation that the order to sell is not being placed on behalf of the account of the person on whose behalf the Buy-In Notice was issued or an associated account. (2) A Participating Organization that issued a Buy-In Notice and the Participating Organization against whom a Buy-In Notice has been issued may supply all or a part of the ~~listed~~ securities provided that the principal supplying the ~~listed~~ securities is not: (a) the Participating Organization; (b) an Approved Person or employee of the Participating Organization; or (c) an associate of any person described in Rules 5-304(2)(a) or (b). (3) If ~~listed~~ securities are supplied by the Participating Organization that issued the Buy-In Notice, delivery shall be made in accordance with the terms of the contract thus created, and the Participating Organization shall not, by consent or otherwise, fail to make such delivery. Amended (●)	

13.3 Clearing Agencies

13.3.1 CDS – Request for Comments – Material Amendments to CDS Rules – Electronic Payment of Entitlements

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS RULES

ELECTRONIC PAYMENT OF ENTITLEMENTS

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS RULE AMENDMENTS

This report proposes amendments to the CDS Rules to permit CDS to establish certain limited exemptions to the requirement (scheduled to become effective on November 1, 2011) that all entitlements on eligible securities be paid by an acceptable electronic means.

B. NATURE AND PURPOSE OF THE PROPOSED CDS RULE AMENDMENTS

B.1 Proposed Amendment

In November 2008, CDS published notice of Rule amendments intended to ensure that entitlements on securities held in CDSX® are paid in electronic format. This requirement is scheduled to become effective on November 1, 2011, and states that a security will not be eligible for deposit into CDSX unless entitlements on that security are paid in certain defined formats (essentially electronic payments with assurance of final and irrevocable funds). The three year lead time was intended to provide an opportunity for market participants (including in particular issuers, paying agents and their bankers) to make the system and process changes necessary to comply with this eligibility criterion. However, not all issuers or their agents are able to comply with the requirement at the present time. The proposed amendments to the CDSX Rules will authorize CDS to establish certain limited exemptions to the requirement.

B.2 Paperless Processing of Securities Transactions

For many years, CDS has pursued the objective of paperless processing of securities transactions, holdings and entitlement payments. One means to this objective is the reduction in the use of cheques. In the absence of Canadian legislation or regulations mandating that issuers pay securities entitlements to the clearing agency in final electronic funds, progress requires changes to the practices of individual issuers and their agents.

Entitlement payments include dividends, interest, payments upon redemption or maturity of securities, and other events involving payments or distributions to holders of securities. Eliminating the use of cheques for entitlement payments provides greater efficiency and cost reduction to CDS (and therefore to the financial services industry as a whole). From a risk perspective, the use of acceptable payments or fund transfers (the requirement to be imposed as of November 1, 2011) ensures that the entitlements credited into CDSX funds accounts are received by CDS as immediate, final and irrevocable credit.

A number of CDS initiatives have significantly reduced the number of cheques received for entitlements. The implementation of the Book Entry Only Securities Services Agreement in 2009 has had a very positive impact on the type of payments received for these issues, as the agreement requires all entitlement payments to be made in electronic form. In addition, CDS has implemented system enhancements to support participants acting as paying agents, and thus the payment of entitlements by funds transfers. CDS is continuing to work with participants to extend this functionality to additional institutions and to a wider range of corporate action events.

In the three years since the eligibility requirements were announced, considerable progress has been made in achieving CDS's objective. In 2008, cheques were used for 70% of payment events, representing 10% of the value of entitlements received; today, cheques are used for 25% of payment events, representing 3% of the value of entitlements received.[1]

While progress has been substantial, and is continuing, it has not been possible to achieve 100% compliance with the eligibility requirement. A considerable number of issuers continue to use alternative means of entitlement payment, including cheques and electronic payments such as pre-authorized debits. This includes significant categories of issuers, such as the Quebec municipalities[2]. As issuers are not CDS participants, they are not themselves bound by the CDSX Rules, and therefore they

[1] Note that these figures exclude entitlements on money market securities; these entitlements, which represent by far the highest value of entitlement payments in CDSX, have been paid by funds transfers for some considerable time.

[2] CDS is actively working with representatives of the Province of Quebec to enhance the entitlement payment process for a range of securities.

cannot be directly required to comply with the Rules. To make the securities of these issuers ineligible would cause considerable disruption to participants, to their customers and to the issuers in question. CDS is actively working to resolve the remaining issues, but this is not expected to be achieved by the November 1, 2011 deadline imposed under the current version of the CDSX Rules. It is therefore proposed that CDS will establish limited exemptions to the eligibility requirement. Exemptions will be based on the amount of the payment (a *de minimis* exemption for small payments), the means of payment (such as pre-authorized debits) or the classification of the issuer (such as Quebec municipalities). The proposed Rule amendments authorize CDS to establish such exemptions.

B.3 New Standards Established by Bank for International Settlements

The Canadian financial services industry is subject to developing international standards. In March of 2011, the Bank for International Settlements, through its committees the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO), issued a draft report for public consultation. The report, *Principles for Financial Market Infrastructures*, proposes new international standards for payment, clearing and settlement systems.[3] After a consultation period, CPSS and IOSCO will review all comments received and publish a final report in early 2012. It is proposed that the new principles will be implemented in legal and regulatory frameworks by the end of 2012. The report states that the new principles "are designed to ensure that the essential infrastructure supporting global financial markets is even more robust and thus even better placed to withstand financial shocks than at present". Financial market infrastructures or "FMIs", including central securities depositories and securities settlement systems such as CDS, will be expected to take "appropriate and swift action" to comply with the new standards. CDS is following these developments closely, and will take the necessary steps to ensure that it complies with the new standards when they are implemented. Principle #9 - Money Settlements states: "An FMI should conduct its money settlements in central bank money where practical and available. If central bank money is not used, an FMI should minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money." The provisions of the CDSX Rules requiring entitlements to be paid in electronic format are in line with this principle. The Board of Directors, in considering the proposed Rule amendments, determined that a sunset provision should be imposed on the exemptions to the entitlement payment requirement for eligible securities. The exemptions will be of limited duration, and further Rule amendments to dispense with such exemptions will be brought forward at a later date. CDS anticipates that the exemptions, provided for by the proposed Rule amendments, will be withdrawn in the timeframes established by CPSS/IOSCO when the new international standards are implemented. CDS will continue to work with the financial services industry, including issuers and their agents, to achieve compliance with the new international standards.

B.4 Technical Amendments to French Version

It is noted that the French version of the Rule amendments includes technical amendments not in the English version, to correct minor typographical errors that occur only in the French version.

C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS

C.1 Competition

The Rule amendments ensure that there will not be a competitive disadvantage to issuers who are not yet in a position to use the Rule mandated electronic means of paying entitlements.

C.2 Risks and Compliance Costs

The Rule amendments do not impose any compliance costs on CDS, its participants or other market participants.

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

CDS's eligibility Rule, and the proposed exception to it, are adapted to the Canadian financial market and there is no direct comparison to other clearing agencies. CDS is closely following the development of new international standards for payment, clearing and settlement systems set out in the CPSS/IOSCO report *Principles for Financial Market Infrastructures*, and will continue to work with the financial services industry, including issuers and their agents, to achieve compliance with the new international standards for the processing of entitlements.

[3] The report can be found at http://www.bis.org/publ/cpss94.htm

D. DESCRIPTION OF THE RULE DRAFTING PROCESS

D.1 Development Context

CDS consulted with issuers and their agents to understand the barriers to compliance with the existing requirements for electronic payment of entitlements, and to design exceptions responsive to the circumstances of these issuers and their agents.

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 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. The LDG had no comments on the proposed Rule amendments.

These amendments were reviewed and approved by the Board of Directors of CDS Ltd. on April 22, 2011.

D.3 Issues Considered

CDS balanced the importance of electronic payment of entitlements against the market disruption that would be caused by making a number of securities ineligible for CDS. Substantial progress has been made towards the objective, and issuers and their agents continue to actively work with CDS to resolve the remaining issues. It was determined that imposing a firm deadline without exceptions would be counterproductive to the overall objective, as well as causing disruption to the issuers and to the financial industry in general.

D.4 Consultation

CDS has consulted widely with the financial services sector on this objective, primarily through the SDRC committee structure (CDS's Strategic Development Review Committee) and IIROC committees. CDS has worked closely with issuers and their agents to increase the use of electronic payments for entitlements. Most recently, CDS gave a presentation to the March 31 annual general meeting of STAC (the Stock Transfer Association of Canada), which included a discussion of the eligibility requirement.

Many Canadian transfer agents are not participants of CDS; as such transfer agents are not bound by the CDSX Rules, they do not routinely receive notice of changes to the CDSX Rules. CDS will provide a copy of this Notice to all transfer agents for CDSX eligible securities, to ensure that they are fully informed of the CDS policy with respect to the electronic payment of entitlements, and the anticipated implementation of the new CPSS/IOSCO standards.

D.5 Alternatives Considered

The alternative would be to have the eligibility requirement become effective on November 1, 2011 without exceptions. However, it was determined that to make the securities of these issuers ineligible would cause considerable disruption to participants, to their customers and to the issuers in question. For this reason, it was determined that exceptions should be made, as set out in the proposed Rule amendments.

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 Rules may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment.

E. TECHNOLOGICAL SYSTEMS CHANGES

The proposed exceptions to the entitlement payment requirement will not require any system changes for CDS, participants or other financial institutions.

F. COMPARISON TO OTHER CLEARING AGENCIES

CDS's eligibility Rule, and the proposed exception to it, are adapted to the Canadian financial market and there is no direct comparison to other clearing agencies.

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:

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

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^{e} Anne-Marie Beaudoin
Secrétaire del'Autorité
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Télécopieur: (514) 864-6381
Courrier électronique: consultation-en-cours@lautorite.qc.ca

Manager, Market Regulation
Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
e-mail: 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

Appendix "A" contains text of current CDS Participant Rules marked to reflect proposed amendments as well as text of these rules reflecting the adoption of the proposed amendments.

APPENDIX "A"

PROPOSED CDS RULE AMENDMENTS

[NOTE – for marked text of rules, additions are underlined; deletions are strikethrough text]

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
Rule 1 DOCUMENTATION **1.6 OVERVIEW OF CDSX SERVICES** **1.6.2 Eligibility of Securities and Currencies** Only Securities that CDS has determined are eligible may be deposited into or held in the Depository Service. CDS may determine from time to time the currencies in which Funds Accounts of Ledgers may be denominated and the classes of Securities for which Transactions may be processed in a particular Service or Function. CDS may determine from time to time that a particular Security shall be ineligible for the Depository Service or for any Service or Function. Securities may be made eligible for the Depository Service only if there is competent legislation providing that transactions in Securities of that class may be effected by entries made on the records of CDS. Notwithstanding the foregoing, the fact that no such legislation is found to be applicable to a Security shall not limit the effect and finality of the transfer of such Security to CDS on deposit into the Depository Service, nor of any Transaction or Settlement effected through the Services in respect of such Security. On November 1, 2011, those Securities in respect of which entitlement payments are not made by Acceptable Payments or Funds Transfer will be made ineligible for the Depository Service, subject to exceptions established by CDS based on criteria including the amount of the entitlement payment, the means by which the entitlement payment is made or the classification of the issuer making the entitlement payment.	**Rule 1 DOCUMENTATION** **1.6 OVERVIEW OF CDSX SERVICES** **1.6.2 Eligibility of Securities and Currencies** Only Securities that CDS has determined are eligible may be deposited into or held in the Depository Service. CDS may determine from time to time the currencies in which Funds Accounts of Ledgers may be denominated and the classes of Securities for which Transactions may be processed in a particular Service or Function. CDS may determine from time to time that a particular Security shall be ineligible for the Depository Service or for any Service or Function. Securities may be made eligible for the Depository Service only if there is competent legislation providing that transactions in Securities of that class may be effected by entries made on the records of CDS. Notwithstanding the foregoing, the fact that no such legislation is found to be applicable to a Security shall not limit the effect and finality of the transfer of such Security to CDS on deposit into the Depository Service, nor of any Transaction or Settlement effected through the Services in respect of such Security. On November 1, 2011, those Securities in respect of which entitlement payments are not made by Acceptable Payments or Funds Transfer will be made ineligible for the Depository Service, subject to exceptions established by CDS based on criteria including the amount of the entitlement payment, the means by which the entitlement payment is made or the classification of the issuer making the entitlement payment.
RULE 6 DEPOSITORY SERVICE **6.2 DEPOSIT OF SECURITIES** **6.2.1 Eligibility** Only Securities that CDS has determined are eligible may be deposited into or held in the Depository Service. CDS may determine from time to time the classes of Securities for which Transactions may be processed in a particular Service or Function. CDS may determine from time to time that a particular Security shall be ineligible for the Depository Service or for any Service or Function. Securities may be made eligible for the Depository Service only if there is competent legislation providing that transactions in Securities of that class may be effected by entries made on the records of CDS. The Procedures and User Guides describe the types of Securities that CDS has determined are eligible for the Depository Service. For each eligible Security, facilities for deposit (and, if applicable, withdrawal) are provided by one of CDS, Bank of Canada, the Transfer Agent for the Issuer, the Issuer acting as its own registrar, a Security Validator or a Custodian. On November 1, 2011, those Securities in respect of which entitlement payments are not made by Acceptable Payments or Funds Transfer will be made ineligible for the	**RULE 6 DEPOSITORY SERVICE** **6.2 DEPOSIT OF SECURITIES** **6.2.1 Eligibility** Only Securities that CDS has determined are eligible may be deposited into or held in the Depository Service. CDS may determine from time to time the classes of Securities for which Transactions may be processed in a particular Service or Function. CDS may determine from time to time that a particular Security shall be ineligible for the Depository Service or for any Service or Function. Securities may be made eligible for the Depository Service only if there is competent legislation providing that transactions in Securities of that class may be effected by entries made on the records of CDS. The Procedures and User Guides describe the types of Securities that CDS has determined are eligible for the Depository Service. For each eligible Security, facilities for deposit (and, if applicable, withdrawal) are provided by one of CDS, Bank of Canada, the Transfer Agent for the Issuer, the Issuer acting as its own registrar, a Security Validator or a Custodian. On November 1, 2011, those Securities in respect of which entitlement payments are not made by Acceptable Payments or Funds Transfer will be made ineligible for the Depository Service, subject to

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
Depository Service, subject to exceptions established by CDS based on criteria including the amount of the entitlement payment, the means by which the entitlement payment is made or the classification of the issuer making the entitlement payment.	exceptions established by CDS based on criteria including the amount of the entitlement payment, the means by which the entitlement payment is made or the classification of the issuer making the entitlement payment.
RULE 11 TA PARTICIPANTS **11.3 OPERATIONS** **11.3.1 Eligibility of Securities**	**RULE 11 TA PARTICIPANTS** **11.3 OPERATIONS** **11.3.1 Eligibility of Securities**
In accordance with Rule 1.6.2, the Board of Directors determines from time to time the classes of Securities that may be made eligible for the Depository Service and the classes of Securities for which Transactions may be processed in particular Services or Functions. The Procedures and User Guides describe the types of Securities that are eligible for the Depository Service. Not all Securities for which a Participant is the Transfer Agent of the Issuer may be eligible. A TA Participant that is the Transfer Agent for a Security that has been made eligible for CDSX shall confirm or reject the Deposit and Withdrawal of such Securities and provide a Closing Balance Report to CDS for that Security. A TA Participant is not obliged to assume the role of a CDSX Depositary Agent or Entitlements Processor with respect to a particular Security by reason only that it is the agent of the offeror or the Issuer with respect to that Security. On November 1, 2011, those Securities in respect of which entitlement payments are not made by Acceptable Payments or Funds Transfer will be made ineligible for the Depository Service, subject to exceptions established by CDS based on criteria including the amount of the entitlement payment, the means by which the entitlement payment is made or the classification of the issuer making the entitlement payment.	In accordance with Rule 1.6.2, the Board of Directors determines from time to time the classes of Securities that may be made eligible for the Depository Service and the classes of Securities for which Transactions may be processed in particular Services or Functions. The Procedures and User Guides describe the types of Securities that are eligible for the Depository Service. Not all Securities for which a Participant is the Transfer Agent of the Issuer may be eligible. A TA Participant that is the Transfer Agent for a Security that has been made eligible for CDSX shall confirm or reject the Deposit and Withdrawal of such Securities and provide a Closing Balance Report to CDS for that Security. A TA Participant is not obliged to assume the role of a CDSX Depositary Agent or Entitlements Processor with respect to a particular Security by reason only that it is the agent of the offeror or the Issuer with respect to that Security. On November 1, 2011, those Securities in respect of which entitlement payments are not made by Acceptable Payments or Funds Transfer will be made ineligible for the Depository Service, subject to exceptions established by CDS based on criteria including the amount of the entitlement payment, the means by which the entitlement payment is made or the classification of the issuer making the entitlement payment.
11.6 ENTITLEMENTS **11.6.1 Payment of Entitlements**	**11.6 ENTITLEMENTS** **11.6.1 Payment of Entitlements**
An entitlement payment received by CDS with respect to Securities held for a Participant in the Depository Service is distributed to the Participant by CDS pursuant to Rule 7.	An entitlement payment received by CDS with respect to Securities held for a Participant in the Depository Service is distributed to the Participant by CDS pursuant to Rule 7.
Transition Period	**Transition Period**
Subject to Rule 11.6.1(b) below, the TA Participant and CDS will co-operate and use their best efforts to arrange for an entitlement to be paid either (i) by an Entitlements Processor acting on behalf of the Issuer, by means of a credit to the CDS Entitlements Ledger from its Funds Account, or (ii) by the Issuer or its Entitlements Processor, by means of an LVTS or Fedwire payment to the bank account specified by CDS.	Subject to Rule 11.6.1(b) below, the TA Participant and CDS will co-operate and use their best efforts to arrange for an entitlement to be paid either (i) by an Entitlements Processor acting on behalf of the Issuer, by means of a credit to the CDS Entitlements Ledger from its Funds Account, or (ii) by the Issuer or its Entitlements Processor, by means of an LVTS or Fedwire payment to the bank account specified by CDS.
Future Payment of Entitlements	**Future Payment of Entitlements**
On November 1, 2011, the TA Participant will arrange for all entitlements to be paid by means of Acceptable Payments (as defined in Rule 8.2.5) or Funds Transfer, subject to exceptions established by CDS based on criteria including the amount of the entitlement payment, the means by which the entitlement payment is made or the classification of the	On November 1, 2011, the TA Participant will arrange for all entitlements to be paid by means of Acceptable Payments (as defined in Rule 8.2.5) or Funds Transfer, subject to exceptions established by CDS based on criteria including the amount of the entitlement payment, the means by which the entitlement payment is made or the classification of the

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
issuer making the entitlement payment.	issuer making the entitlement payment.

13.3.2 CDS – Request for Comments – Material Amendments to CDS Rules – Requirement for Uncertificated Withdrawal of Securities

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS RULES

REQUIREMENT FOR UNCERTIFICATED WITHDRAWAL OF SECURITIES

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS RULE AMENDMENTS

The proposed amendments to the CDS Rules will require participants to withdraw securities from the CDSX® system in uncertificated format where the issuer offers a direct registration system.

B. NATURE AND PURPOSE OF THE PROPOSED CDS RULE AMENDMENTS

B.1 Proposed Amendment

The proposed Rule amendments are a further step toward the objective of paperless processing of securities transactions and holdings. The Rule amendments promote a reduction in the use of certificates evidencing securities. Progress towards the dematerialization of securities will require changes to market practices made by individual issuers and transfer agents.

B.2 Paperless Processing of Securities Transactions

Certificates require manual handling, which increases costs and reduces efficiency. Costs associated with certificates include vaults, special custody procedures, audits, surety bonds, specialized transportation and handling, and clerical processing. Certificates also give rise to the risk of theft or loss, with the resulting costs to replace certificates. DTC has estimated that the annual cost to the American securities industry in handling paper security certificates approaches $250 million; no definitive studies have been done in Canada, but it can be assumed that the Canadian costs are proportionate. CDS has supported many initiatives by the financial services sector to reduce the number of security certificates. Recent CDS dematerialization efforts include destruction of NTI certificates, development of trust indentures for book-entry only security issuance, electronic closings, TRAX to facilitate the electronic processing of stock options and buy backs, warrant subscriptions in uncertificated form, and a fee structure that provides incentives for issuers to avoid certificate issuance.

Certain Canadian transfer agents are promoting the use of a direct registration system (DRS) and encouraging issuers to make the change to such systems, to reduce the number of share certificates issued and the resulting costs in handling and transfers. In such a system, when a security is issued or transferred, the security holder receives a statement showing the security holding, in place of a certificate evidencing the security. The system does not impinge on the rights of shareholders, who may continue to request a certificate. Transfers of DRS securities are accomplished by submitting the usual form of stock power of attorney signed by the registered holder, together with the direct registration system statement.

CDS proposes changes to its Rules to support these initiatives by the transfer agent sector. Under the amended Rules, when a participant withdraws a security from CDSX and the issuer uses DRS, CDSX will default the withdrawal request to DRS format instead of a physical certificate; the participant will not have the option to choose certificated format for the withdrawn securities. The transfer agent will not deliver a physical certificate evidencing the withdrawn security. Instead, the transfer agent will issue a statement to the new registered holder of the withdrawn security confirming that the security has been transferred and is now registered in the name of the new holder (generally the participant's customer).

B.3 New International Standards

The Canadian financial services industry is subject to developing international standards. In March of 2011, the Bank for International Settlements, through its committees the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO), issued a draft report for public consultation. The report, *Principles for Financial Market Infrastructures*, proposes new international standards for payment, clearing and settlement systems.[1] After a consultation period, CPSS and IOSCO will review all comments received and publish a final report in early 2012. It is proposed that the new principles will be implemented in legal and regulatory frameworks by the end of 2012. The report states that the new principles "are designed to ensure that the essential infrastructure supporting global financial markets is even more robust and thus even better placed to withstand financial shocks than at present". Financial market infrastructures or "FMIs", including central securities depositories and securities settlement systems such as CDS, will be

[1] The report can be found at http://www.bis.org/publ/cpss94.htm

expected to take "appropriate and swift action" to comply with the new standards. CDS is following these developments closely, and will take the necessary steps to ensure that it complies with the new standards when they are implemented. Principle #10 - Physical Deliveries states: "An FMI should clearly state its obligations with respect to the delivery of physical instruments or commodities and should identify, monitor, and manage the risks associated with such physical deliveries." Principle #11 - Central Securities Depositories (CSD) states: "A CSD should have appropriate rules and procedures to help ensure the integrity of securities issues and minimise and manage the risks associated with the safekeeping and transfer of securities. A CSD should maintain securities in an immobilised or dematerialised form for their transfer by book entry." The detailed explanation of this principle states that a CSD "should strive to support securities immobilisation or dematerialisation to the greatest extent possible, such as through the use of incentives" if legal considerations prevent the full implementation of a dematerialization strategy. The Board of Directors, in considering the proposed Rule amendments, directed that participants should be advised that CDS will continue its efforts to achieve the objective of paperless processing of securities transactions. Further Rule amendments to support the elimination of the use of security certificates will be brought forward at a later date. CDS anticipates that any necessary further amendments will be put forward in the timeframes established by CPSS/IOSCO when the new international standards are implemented. CDS will continue to work with the financial services industry, including issuers and their agents, to achieve compliance with the new international standards.

C. IMPACT OF THE PROPOSED CDS RULE AMENDMENTS

C.1 Competition

All CDS participants will be subject to the same requirement, so there will be no competitive disadvantage among them. Several Canadian transfer agents offer DRS processing to their issuers, and a number are considering this option. Nothing in the Rule amendments will require any issuer or transfer agent to use DRS processing.

C.2 Risks and Compliance Costs

The reduced costs and increased efficiencies in DRS processing will benefit all users.

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

Dematerialization in the securities industry is an objective supported by all international regulatory and advisory groups. As noted below (see section F), many other jurisdictions have advanced to a completely dematerialized system, and others are moving towards that objective. CDS is closely following the development of new international standards for payment, clearing and settlement systems set out in the CPSS/IOSCO report *Principles for Financial Market Infrastructures*, and will continue to work with the financial services industry, including issuers and their agents, to achieve compliance with the new international standards to limit the use of certificated securities.

D. DESCRIPTION OF THE RULE DRAFTING PROCESS

D.1 Development Context

CDS consulted with transfer agents to understand their DRS systems, and how best to integrate these with the CDSX system in securities withdrawal processing. CDS also consulted with participants on their requirements for records of withdrawals, and ability to communicate with customers.

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 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. The LDG had no comment on the proposed Rule amendments.

These Rule amendments were reviewed and approved by the Board of Directors of CDS Ltd. on April 20, 2011.

D.3 Issues Considered

CDS reviewed the increasing use of DRS processing in the Canadian securities industry, and considered how best to integrate this processing with the CDSX system. It was determined that the primary point of contact between DRS issuer systems and CDSX was the point at which participants withdraw securities form DRS, and that this was the only point at which a change in CDSX processes would be required.

D.4 Consultation

CDS has consulted widely with the financial services sector on its dematerialization objectives. CDS gave a presentation to the March 31, 2011 annual general meeting of STAC (the Stock Transfer Association of Canada). CDS has also had detailed discussions with a number of transfer agents, in order to understand their direct registration system initiatives. Computershare has reported that a large number (over 1200) of its issuers are now using, or in the process of switching to, DRS. Other transfer agents have indicated that they are beginning to implement DRS as an option for their issuers.

CDS has also discussed the proposal with its participants. A presentation was made to the FAS Operations Committee (the Financial Administrators Section of IIROC), which represents the Canadian broker community. The initiative has also been reported to CDS participants at the Debt and Equity Subcommittee of the SDRC (CDS's Strategic Development Review Committee).

Many Canadian transfer agents are not participants of CDS; as such transfer agents are not bound by the CDSX Rules, they do not routinely receive notice of changes to the CDSX Rules. CDS will provide a copy of this Notice to all transfer agents for CDSX eligible securities, to ensure that they are fully informed of the CDS policy with respect to the uncertificated withdrawal of DRS securities, and the anticipated implementation of the new CPSS/IOSCO standards.

D.5 Alternatives Considered

CDS considered the alternative of giving participants the option to have a physical certificate delivered, even where the issuer and its transfer agent offer DRS processing. It was determined that it would be most efficient for transfer agents and participants to have a single automatic withdrawal process. Participants and their customers retain the ability to have securities evidenced by a certificate, once the withdrawal from CDSX is complete.

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 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

Implementation of the restriction on certificated withdrawal will require limited system development to CDSX. The CDSX Security Master File will identify which issuers offer DRS, and will default withdrawal requests for securities of those issuers to DRS format. In addition, CDSX will be enhanced, so that an additional confirmation notification is delivered to each participant when a withdrawal is completed in uncertificated DRS format. Without such confirmation, the participant would not otherwise have a separate record of the completion of the withdrawal. The confirmation provides a separate record of the completion of the withdrawal. Participants may use a copy of the confirmation to report to their customers, as described in the next section.

E.2 CDS Participants

It is not anticipated that participants will have to make significant system changes to comply with the amended Rule. Certain changes in back office processing and customer communication will be required to reflect the delivery of direct registration statements in place of certificates. When securities are withdrawn in certificated format under the current, non-DRS processing, the certificate (even if registered in the name of the participant's customer) is delivered to the participant; the participant then delivers the certificate to its customer. In the new DRS processing of withdrawals, the transfer agent delivers the DRS security registration statement directly to the registered holder, usually the participant's customer. It is for this reason that CDS proposes to enhance CDSX, as noted above, to generate a separate confirmation of a withdrawal in DRS format. Participant back office systems will receive, and must be able to appropriately process, the CDSX system-generated confirmation of a withdrawal in uncertificated DRS format. This confirmation provides the participant with a separate record of the completion of the withdrawal; it is anticipated that participants will wish to enhance their systems in order to use the confirmation to report to their customer on the withdrawal. Participants will benefit from the increased efficiency and reduced costs arising from the reduction in the handling of security certificates. While there will be some initial costs to participants in making these system enhancements, it is anticipated that there will be a net benefit to participants, particularly as more issuers and transfer agents adopt a DRS system.

A DRS position can be deposited back into CDSX at a later date without difficulty. The participant will use its customer's DRS security registration statement to provide the information necessary to complete the deposit instructions (DRS identification number); the statement, together with the standard stock power of attorney holder (guaranteed and/or medallion stamped), will be delivered to the transfer agent. The transfer agent will then transfer the securities into CDS Nominee name, and confirm the deposit.

E.3 Other Market Participants

A number of Canadian transfer agents now offer a DRS system to issuers, and others are in the process of introducing this option for issuers using their services. Transfer agents must make system changes in order to offer a DRS option. The CDS Rules do not in any way compel an issuer or a transfer agent to adopt a DRS system; that remains a business decision entirely outside of the scope of the CDS Rules. The proposed Rule amendments do support those issuers and their transfer agents who have independently chosen the DRS option, enabling them to interact more efficiently with the financial institutions that are CDS participants.

The position of customers of participants (the beneficial owners of securities) is not directly affected by the Rules. The DRS system is being implemented by many Canadian issuers; the Rule amendments and system enhancements provide an efficient interface between these DRS systems and CDSX, for the benefit of the financial institutions that are participants. However, it is not anticipated that the customers who are the beneficial owners of securities will be negatively affected. They will benefit from the reduced risk in receiving regular DRS statements, rather that having to provide safekeeping for a potentially negotiable security certificate. Issuers will continue to comply with legislative or regulatory requirements to supply a security certificate when requested by the registered holder. As noted above, customers can provide their financial institutions with the DRS registration statement and a stock power of attorney when the customer wishes to transfer the securities.

F. COMPARISON TO OTHER CLEARING AGENCIES

The Securities and Exchange Commission approved a rule change by The Depository Trust Company (DTC) to eliminate issuing physical certificates for withdrawals beginning January 1, 2009. The rule applies to all issues that participate in DTC's direct registration system. In 2008, all the major and regional exchanges in the United States mandated that direct registration system become a listing requirement for all issues. Eliminating withdrawals in physical certificate format is part of DTC's overall dematerialization efforts aimed at eliminating all paper certificates in the securities industry. DTC states: "Both the industry and the U.S. government continue to encourage dematerialization, knowing that paper certificates are inefficient and increase the risk of lost or stolen certificates."[2]

Markets in many countries around the world no longer issue paper securities at all. New Zealand, for example, won't permit a company to list its stock on the exchange if it insists on issuing paper certificates. Many countries in Europe, Asia, and South America are using paperless electronic securities either exclusively or predominately.

G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest. The Rule amendments support dematerialization, which reduces costs and risk in the financial services industry as a whole.

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:

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

[2] DTCC Thought Leadership: Industry Issues release "SEC Approves Eliminating Paper Certificates for Withdrawals-by-Transfer", available at htpp://www.dtcc.com/leadership/issues/nomorepaper/about/announcements.php

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:

Me Anne-Marie Beaudoin
Secrétaire del'Autorité
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Télécopieur: (514) 864-6381
Courrier électronique: consultation-en-cours@lautorite.qc.ca

Manager, Market Regulation
Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
e-mail: 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

Appendix "A" contains text of current CDS Participant Rules marked to reflect proposed amendments as well as text of these rules reflecting the adoption of the proposed amendments.

APPENDIX "A"

PROPOSED CDS RULE AMENDMENTS

[NOTE – for marked text of rules, additions are underlined; deletions are strikethrough text]

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
Rule 6 Depository Service **6.3.3 Withdrawal of Securities** **6.3.3.1 Withdrawal of Securities** A Participant withdraws eligible Securities from the Depository Service by requesting a withdrawal from its Ledger and taking the steps set out in the Procedures and User Guides for that class of Security. Withdrawal of Securities prior to completion of Payment Exchange must satisfy the ACV edit. Securities in respect of which a withdrawal request has been made are debited from the Participant's Securities Account and credited to the Participant's Withdrawal Account. Securities credited to a Withdrawal Account are held for the Participant, but the Participant cannot effect any Transactions affecting such Securities. If a withdrawal request is rejected, the Securities shall be transferred back to the Participant's Securities Account. A withdrawal is effected only when the withdrawal request is confirmed by the Person with the appropriate withdrawal facility for that Security (Bank of Canada, the Issuer, the Transfer Agent, the Security Validator or the Custodian, as appropriate). Upon withdrawal, CDS debits the Securities from the Withdrawal Account of the Participant. ~~The withdrawn Securities shall be made available in accordance with the instructions of the withdrawing Participant, including delivery of a Security Certificate evidencing the withdrawn Securities or confirmation by the Transfer Agent or Custodian that the withdrawn Securities are held for or registered in accordance with such instructions.~~ The Transfer Agent or Custodian for the withdrawn Securities will either (i) deliver a Security Certificate evidencing the withdrawn Securities, registered in accordance with the instructions of the withdrawing Participant, or (ii) for Securities in a direct registration system described in Rule 6.3.3.3, provide a statement confirming that the withdrawn Securities are registered in accordance with such instructions.	**Rule 6 Depository Service** **6.3.3 Withdrawal of Securities** **6.3.3.1 Withdrawal of Securities** A Participant withdraws eligible Securities from the Depository Service by requesting a withdrawal from its Ledger and taking the steps set out in the Procedures and User Guides for that class of Security. Withdrawal of Securities prior to completion of Payment Exchange must satisfy the ACV edit. Securities in respect of which a withdrawal request has been made are debited from the Participant's Securities Account and credited to the Participant's Withdrawal Account. Securities credited to a Withdrawal Account are held for the Participant, but the Participant cannot effect any Transactions affecting such Securities. If a withdrawal request is rejected, the Securities shall be transferred back to the Participant's Securities Account. A withdrawal is effected only when the withdrawal request is confirmed by the Person with the appropriate withdrawal facility for that Security (Bank of Canada, the Issuer, the Transfer Agent, the Security Validator or the Custodian, as appropriate). Upon withdrawal, CDS debits the Securities from the Withdrawal Account of the Participant. The Transfer Agent or Custodian for the withdrawn Securities will either (i) deliver a Security Certificate evidencing the withdrawn Securities, registered in accordance with the instructions of the withdrawing Participant, or (ii) for Securities in a direct registration system described in Rule 6.3.3.3, provide a statement confirming that the withdrawn Securities are registered in accordance with such instructions.
6.3.3.3 Uncertificated Withdrawal in Issuer's Direct Registration System Where the Issuer of a Security offers a direct registration system, a Participant making a withdrawal may not request a Security Certificate evidencing the withdrawn Securities; the Transfer Agent or Custodian will provide a statement confirming that the withdrawn Securities are registered in accordance with the instructions of the withdrawing Participant. Nothing in this Rule restricts the rights of a Participant or other holder of the withdrawn Security to request a certificate when the Security is no longer held in CDSX after completion of the withdrawal process. A direct registration system for a particular Security means that the Issuer offers holders of that Security the option of holding the Security by registration in the name of the holder without	**6.3.3.3 Uncertificated Withdrawal in Issuer's Direct Registration System** Where the Issuer of a Security offers a direct registration system, a Participant making a withdrawal may not request a Security Certificate evidencing the withdrawn Securities; the Transfer Agent or Custodian will provide a statement confirming that the withdrawn Securities are registered in accordance with the instructions of the withdrawing Participant. Nothing in this Rule restricts the rights of a Participant or other holder of the withdrawn Security to request a certificate when the Security is no longer held in CDSX after completion of the withdrawal process. A direct registration system for a particular Security means that the Issuer offers holders of that Security the option of holding the Security by registration in the name of the holder without

Text of CDS Participant Rules marked to reflect proposed amendments	Text CDS Participant Rules reflecting the adoption of proposed amendments
the issuance of a physical certificate evidencing the Security. **Rule 11 TA Participants** **11.4.7 Withdrawal of Securities** Regardless of the identity of the Participant who requests the Withdrawal of a Security, such Person shall be deemed to be acting on behalf of CDS in presenting the Security for registration of transfer out of CDS Name. Withdrawal instructions shall constitute delivery by CDS (and its Nominee, if applicable) of a valid assignment of the Securities to the transferee specified in the instructions, and an endorsement by CDS and its Nominee of any certificate or statement evidencing the Securities to be Withdrawn. The TA Participant will confirm to CDS when the Withdrawal has been effected. CDS will then debit the Withdrawn Securities from the account of the Withdrawing Participant. ~~The TA Participant will deliver a certificate or statement evidencing the Withdrawn Securities, registered in the name of the transferee specified in the instructions.~~ The TA Participant will either (i) deliver a Security Certificate evidencing the withdrawn Securities, registered in accordance with the withdrawal instructions, or (ii) for Securities in a direct registration system described in Rule 6.3.3.3, provide a statement confirming that the withdrawn Securities are registered in accordance with such instructions. Nothing in this Rule shall require CDS or any TA Participant to deliver any Security in contravention of any constraint in the conditions or attributes of the Security, or of any adverse claim, execution, writ, seizure or similar action, or any order or judgment of a governmental or regulatory agency or court or officer thereof, having jurisdiction over CDS, the TA Participant or the Security, which on its face affects such Security.	the issuance of a physical certificate evidencing the Security. **Rule 11 TA Participants** **11.4.7 Withdrawal of Securities** Regardless of the identity of the Participant who requests the Withdrawal of a Security, such Person shall be deemed to be acting on behalf of CDS in presenting the Security for registration of transfer out of CDS Name. Withdrawal instructions shall constitute delivery by CDS (and its Nominee, if applicable) of a valid assignment of the Securities to the transferee specified in the instructions, and an endorsement by CDS and its Nominee of any certificate or statement evidencing the Securities to be Withdrawn. The TA Participant will confirm to CDS when the Withdrawal has been effected. CDS will then debit the Withdrawn Securities from the account of the Withdrawing Participant. The TA Participant will either (i) deliver a Security Certificate evidencing the withdrawn Securities, registered in accordance with the withdrawal instructions, or (ii) for Securities in a direct registration system described in Rule 6.3.3.3, provide a statement confirming that the withdrawn Securities are registered in accordance with such instructions. Nothing in this Rule shall require CDS or any TA Participant to deliver any Security in contravention of any constraint in the conditions or attributes of the Security, or of any adverse claim, execution, writ, seizure or similar action, or any order or judgment of a governmental or regulatory agency or court or officer thereof, having jurisdiction over CDS, the TA Participant or the Security, which on its face affects such Security.

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