**The Ontario Securities Commission**

# OSC Bulletin

June 17, 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)

**The Ontario Securities Commission**
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Toronto, Ontario
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# Table of Contents

# Chapter 1

# Notices / News Releases

## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**June 17, 2011**

**CURRENT PROCEEDINGS**

**BEFORE**

**ONTARIO SECURITIES COMMISSION**

- - - - - - - - - - - - - - - - - - - - - - -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
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| Lawrence E. Ritchie, Vice Chair | — | LER |
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| Kevin J. Kelly | — | KJK |
| Paulette L. Kennedy | — | PLK |
| Edward P. Kerwin | — | EPK |
| Vern Krishna | — | VK |
| Christopher Portner | — | CP |
| Judith N. Robertson | — | JNR |
| Charles Wesley Moore (Wes) Scott | — | CWMS |

**SCHEDULED OSC HEARINGS**

| | |
|---|---|
| June 20 and June 22-29, 2011<br><br>10:00 a.m. | **Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk**<br><br>s. 37, 127 and 127.1<br><br>C. Price in attendance for Staff<br><br>Panel: JDC/MCH |
| June 22, 2011<br><br>10:00 a.m. | **Energy Syndications Inc., Green Syndications Inc., Syndications Canada Inc., Land Syndications Inc. and Douglas Chaddock**<br><br>s. 127<br><br>C. Johnson in attendance for Staff<br><br>Panel: JEAT |
| June 28, 2011<br><br>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.**<br><br>s. 127<br><br>A. Perschy in attendance for Staff<br><br>Panel: CP |

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|---|---|
| June 29, 2011<br>3:00 p.m. | **Bernard Boily**<br>s. 127 and 127.1<br>M. Vaillancourt/U. Sheikh in attendance for Staff<br>Panel: VK |
| July 5, 2011<br>2:30 p.m. | **Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins**<br>s. 127<br>C. Rossi in attendance for Staff<br>Panel: CP/CWMS |
| July 6-7, 2011<br>10:00 a.m. | **Sunil Tulsiani, Tulsiani Investments Inc., Private Investment Club Inc., and Gulfland Holdings LLC**<br>s. 127<br>J. Feasby in attendance for Staff<br>Panel: VK/CWMS |
| July 8, 2011<br>10:00 a.m. | **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**<br>s. 127(1) and 127(5)<br>C. Watson in attendance for Staff<br>Panel: MGC/PLK |
| July 11, 2011<br>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**<br>s. 127<br>H. Craig in attendance for Staff<br>Panel: TBA |
| July 11, 2011<br>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**<br>s. 37, 127 and 127.1<br>H. Craig in attendance for Staff<br>Panel: TBA |
| July 11, 2011<br>11:30 a.m. | **TBS New Media Ltd., TBS New Media PLC, CNF Food Corp., CNF Candy Corp., Ari Jonathan Firestone and Mark Green**<br>s. 127<br>H. Craig in attendance for Staff<br>Panel: CP |
| July 15, 2011<br>10:00 a.m. | **Hillcorp International Services, Hillcorp Wealth Management, Suncorp Holdings, 1621852 Ontario Limited, Steven John Hill, and Danny De Melo**<br>s. 127<br>A. Clark in attendance for Staff<br>Panel: JEAT |

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| July 15, 2011<br><br>11:00 a.m. | **Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Siklos (Also Known As Peter Kuti), Jan Chomica, and Lorne Banks**<br><br>s. 127<br><br>H. Craig/C. Rossi in attendance for Staff<br><br>Panel: JEAT |
| July 18 and July 20-25, 2011<br><br>10:00 a.m. | **Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt**<br><br>s. 127<br><br>M. Vaillancourt in attendance for Staff<br><br>Panel: TBA |
| July 20, 2011<br><br>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"**<br>s. 127<br><br>B. Shulman in attendance for Staff<br><br>Panel: JEAT |
| July 20-22 & July 26-28, 2011<br><br>10:00 a.m. | **York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott Bassingdale**<br><br>s. 127<br><br>H. Craig/C. Watson in attendance for Staff<br><br>Panel: VK/EPK |
| July 20, 2011<br><br>11:00 a.m. | **L.T.M.T. Trading Ltd. also known as L.T.M.T. Trading and Bernard Shaw**<br><br>s. 127<br><br>A. Heydon in attendance for Staff<br><br>Panel: JEAT |
| July 26, 2011<br><br>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)**<br><br>s. 127<br><br>S. Chandra in attendance for Staff<br><br>Panel: EPK |
| July 27, 2011<br><br>10:00 a.m. | **Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: EPK |
| July 27, 2011<br><br>11:00 a.m. | **Peter Sbaraglia**<br><br>s. 127<br><br>S. Horgan/P. Foy in attendance for Staff<br><br>Panel: EPK |
| July 29, 2011<br><br>10:00 a.m. | **North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti**<br><br>s. 127<br><br>M. Vaillancourt in attendance for Staff<br><br>Panel: EPK |

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| August 10, 2011<br><br>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**<br><br>s. 127<br><br>M. Vaillancourt in attendance for Staff<br><br>Panel: JEAT |
| September 6, 7, 9 and 12, 2011<br><br>10:00 a.m. | **Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman**<br><br>s. 127(7) and 127(8)<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| September 6-12, September 14-26 and September 28, 2011<br><br>10:00 a.m. | **Anthony Ianno and Saverio Manzo**<br><br>s. 127 and 127.1<br><br>A. Clark in attendance for Staff<br><br>Panel: EPK/PLK |
| September 8, 2011<br><br>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**<br><br>s. 127<br><br>J. Feasby in attendance for Staff<br><br>Panel: JEAT |
| September 12, 2011<br><br>10:00 a.m.<br><br>September 13, 2011<br><br>2:00 p.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**<br><br>s. 127 and 127.1<br><br>H. Daley in attendance for Staff<br><br>Panel: JDC/MCH |
| September 14-23, September 28 – October 4, 2011<br><br>10:00 a.m. | **Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**<br><br>s. 127 and 127.1<br><br>D. Ferris in attendance for Staff<br><br>Panel: VK/MCH |
| October 3-7 and October 12-21, 2011<br><br>10:00 a.m. | **FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun**<br><br>s. 127<br><br>C. Price in attendance for Staff<br><br>Panel: CP |

October 5, 2011

10:00 a.m.

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

s. 127 and 127.1

H. Craig in attendance for Staff

Panel: MGC

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

October 31 – November 3, 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

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: JDC

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| December 5 and December 7-16, 2011<br><br>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.**<br><br>s. 127<br><br>M. Britton in attendance for Staff<br><br>Panel: EPK/PLK |
| January 3-10, 2012<br><br>10:00 a.m. | **Simply Wealth Financial Group Inc., Naida Allarde, Bernardo Giangrosso, K&S Global Wealth Creative Strategies Inc., Kevin Persaud, Maxine Lobban and Wayne Lobban**<br><br>s. 127 and 127.1<br><br>C. Johnson in attendance for Staff<br><br>Panel: JDC |
| January 18-30 and February 1-10, 2012<br><br>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**<br><br>s. 37, 127 and 127.1<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| February 1-13, February 15-17 and February 21-23, 2012<br><br>10:00 a.m. | **Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group**<br><br>s. 127 and 127.1<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| TBA | **Yama Abdullah Yaqeen**<br><br>s. 8(2)<br><br>J. Superina in attendance for Staff<br><br>Panel: TBA |
| TBA | **Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell**<br><br>s. 127<br><br>J. Waechter in attendance for Staff<br><br>Panel: TBA |
| TBA | **Frank Dunn, Douglas Beatty, Michael Gollogly**<br><br>s. 127<br><br>K. Daniels in attendance for Staff<br><br>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

**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

**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

**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

**Axcess Automation LLC, Axcess Fund Management, LLC, Axcess Fund, L.P., Gordon Alan Driver, David Rutledge, 6845941 Canada Inc. carrying on business as Anesis Investments, Steven M. Taylor, Berkshire Management Services Inc. carrying on business as International Communication Strategies, 1303066 Ontario Ltd. Carrying on business as ACG Graphic Communications, Montecassino Management Corporation, Reynold Mainse, World Class Communications Inc. and Ronald Mainse**

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

**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 Notice 11-753 (Revised) – Notice of Statement of Priorities for Financial Year to End March 31, 2012

**OSC NOTICE 11-753 (REVISED)**

**NOTICE OF STATEMENT OF PRIORITIES**
**FOR FINANCIAL YEAR TO END MARCH 31, 2012**

The *Securities Act* requires the Commission to deliver to the Minister by June 30th of each year a statement of the Commission setting out its priorities for its current financial year in connection with the administration of the Act, the regulations and rules, together with a summary of the reasons for the adoption of the priorities.

In the notice published by the Commission on February 25, 2011 (34 OSCB 2266), the Commission set out its draft Statement of Priorities and invited public input in advance of finalizing and publishing the 2010/2012 Statement of Priorities. Nine responses were received. The responses were generally supportive of the direction and goals we have set. Comments focused on a wide range of issues including:

i) A number of respondents suggested that the OSC needs to focus on better disclosure in order to protect investors, rather than more disclosure. Equally important is that investors actually understand the products, their associated risks, and their costs.

ii) Respondents endorsed the need for more active consultation with retail investors including research to better understand their needs and concerns.

iii) A number of comments focused on implementing measures to protect investors from harmful practices and to award, where appropriate, financial compensation to those investors who have suffered losses as a result of violations of the *Securities Act*.

iv) Respondents requested more clarity on the regulatory results we are seeking with our proposed priorities and how we will measure our performance in attaining them.

We have considered the comments received and amended the 2011/2012 Statement of Priorities to reflect a number of initiatives that address these points:

i) Work with the Ontario Government to explore a mechanism by which the OSC could award compensation to Ontario investors who suffer losses because of violations of the *Securities Act* (Ontario).

ii) Research the pros and cons of imposing a fiduciary duty on financial advisors and identify what problems we think that introducing a statutory fiduciary duty would resolve. At the same time, we will continue to identify specific standards against which advisors' conduct can be measured.

iii) Work with the CSA, IIROC and the MFDA to develop harmonized standards for cost disclosure and performance reporting to investors. The proposed rules will apply to all dealers and advisers in relation to all securities and investment products they sell and will, if adopted, dramatically change the account reporting most clients currently receive. We expect that the proposed rules will address many of the securities-industry related recommendations of the recent Financial Literacy Task Force Report (December 2010).

iv) Continue implementation of the point of sale (POS) initiative for mutual funds and begin work on expanding POS delivery to other types of publicly offered investment fund products. (As work on the POS initiative continues, the OSC will monitor its impact on price competition in mutual funds).

v) Demonstrate the importance to the regulatory process of obtaining verifiable data, as well as gathering feedback and views of investors through town hall meetings and round tables.

The comment letters and our responses to the comments are available on our website www.osc.gov.on.ca. The comment letters include useful suggestions focused on specific action that could be taken while working toward our identified priorities. These comments will be considered in undertaking the identified initiatives.

The Statement of Priorities will serve as the guide for the Commission's operations. Following delivery of the Statement of Priorities to the Minister, we will also publish on our website a report on our progress against our 2010/2011 priorities.

June 17, 2011

For further information contact:

Robert Day
Manager, Business Planning
Ontario Securities Commission

**ONTARIO SECURITIES COMMISSION**
**2011-2012**

**STATEMENT OF PRIORITIES**

## Introduction

The *Securities Act* (Ontario) requires the Ontario Securities Commission (OSC) to publish in its Bulletin and to deliver to the Minister by June 30 of each year a statement by the Chair setting out the proposed priorities for the Commission for the current financial year.

This Statement of Priorities sets out the OSC's strategic goals and specific initiatives that will be pursued in support of these goals in the fiscal year commencing April 1, 2011. It also discusses the environmental factors that the OSC considered in setting these goals.

The OSC fully supports the policy of the government of Ontario regarding the establishment of a national securities regulator for Canada. However, pending the establishment of a national regulator, the OSC remains committed to delivering its regulatory services with effectiveness and accountability. Consequently, the OSC will continue to work closely with its colleagues within the Canadian Securities Administrators (CSA) and with market participants to ensure that the regulatory system continues to function efficiently and remains responsive to changing market circumstances.

## Our Vision

To be an effective and responsive securities regulator – fostering a culture of integrity and compliance and instilling investor confidence in the capital markets.

## Our Mandate

The OSC's mandate 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. The mandate is established by statute.

## Message from the Chair

The Ontario Securities Commission's top priority is to represent the best interests of the investors of this province. The OSC is a public service agency dedicated to protecting the interests of investors and fostering their confidence in Ontario's capital markets. We serve investors by being responsive, vigorous and accountable as we carry out our responsibilities and duties as a securities regulator.

The OSC Statement of Priorities features five broad regulatory priorities for the 2011-12 fiscal year, developed during the Commission's annual planning process. These regulatory priorities indicate where we will focus our attention and energy in the year ahead. We will address these priorities within the context of the rapidly unfolding developments in the capital markets, such as the proposed transaction involving TMX Group and the London Stock Exchange Group. As a new Chair of the OSC, I believe the organization must stay ahead of the important issues and anticipate risks that could affect investors and the capital markets in the future. Delivering risk-oriented regulatory responses is essential to fostering public confidence in the markets.

The OSC's strong support for the creation of a national securities regulator is reflected in our Statement of Priorities. We believe that a national regulator would serve the best interests of all Canadians by enhancing investor protection, strengthening securities law enforcement, allowing for more responsive policy development and giving this country a stronger voice in shaping international standards for securities regulation. The OSC intends to support the Ontario Government and our Minister during this important initiative.

Today's financial markets are dynamic and innovative. As a result, the OSC must constantly enhance its skills and knowledge in order to protect the interests of investors and foster their confidence in the fairness and integrity of the capital markets. The Commission, executive team and staff of the OSC are working together to build the OSC into one of the best regulatory models in North America. It is an honour to serve investors as a regulator of the capital markets of Ontario.

Yours very truly,

Howard I. Wetston, Q.C.
Chair and Chief Executive Officer

## Our Environment

Each year, the OSC develops its business plan and sets goals and priorities to achieve its vision and its mandate. The OSC does this against a backdrop of current and forecast economic conditions, evolving market practices, developing trends and issues, as well as changes in public expectations. The main factors influencing this year's planning are:

- *Developments in the broader investment marketplace:* This includes changes in products and market structures, and issues related to transactions and the activities of market intermediaries.

- *Developments in the domestic and international regulatory arena*: As the globalization of economies and capital markets continues to evolve, so has the need to consider changes in the way financial services are regulated.

- *Responses to investor concerns about regulatory effectiveness:* Notwithstanding the efforts of regulators, there is a need to assess and demonstrate the effectiveness of regulatory programs in achieving regulatory objectives.

*Market Developments/Evolution*
The rapid pace of product and market innovation has led to the proliferation of complex exchange-traded funds (ETFs) and structured products, dark pools and algorithmic trading, portfolio account services that provide retail investors with access to the exempt market, greater importance of new trading platforms, developments in new order types, and evolving regulatory requirements for the clearing and reporting of over-the-counter (OTC) trades in derivatives.

The OSC must assess the impact of these developments on market transparency, stability, and investor access and fairness, to determine the needed changes to the regulatory framework. The OSC does this by constantly reviewing the regulatory capabilities and approaches used to assess the impacts and risks emerging in the areas it regulates. In some cases, existing tools may be insufficient to monitor and respond to new developments within the limits of current regulation, and the OSC must find new ways to respond effectively. Skilled staff, including specialists in market and product research and analysis, have become increasingly important resources that the OSC must consider using in these circumstances. In addition, developments in areas beyond the OSC's current regulatory jurisdiction may require an extension of the OSC's authority.

*Evolving Global Regulatory Landscape*
Recognizing the interconnectedness of Canadian financial markets domestically and internationally, and the importance of securities markets to broader financial activities, is fundamental to effective securities regulation. The appropriate regulatory response to market developments must ensure that opportunities for regulatory arbitrage are minimized and that local investors and market participants are protected.

Securities regulators, with their traditional focus on transparency and business conduct oversight, have an important role to play in promoting Canada's financial stability. However, addressing systemic risk is a shared responsibility and securities regulators must partner with other Canadian organizations, including the Office of the Superintendent of Financial Institutions Canada (OSFI), the Bank of Canada, and the federal and provincial Finance Ministries.

The recent financial crisis has resulted in the development of recommendations and principles internationally relating to the conduct and reporting of short selling activities, regulation of OTC derivatives trading and the role of securities regulators with respect to systemic risk in the capital markets. Keeping pace with these developments, while paying close attention to issues that matter to Ontario's investors and markets, is an ongoing challenge.

The OSC will consider G20 commitments, initiatives by other North American regulatory agencies, such as the U.S. Securities and Exchange Commission (SEC) and the U.S. Commodity Futures Trading Commission (CFTC) and developments at the International Organization of Securities Commissions (IOSCO).

*Expectations of Regulatory Effectiveness*

Confidence in capital markets depends on meeting public expectations of regulatory effectiveness. Public expectations are affected by personal financial losses (and associated public perceptions), the overall level of stability of the markets, the visibility of timely enforcement actions, and perceptions of fairness and access to the markets by investors. A regulatory focus on the "technical" correctness of a product must be balanced against public interest considerations.

Significant structural changes in the markets have occurred over the last few years. New challenges include the rise of alternative trading systems and new transaction types, complex financial engineering of new products, greater reliance on the exempt market for distribution, potential intermediary conflicts of interest in the distribution of products, and differing rules for similar products.

Changes in products and market structures challenge the ability of traditional securities regulation to protect investors. The OSC must be more sensitive to market activity that affects retail investors, such as dealing with harmful conduct by distributors

or the provision of clear client reports, as well as business structure issues such as advisor incorporation or algorithmic trading. More effort is required to encourage input from investors, particularly retail investors, so that their views are represented as much as those of more formally organized market participants.

Traditional approaches to investor protection alone, such as setting disclosure requirements and business conduct rules, as well as enforcement, are no longer sufficient. Equally important for investor protection is the development of an educated and informed investing public.

Collecting and analysing comments from retail investors is needed to ensure the concerns of the retail investors are heard. The OSC will examine alternative ways to reach retail investors through its investor communications, including a greater use of social media. Using the Investor Education Fund and the recently established OSC Investor Advisory Panel, the OSC will improve the awareness and financial literacy of Ontario investors and ensure that their views and concerns are considered effectively.

Though the OSC's compliance and enforcement regime is vigorous and active, it must be visible and understood by market participants and the public in order to effectively deter illegal or undesirable conduct. This may require assuming a stronger investor education role.

**Key Regulatory Priorities for 2011-12**

The OSC has identified five broad priorities for 2011-12. These priorities are set out below. In addition, the OSC will carry out a number of other initiatives, as well as ongoing operational programs, in order to achieve its mandate.

***1. Better demonstrate our commitment to investor protection***

*- In undertaking policy and rule development as well as compliance and enforcement programs, a foremost priority of the OSC will be the protection of investors.*

The interests of investors are at the core of everything that the OSC does. The need to educate and protect investors is even more critical, given the increased availability of complex products, greater reliance on the exempt market for distribution and potential conflicts of interest in the distribution of products. The OSC will work to ensure investors get a fair deal. The OSC will:

- Build confidence in the investment process by ensuring that investors be provided with information that is timely, clear and useful. Better information, not just more information, will help investors make better choices. The OSC will:
  - Research the pros and cons of imposing a fiduciary duty on financial advisors and identify what problems we think that introducing a statutory fiduciary duty would resolve. At the same time, we will continue to identify specific standards against which advisors' conduct can be measured.
  - Work with the CSA, IIROC and the MFDA to develop harmonized standards for cost disclosure and performance reporting to investors. The proposed rules will apply to all dealers and advisers in relation to all securities and investment products they sell and will, if adopted, improve the account reporting clients currently receive. We expect that the proposed rules will address many of the securities-industry related recommendations of the recent Financial Literacy Task Force Report (December 2010).
  - Continue to implement the point of sale (POS) initiative and consider expanding POS delivery to other types of publicly offered investment fund products. (As work on the POS initiative continues, the OSC will monitor its impact on price competition in mutual funds).
- Work with the Ontario Government to explore a mechanism by which the OSC could award compensation to Ontario investors who suffer losses because of violations of the *Securities Act* (Ontario).
- Increase efforts to gather views of investors by conducting town hall meetings and investor round tables.
- Simplify its communication with retail investors by using a variety of tools, including social media and focus groups.
- Continue to focus on issues relevant to investors who own securities (shareholder rights).
- Continue to support investor education through the use of monies received through enforcement proceedings to support the Investor Education Fund.

***2. Intensify Operational, Compliance and Enforcement efforts to promote confidence in the markets***

The OSC's operational, compliance and enforcement regime is vigorous and active. However, it must be more visible and better understood by market participants and the public in order to achieve the desired deterrent effect. The OSC will step up its focus on compliance and enforcement by insisting on adherence to both the spirit and letter of regulatory requirements. To this end the OSC will:

- Focus compliance efforts on higher risk areas and potential abusive practices affecting investors.
- Strengthen the risk and results-based focus of its compliance work through better use of data and the refinement of risk assessment techniques.
- Identify through compliance efforts registrants and issuers whose operations or structures may pose risks to retail investors.
- Strive to modify market behaviour by using the full set of regulatory tools available to act against those who engage in activities adverse to investors' interests or to market integrity.
- Strive to reduce timelines for completing investigations and bringing regulatory proceedings forward.
- Improve the timeliness of adjudicative processes.
- Publicize the successful implementation of IFRS in our capital markets, specifically focusing compliance efforts on affected capital market participants.
- Improve communication and collaboration among domestic and international enforcement agencies.

***3. Modernize our Regulatory systems and approaches***

- *Respond to emerging issues and trends in product development, distribution models, trading programs and market structures; and*
- *Monitor developments among international regulators while adapting their principles and programs as needed for Ontario and Canadian markets*

Market quality and investor confidence are key outcomes for the OSC. The OSC strives to identify the important issues and deal with them in a timely way. The OSC must continue to discourage or pre-empt regulatory arbitrage, maintain market confidence, reduce financial crime and safeguard investors.

The global financial environment is dynamic and will continue to evolve. The OSC needs to ensure that regulatory risks and consequences that arise as products and market structures change (e.g. new technology, new market participants), are assessed and mitigated. Key steps in this process will include:

- Re-assessing current regulatory approaches to determine any changes necessary to improve fairness and protection for investors.
- Continuing to develop regulatory approaches focussed on risk-based tools and measurable results.
- Focusing on systemic risk with greater participation in the international arena and more interaction with other Canadian financial services regulators in Canada, such as OSFI and the Bank of Canada.
- Continuing to work with international regulators to develop an international regulatory agenda that works for Canada.

Proactive regulatory responses that are "risk oriented" are needed to maintain confidence in the markets. As part of accomplishing this goal the OSC should:

- Implement a regulatory framework for OTC derivatives including new rules specifically designed to implement the G20 commitments. The framework should bring OTC derivatives within the scope of existing insider-trading offences.
- Develop rules to provide non-exempt investors with a risk disclosure document.

- Review and develop an appropriate regulatory approach, through recognition or exemption, for OTC derivative clearing houses operating in Ontario.

***4. Pursue a Coordinated Approach to Securities Regulation***

- *By supporting the development of a Canadian Securities Regulator.*
- *By collaborating in the harmonization and modernization of regulation in Canada through the CSA while representing the interests of Ontario investors.*

The evolution of the capital markets reinforces our belief that the OSC must improve its system of regulation by supporting the implementation of a Canadian Securities Regulator. Capital markets extend across provincial boundaries and are important to the economy of Canada. Their effective regulation demands a national approach to deal with national issues such as the regulation of derivatives and the coordination with other Canada-wide regulation in the broader financial services sector in addressing systemic risk. To reflect the reality of Canadian capital markets, the Canadian Securities Regulator should be based in Canada's financial capital, Toronto. This will recognize the importance of Ontario's markets in the context of Canada's capital markets and utilize the expertise of OSC staff.

The OSC will continue to support the Ontario Government, the Canadian Securities Transition Office (CSTO) and participating provincial regulators to make this happen. The OSC expects the CSTO to request more of its resources to support this initiative as it proceeds. The OSC remains committed to working with the CSA to promote the protection of retail investors and the quality and integrity of Canada's capital markets. The OSC will find a way to do this. In some instances this may mean encouraging its CSA colleagues to take on the development of initiatives that are not a priority for Ontario capital markets.

Through this transition period, the OSC will also coordinate with other Canadian regulators to monitor system-wide issues and ensure consistent regulatory coverage. The OSC will work with other sector regulators, such as the OSFI and the Bank of Canada, to create coordinated responses to address regulatory issues as they emerge.

***5. Demonstrate accountability for its performance as a leading securities regulator in Canada by:***

*- identifying specific outcomes and related rationale;*
*- developing clear reporting on its progress in achieving the results the OSC will pursue; and*
*- prudently managing its limited resources.*

As the CSTO works toward a national regulator the OSC will continue to pursue its mandate and will continue efforts to improve its organizational performance. As a leading regulator, the OSC will strive to protect Ontario's investors and capital markets as it moves towards creation of a national regulator and beyond. Throughout this period the OSC will become a more capable organization. The OSC will:

- Communicate its agenda and the results it expects to achieve more clearly.
- Improve its visibility by being more externally focused in its actions and communications.
- Increase its reliance on data and facts when developing policy and operational solutions to achieve measurable results that clearly support its actions.
- Monitor and improve the efficiency and effectiveness of its operations to provide cost-effective regulation.

**2011-12 Outlook**

*OSC Revenues and Surplus*

Overall, the OSC is forecasting revenues to increase by 10.1% from 2010-11 actual revenues, primarily due to the higher fee rates noted earlier. Even with these fee increases and consistent with its plan to reduce its surplus (as outlined earlier), the OSC expects to operate at a deficit in 2011-12.

*2011-12 Budget Approach*

In developing the 2011-12 budget, the OSC continued to balance the need for restraint with its need to move forward on initiatives which are necessary to achieve its mandate of providing protection to investors and fostering fair and efficient capital markets.

| ($000's) | 2010-11 Budget | 2010-11 Actual | 2011-12 Budget | 2011-12 Budget to 2010-11 Budget $$$ Change | 2011-12 Budget to 2010-11 Budget % Change | 2011-12 Budget to 2010-11 Actual $$$ Change | 2011-12 Budget to 2010-11 Actual % Change |
|---|---|---|---|---|---|---|---|
| Revenues | 69,496 | 72,955 | 80,287 | 10,791 | **15.5** | 7,332 | **10.1** |
| Expenses | 86,740 | 84,047 | 90,706 | 3,966 | **4.6** | 6,659 | **7.9** |
| Deficiency of Revenue compared with Expenses | (17,244) | (11,092) | (10,419) | 6,825 | | 673 | |
| Capital Expenditures | 1,401 | 1,321 | 2,396 | 995 | **71.0** | 1,075 | **81.4** |

The 2011-12 budget increase includes investments in a number of strategic initiatives. While these initiatives will be staffed in part by a re-allocation of existing resources, the scope of the initiatives is such that more resources will be needed and are reflected in the budget.

The 2011-12 budget includes money for new staff and consulting resources to deal with market structure issues that are increasing both in number and complexity. Additional funding is also allocated to build out the new group focused on the regulation of OTC derivatives. These initiatives are consistent with the regulatory results the OSC is seeking.

The OSC is committed to becoming a 21st century regulator. As a first step consulting resources have been committed to complete a comprehensive strategic plan. The plan will provide a roadmap for future operational priorities and investments. To be a 21st century regulator, the OSC also needs to attract, retain and motivate staff with the required skills and experience. Skilled staff are increasingly important resources. The OSC believes that becoming a leading employer will help it attract skilled staff. Therefore, resources have been allocated to develop a talent strategy so as to create the appropriate organizational structure and development environment.

The budget reflects a projected increase of $6.6 million or 7.9% over 2010-11 spending and 4.6% above the 2010-11 budget. The level of the proposed increase is consistent with that being sought by regulators in other jurisdictions. Salaries and benefits, which comprise $69.9 million or 77.1% of the budget, reflect an increase of $4.0 million or 5.6% over 2010-11 spending. The average annual increase for staff was 1.9%. The increase in salaries and benefits cost reflects the full-year costs for staff hired during 2010-11 and higher health benefit costs. Eleven new positions were approved to achieve the strategic initiatives set out above. More resources were allocated to support OSC Commissioners and improve the timeliness of our adjudicative processes. Additional staff was added to support our new directions and approaches to enforcement and compliance. Our goal is to pursue meaningful cases that have a strong deterrent effect on those tempted to contravene securities legislation.

The significant increase in the capital budget reflects the replacement of personal computers and laptops as the bulk of the OSC's computer leases end in 2011-12 and must be replaced.

### 1.1.3 Notice of Correction – Error on Spine of Volume 34, Issue 23 (June 10, 2011)

The front cover of the Ontario Securities Bulletin has the correct date and issue number, as follows:

June 10, 2011
Volume 34, Issue 23

However, the spine incorrectly reads:
June 3, 2011 Volume 34, Issue 22

The spine should also read:
June 10, 2011 Volume 34, Issue 23

## 1.3 News Releases

### 1.3.1 OSC Investor Alert: New Hudson Television Corporation, New Hudson Television LLC and James Dmitry Salganov

**FOR IMMEDIATE RELEASE**
**June 9, 2011**

**OSC INVESTOR ALERT:**
**NEW HUDSON TELEVISION CORPORATION,**
**NEW HUDSON TELEVISION LLC AND**
**JAMES DMITRY SALGANOV**

**TORONTO** – The Ontario Securities Commission (OSC) issued a temporary cease trade order on June 8, 2011 against New Hudson Television Corporation, New Hudson Television LLC and James Dmitry Salganov. This cease trade order prohibits them from trading in any securities and prohibits all trading in the securities of New Hudson Television Corporation and New Hudson Television LLC.

The OSC has issued this cease trade order based on allegations that New Hudson Television Corporation, New Hudson Television LLC and James Dmitry Salganov may have breached the *Securities Act* (Ontario) by distributing New Hudson Television LLC securities to the public without registration, without filing the necessary prospectus or preliminary prospectus, and without reliance on an exemption; and by making prohibited representations to members of the public about the future value of these securities in the course of the distribution.

If you have been approached to invest by representatives of New Hudson Television Corporation, New Hudson Television LLC or James Dmitry Salganov, please call the OSC Contact Centre at 1-877-785-1555 for assistance.

The temporary cease trade order is in effect until June 23, 2011. A hearing to consider whether it should be extended will be held at 9:00 a.m. on June 22, 2011 at the OSC. The temporary cease trade order 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
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1-877-785-1555 (Toll Free)

**1.3.2 OSC Schedules Public Consultation on Proposed Transaction by TMX Group Inc. and London Stock Exchange Group for July 21 & 22, 2011**

**FOR IMMEDIATE RELEASE**
**June 15, 2011**

**OSC SCHEDULES PUBLIC CONSULTATION ON PROPOSED TRANSACTION BY TMX GROUP INC. AND LONDON STOCK EXCHANGE GROUP FOR JULY 21 & 22, 2011**

**TORONTO** – The Ontario Securities Commission (OSC) today announced that it has scheduled two days of public consultation on the Application related to the proposed transaction by TMX Group Inc. and London Stock Exchange Group in order to seek input from interested parties.

The public consultation will take place from 10:00 a.m. to 5:00 p.m. on July 21 & 22, 2011 at the Toronto Eaton Centre Marriott.

The Application raises significant public policy issues that are important to market participants and the Ontario capital market. The public consultation will provide a full opportunity for interested parties to express their views on the Application directly to the Commission.

The consultation will be led by a panel of the Commission and will help inform the Commission in reaching its determination. Ultimately, it is the Commission as a whole that will make the decision on the Application.

Interested parties wishing to participate in the public consultation must first submit written comments on the Notice and Request for Comment on the Application by June 29, 2011. The Commission will issue a notice by July 11, 2011 with additional details, including the list of parties who have been asked by the Commission to participate in the public consultation.

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## 1.4 Notice from the Office of the Secretary

### 1.4.1 QuantFX Asset Management Inc. et al.

**FOR IMMEDIATE RELEASE**
**June 14, 2011**

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

**AND**

**IN THE MATTER OF**
**QUANTFX ASSET MANAGEMENT INC.,**
**VADIM TSATSKIN,**
**LUCIEN SHTROMVASER**
**AND ROSTISLAV ZEMLINSKY**

**TORONTO** – The Commission issued an Order in the above named matter which provides that the hearing on the merits is scheduled to commence on October 31, 2011 at 10:00 a.m. and to continue on November 1, 2 and 3, 2011 or on such other dates as provided by the Secretary's Office and agreed to by the parties; and the Temporary Order with respect to Tsatskin is extended to the conclusion of the hearing on the merits in this matter.

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

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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

### 1.4.2 VenGrowth Funds et al.

**FOR IMMEDIATE RELEASE**
**June 14, 2011**

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

**AND**

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

**AND**

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

**TORONTO** – Following a hearing held on June 1 and 2, 2011 and the Order issued on June 9, 2011, the Panel released its Reasons for Decision in the above named matter.

A copy of the Reasons For Decision dated June 14, 2011 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
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# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Fortis Inc. et al.

**Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief applications in Multiple Jurisdictions – National Instrument 52-107, s. 9.1 Acceptable Accounting Principles, Auditing Standards and Reporting Currency – the Filer requests relief from the requirements under section 3.2 of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards (**NI 52-107**) that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises (the **Exemption Sought**) to permit the Filer to prepare its financial statements in accordance with U.S. GAAP for its financial years that begin on or after 1 January 2012 but before 1 January 2015.

**Applicable Legislative Provisions**

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standard, s. 5.1.

**June 9, 2011**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ONTARIO**
**(THE "PRINCIPAL JURISDICTION")**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**FORTIS INC. ("FORTIS"), ON BEHALF OF ITSELF**
**ANDFORTISBC HOLDINGS INC.,**
**FORTISBC ENERGY INC.,**
**FORTISBC INC., FORTISALBERTA INC.,**
**NEWFOUNDLAND POWER INC. AND**
**CARIBBEAN UTILITIES COMPANY, LTD.**

**DECISION**

**Background**

The securities regulatory authority or regulator in the Principal Jurisdiction (the "**Principal Regulator**") has received an application from Fortis for a decision under the securities legislation of the Principal Jurisdiction (the "**Legislation**") of the Principal Regulator exempting each of Fortis and its reporting issuer subsidiaries, FortisBC Holdings Inc., FortisBC Energy Inc., FortisBC Inc., FortisAlberta Inc., Newfoundland Power Inc. and Caribbean Utilities Company, Ltd. (collectively, the **"Subsidiaries"** and, together with Fortis, the "**Filers**" and each a "**Filer**"), from the requirements under section 3.2 of National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards* ("**NI 52-107")** that financial statements be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises (the "**Exemption Sought**") to permit the Filers to prepare their financial statements in accordance with U.S. GAAP for their financial years that begin on or after January 1, 2012 but before January 1, 2015.

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;

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 – *Passport System* ("**MI 11-102**") is intended to be relied upon in each of the Passport Jurisdictions; and

(c) the decision is the decision of the Principal Regulator and automatically results in an equivalent decision in the Passport Jurisdictions.

**Interpretation**

Terms defined in National Instrument 14-101 – *Definitions*, MI 11-102 and NI 52-107 have the same meaning if used in this decision, unless otherwise defined.

**Representations**

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

*Fortis Inc.*

1. Fortis is principally a diversified utility holding company and was continued under the *Corporations Act* (Newfoundland and Labrador) on August 28, 1987. The head office of Fortis is in St. John's, Newfoundland and Labrador.

2. Fortis is a reporting issuer or equivalent in the Principal Jurisdiction and each of the Passport Jurisdictions other than the Yukon Territory, the Northwest Territories and Nunavut and, to its knowledge, is not in default of securities legislation in any jurisdiction in Canada.

3. Fortis is not an SEC issuer.

4. Fortis has "activities subject to rate regulation", as defined in the Handbook.

*FortisBC Holdings Inc.*

5. FortisBC Holdings Inc. ("**FHI**") is a utility holding company incorporated under the laws of British Columbia. Its articles were amended on March 1, 2011 to change its name to FortisBC Holdings Inc. The head office of FHI is in Vancouver, British Columbia.

6. FHI is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions and, to its knowledge, is not in default of securities legislation in any jurisdiction in Canada.

7. FHI is not an SEC issuer.

8. FHI has "activities subject to rate regulation", as defined in the Handbook.

*FortisBC Energy Inc.*

9. FortisBC Energy Inc. ("**FEI**") is a gas distribution company incorporated under the laws of British Columbia. Its articles were amended on March 1, 2011 to change its name to FortisBC Energy Inc. The head office of FEI is in Vancouver, British Columbia.

10. FEI is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions and, to its knowledge, is not in default of securities legislation in any jurisdiction in Canada.

11. FEI is not an SEC issuer.

12. FEI has "activities subject to rate regulation", as defined in the Handbook.

*FortisBC Inc.*

13. FortisBC Inc. ("**FBC**") is an integrated electric utility incorporated under the laws of British Columbia. The head office of FBC is in Kelowna, British Columbia.

14. FBC is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions other than the Yukon Territory, the Northwest Territories and Nunavut and, to its knowledge, is not in default of securities legislation in any jurisdiction in Canada.

15. FBC is not an SEC issuer.

16. FBC has "activities subject to rate regulation", as defined in the Handbook.

*FortisAlberta Inc.*

17. FortisAlberta Inc. ("**FAB**") is an electricity distribution company incorporated under the laws of Alberta. The head office of FAB is in Calgary, Alberta.

18. FAB is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions other than the Yukon Territory, the Northwest Territories and Nunavut and, to its knowledge, is not in default of securities legislation in any jurisdiction in Canada.

19. FAB is not an SEC issuer.

20. FAB has "activities subject to rate regulation", as defined in the Handbook.

*Newfoundland Power Inc.*

21. Newfoundland Power Inc. ("**NPI**") is an integrated electric utility incorporated under the laws of Newfoundland and Labrador. The head office of NPI is located in St. John's, Newfoundland and Labrador.

22. NPI is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions other than the Yukon Territory, the Northwest Territories and Nunavut and, to its knowledge, is not in default of securities legislation in any jurisdiction in Canada.

23. NPI is not an SEC issuer.

24. NPI has "activities subject to rate regulation", as defined in the Handbook.

*Caribbean Utilities Company, Ltd.*

25. Caribbean Utilities Company, Ltd. ("**CUC**") is an integrated electric utility incorporated under the laws of the Cayman Islands. The head office of CUC is located in Grand Cayman, Cayman Islands.

26. CUC is a reporting issuer or equivalent in the Jurisdiction and each of the Passport Jurisdictions other than the Yukon Territory, the Northwest Territories and Nunavut and, to its knowledge, is not in default of securities legislation in any jurisdiction in Canada.

27. CUC is not an SEC issuer.

28. CUC has "activities subject to rate regulation", as defined in the Handbook.

*General*

29. As "qualifying entities" for the purposes of section 5.4 of NI 52-107, each of the Filers are permitted by that provision to prepare their financial statements for their financial year commencing January 1, 2011 and ending December 31, 2011 in accordance with Canadian GAAP – Part V of the Handbook.

30. Were any of the Filers SEC issuers, they would be permitted by section 3.7 of NI 52-107 to file their financial statements prepared in accordance with U.S. GAAP, which accords treatment of "activities subject to rate regulation" similar to that under Canadian GAAP – Part V.

**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.

31. The decision of the Principal Regulator under the Legislation is that the Exemption Sought is granted for each Filer provided that:

    (a) for its financial years commencing on or after January 1, 2012 but before January 1, 2015 and interim periods therein, each of the Filers files its financial statements in accordance with U.S. GAAP; and

    (b) information for comparative periods presented in each of the financial statements referred to in paragraph (a) is prepared in accordance with U.S. GAAP.

32. The Exemption Sought will terminate in respect of each of the Filer's financial statements for annual and interim periods commencing on or after the earlier of:

    (a) January 1, 2015; or

    (b) the date on which the Filer ceases to have "activities subject to rate regulation" as defined in the Handbook as at the date of this decision.

"Cameron McInnis"
Chief Accountant
Ontario Securities Commission

### 2.1.2 Explorator Resources 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).

June 10, 2011

Kristopher Hanc
Bennett Jones LLP
3400 One First Canadian Place
P.O. Box 130
Toronto, ON
M5X 1A4

Dear Mr. Hanc:

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

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

As the Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;

(b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

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

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

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

### 2.1.3 Goodman & Company, Investment Counsel Ltd et al.

**Headnote**

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – relief from section 4.1 of NI 81-102 for dealer-managed mutual funds to invest in distributions of debt securities for which dealer-manager acts as underwriter during distribution period or 60 day period following distribution – debt securities will not have "approved rating" by "credit rating organization" as required by subsection 4.1(4) – limited supply of new debt offerings have approved ratings, and trend is expected to continue – dominant position of related dealers in debt underwriting limits funds' ability to acquire debt securities for the funds – all purchases must be consistent with fund investment objectives and subject to approval of independent review committee – debt offerings must have at least one underwriter in addition to related dealer, at least one arm's length purchaser purchasing at least 5% of the offerings – related funds can collectively purchase no more than 20% of offering and must pay no more than lowest price paid by arm's length purchaser(s) – funds must not be money market fund funds and cannot purchase asset backed commercial paper pursuant to relief – National Instrument 81-102 – Mutual Funds.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 4.1, 19.1.

**June 9, 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. AND**
**SCOTIA ASSET MANAGEMENT L.P.**

**(the "Filers")**

**AND**

**IN THE MATTER OF**
**THE MUTUAL FUNDS**
**to which National Instrument 81-102 *Mutual Funds***
**("NI 81-102") applies and of which one of the**
**Filers is, or will be, the adviser, sub-adviser,**
**and/or manager (each a "Fund" and,**
**collectively, the"Funds")**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filers, in respect of the Filers and the Funds, for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") for relief (the "**Requested Relief**") under section 19.1 of NI 81-102 from section 4.1(1) of NI 81-102 (the "**Investment Prohibition**") to permit the investment by the Funds in debt securities of an issuer during the period of the distribution (the "**Distribution**") or during the period of 60 days after the Distribution (the "**60-Day Period**"), notwithstanding the involvement of one of the Filers' associates or affiliates as an underwriter in the Distribution and notwithstanding that the debt securities do not have an "approved rating" by an "approved credit rating organization" as contemplated by section 4.1(4)(b) of NI 81-102.

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

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("MI 11-102") is intended to be relied on in Alberta, British Columbia, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Yukon Territory, Northwest Territories and Nunavut Territory (collectively, the "Non-Principal Jurisdictions").

**Interpretation**

Terms defined in MI 11-102, National Instrument 14-101 *Definitions*, NI 81-102 and National Instrument 81-107 *Independent Review Committee for Investment Funds* ("NI 81-107") have the same meaning if used in this decision, unless otherwise defined. For greater certainty, the term "approved rating", as used in section 4.1(4)(b) of NI 81-102, has the meaning given to such term in National Instrument 44-101 *Short Form Prospectus Distributions*.

**Representations**

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

***The Filers***

1. One of the Filers is or will be the manager, portfolio adviser or sub-adviser of each of the Funds.

2. Neither of the Filers nor any of the Funds is in default of securities legislation in the Jurisdiction or in any of the Non-Principal Jurisdictions.

3. Each of the Filers is an affiliate of Scotia Capital Inc. and may become an affiliate or associate of additional entities in the future which may act as an underwriter in a Distribution (each of which is a "**Related Dealer**", and collectively the "**Related Dealers**").

***The Funds***

4. Each of the Funds is, or will be, a mutual fund established under the laws of Ontario or one of the other Jurisdictions, and none of the Funds is or will be a "money market fund" as defined in NI 81-102.

5. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a simplified prospectus and annual information form that has been, or will be, prepared and filed in accordance with the securities legislation of each of the Jurisdictions. Each of the Funds is or will be a dealer-managed mutual fund that is or will be a reporting issuer in one or more of the Jurisdiction and the Non-Principal Jurisdictions.

6. Each of the Funds has or will have an independent review committee ("**IRC**") appointed under NI 81-107. The IRC complies, or will comply, with the standard of care set out in section 3.9 of NI 81-107.

7. The Funds require the Requested Relief from the Investment Prohibition because:

   (a) there is a limited supply of debt securities issued by issuers other than the federal or a provincial government ("**Non-Government Debt Securities**");

   (b) frequently, the only source of new issues of Non-Government Debt Securities will be offerings that are, in whole or in part, underwritten by a Related Dealer; and

   (c) Non-Government Debt Securities that the Filers wish to purchase for the Funds may not have an "approved rating" by an "approved credit rating organization".

8. Each Filer considers that a Fund managed or advised by it may be prejudiced if it cannot purchase, during a Distribution or in the 60-Day Period, Non-Governmental Debt Securities that are consistent with the Fund's investment objective. Forgoing participation in these investment opportunities may be a significant opportunity cost for the relevant Funds, as they would be denied timely access to these securities purely as a result of the coincidental participation of a Related Dealer in the transaction and the lack of a credit rating of the securities distributed.

9. The Filers operate independently from the Related Dealers with regard to their respective investment decisions. Information and influence barriers ensure that a Fund has no involvement in a Related Dealer's function as underwriter.

Moreover, transactions executed in reliance on the Requested Relief represent the business judgment of the applicable portfolio adviser uninfluenced by considerations other than the best interests of the applicable Fund. This principle is reflected in the policies and procedures that have been implemented and approved by the IRC for dealing with related parties.

10. The details of a Distribution and a Related Dealer's involvement as an underwriter in such Distribution will not be known to a Filer sufficiently long enough in advance to be practical to make an application for relief on a case-by-case basis. Furthermore, a case-by-case approach is not economical or otherwise efficient for the Filers or the Funds.

**Decision**

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

The decision of the principal regulator under the Legislation is that the Requested Relief from the Investment Prohibition is granted in respect of purchases of Non-Governmental Debt Securities by each Fund, provided that:

(a) at the time of each investment, the purchase is consistent with, or is necessary to meet, the investment objective of the Fund and represents the business judgment of the portfolio adviser of the Fund uninfluenced by considerations other than the best interests of the Fund or in fact is in the best interests of the Fund;

(b) the manager of the Fund complies with section 5.1 of NI 81-107 and the manager and 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;

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

(d) if the securities are acquired during the Distribution,

  (i) at least one underwriter acting as underwriter in the Distribution is not a Related Dealer,

  (ii) at least one purchaser who is independent and arm's length to the Fund(s) and the Related Dealers must purchase at least 5% of the securities distributed under the Distribution,

  (iii) the price paid for the securities by a Fund in the Distribution shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Distribution, and

  (iv) a Fund and any related Funds for which a Filer or its affiliate or associate acts as manager and/or portfolio adviser can collectively acquire no more than 20% of the securities distributed under the Distribution in which a Related Dealer acts as underwriter;

(e) if the securities are acquired in the 60-Day Period,

  (i) the ask price of the securities is readily available as provided in Commentary 7 to section 6.1 of NI 81-107,

  (ii) the price paid for the securities by a Fund is not higher than the available ask price of the security, and

  (iii) the purchase is subject to market integrity requirements as defined in NI 81-107;

(f) the securities acquired by the Funds pursuant to the Requested Relief cannot be asset-backed commercial paper; and

(g) no later than the time a Fund files its annual financial statements, the manager of the Fund will file the particulars of each investment made by the Fund pursuant to the Requested Relief during its most recently completed financial year.

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

### 2.1.4 Sun Life Global Investments (Canada) Inc.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds subject to NI 81-102 to permit applicant funds to purchase long-term debt securities of a related entity under primary offerings of the related entity and on the secondary market – future oriented relief – relief subject to conditions including IRC approval, pricing requirements, and limits on the amount of the primary offering applicant funds can purchase.

**Applicable Legislative Provisions**

Securities Act (Ontario), ss. 111(2)(a), 111(2)(b), 111(2)(c)(ii), 111(3), 113.
National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.5(2)(a), 15.
National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

**April 8, 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**
**SUN LIFE GLOBAL INVESTMENTS**
**(CANADA) INC.**
**(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of existing mutual funds and future mutual funds of which the Filer or an affiliate of the Filer is the manager (the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Funds from the prohibitions in the Legislation against:

(a) a mutual fund making or holding an investment in:

  (i) any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company;

  (ii) any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder; or

  (iii) an issuer in which any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company has a significant interest,

  (the **Related Issuer Relief** ) and

(b) a registered adviser of a Fund knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase a security of an issuer in which a responsible person or an associate of a responsible person is a partner, officer or director, unless the specific fact is disclosed to the client and the written consent of the client is obtained (the **NI 31-103 Relief**),

in each case, to permit the Funds to invest in non-exchange traded debt securities of Sun Life Financial Inc. or any other issuer in which investment by a Fund would be prohibited as a result of the above prohibitions (each a **Related Issuer**), in the secondary market or on a primary distribution or treasury offering. (The Related Issuer Relief and NI 31-103 Relief, collectively, are the **Exemption Sought**.)

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

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

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

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* 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 Filer and the Funds*

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

2. The Filer is registered as a commodity trading manager, investment fund manager and portfolio manager in Ontario.

3. The Filer, or its affiliate is, or will be, the manager and the portfolio adviser of the Funds.

4. Each Fund is, or will be, an investment fund under the laws of Ontario or Canada and is or will be a reporting issuer in one or more of the Jurisdictions.

5. Each Fund is, or will be, governed by National Instrument 81-102 *Mutual Funds* (**NI 81-102**), subject to any relief therefrom granted by the securities regulatory authorities.

6. The securities of each of the existing Funds are, or will be, qualified for distribution pursuant to a simplified prospectus and annual information form that have been prepared and filed in accordance with the securities legislation of each of the Jurisdictions.

*Relationships with Related Issuers*

7. Sun Life Financial Inc. is the ultimate parent company of the Filer and as a result, Sun Life Financial Inc. is a substantial securityholder of the Filer.

8. A Fund, together with one or more other Funds, may be a substantial securityholder of an issuer of non-exchange traded securities.

9. Sun Life Financial Inc. has a significant interest in each of Sun Life Assurance Company of Canada Inc., Sun Life Capital Trust, Sun Life Capital Trust II, Sun Life Assurance Company of Canada (U.S.) and Sun Life Insurance and Annuity Company of New York, and may have a significant interest in other issuers in which the Funds may desire to invest.

10. Officers and directors of the Filer, or of an affiliate of the Filer that is a registered adviser, may be officers and directors of an issuer in which a Fund desires to invest.

*Independent Review Committee*

11. The Filer has established an independent review committee (**IRC**) in respect of each Fund in accordance with the requirements of National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**). The IRC shall comply with the standard of care set out in section 3.9 of NI 81-107.

12. The purchase and holding of securities of a Related Issuer by a Fund will be authorized by the IRC of such Fund pursuant to section 5.2 of NI 81-107 and the Filer and the IRC of the Fund will comply with section 5.4 of NI 81-107 in respect of any standing instructions the IRC provides in connection with the purchase and holding of securities of the Related Issuer.

13. Section 6.2 of NI 81-107 provides the Funds with an exemption from the prohibitions comprising the Exemption Sought in respect of purchasing exchange-traded securities, such as common shares, in the secondary market. It does not permit a Fund, or the Filer on behalf of a Fund, to purchase non-exchange-traded securities issued by a Related Issuer. Some securities of Related Issuers, such as debt securities, are not listed and traded.

*Investment in Securities of Related Issuers*

14. The Filer is seeking the Exemption Sought to permit the Funds to purchase and hold non-exchange-traded debt securities of Related Issuers.

15. The Filer has determined that it would be in the best interests of the Funds to receive the Exemption Sought.

16. The investment strategies of each of the Funds that relies on the Exemption Sought will permit it to invest in securities of a Related Issuer.

17. Related Issuers of the Filer are significant issuers of securities and are issuers of highly rated commercial paper and other debt instruments. The Filer considers that the Funds should have access to such securities for the following reasons:

    (a) there is a limited supply of highly rated corporate debt;

    (b) diversification is reduced to the extent that a Fund is limited with respect to investment opportunities; and

    (c) to the extent that a Fund is trying to track or outperform a benchmark, it is important for the Fund to be able to purchase any securities included in the benchmark. Debt securities of Related Issuers to the Filer are included in most of the Canadian debt indices.

18. Where the non-exchange-traded debt security is purchased by a Fund in a primary distribution or treasury offering (**Primary Offering**) pursuant to the Exemption Sought:

    (a) the debt security, other than an asset backed commercial paper security, will have a term to maturity of 365 days or more and will be issued by a Related Issuer that has been given and continues to have, at the time of purchase, an "approved credit rating" by an approved credit rating organization; and

    (b) the terms of the Primary Offering, such as the size and the pricing, will be a matter of public record as evidenced in a prospectus, offering memorandum, press release or other public document.

19. Where the non-exchange-traded debt security is purchased by a Fund in the secondary market pursuant to the Exemption Sought and not in a Primary Offering, the debt security has been given and continues to have, at the time of purchase, an "approved credit rating" by an “approved credit rating organization”.

**Decision**

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

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

1. the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Fund;

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

3. the manager of the Fund complies with section 5.1 of NI 81-107 and the manager and 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;

4. for a Fund to make or hold an investment in non-exchange traded debt securities of a Related Issuer in the secondary market:

(a) the security has been given, and continues, at the time of purchase, to have an "approved credit rating" by an "approved credit rating organization", within the meaning of those terms in NI 81-102;

(b) the price payable for the security is not more than the ask price of the security;

(c) the ask price of the security is determined as follows:

(i) if the purchase occurs on a marketplace, the price payable is determined in accordance with the requirements of the marketplace; or

(ii) if the purchase does not occur on a marketplace,

(1) the Fund may pay the price for the security at which an independent, arm's length seller is willing to sell the security, or

(2) if the Fund does not purchase the security from an independent arm's length seller, the Fund pays the price quoted publicly by an independent marketplace or obtains, immediately before the purchase, at least one quote from an independent, arm's length purchaser or seller and does not pay more than that quote; and

(d) the transaction complies with any applicable "market integrity requirements" as defined in NI 81-107;

5. for a Fund to make or hold an investment in long-term non-exchange traded debt securities of a Related Issuer in a Primary Offering:

(a) the size of the Primary Offering is at least $100 million;

(b) at least two purchasers who are independent, arm's length purchasers (which may include "independent underwriters" within the meaning of NI 33-105 *Underwriting Conflicts*), collectively purchase at least 20% of the Primary Offering;

(c) no Fund shall participate in the Primary Offering if, following its purchase, the Fund would have more than 5% of its net assets invested in non-exchange-traded debt securities of a Related Issuer;

(d) no Fund shall participate in the Primary Offering if, following its purchase, the Fund, together with related Funds, will hold more than 20% of the securities issued in the Primary Offering; and

(e) the price paid for the securities by a Fund in the Primary Offering shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Primary Offering;

6. no later than the time the Fund files its annual financial statements, the Filer, as manager of the Fund, files with the securities regulatory authority or regulator the particulars of any investments made in reliance on this relief;

7. the IRC of the Fund complies with section 4.5 of NI 81-107 in connection with any instance that it becomes aware that the Filer did not comply with any of the conditions of this Decision; and

8. the Decision with respect to non-exchange traded debt securities purchased pursuant to a Primary Offering or in the secondary market will expire on the coming into force of any securities legislation relating to fund purchases of non-exchange traded debt securities purchased pursuant to a Primary Offering or in the secondary market.

**Related Issuer Relief**

"Margot Howard"
Commissioner
Ontario Securities Commission

"C. Portner"
Commissioner
Ontario Securities Commission

**NI 31-103 Relief**

"Darren McKall"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

### 2.1.5 ProspEx Resources Ltd. – s. 1(10)

**Headnote**

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

**Ontario Statutes**

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

June 13, 2011

Macleod Dixon LLP
3700 Canterra Tower
400 - 3 Avenue SW
Calgary, AB T2P 4H2

**Attention: Jason A. Giborski**

Dear Sir:

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

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

As the Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;

(b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

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

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

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

### 2.1.6 Sun Life Global Investments (Canada) Inc. and Sun Life Blackrock Canadian Balanced Fund

**Headnote**

National Policy 11-203 – Existing and future mutual funds granted exemption to invest in an exchange traded fund whose securities would meet the definition of index participation unit in NI 81-102, but for the fact that they are listed on the London Stock Exchange – relief is subject to certain conditions and requirements.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 2.1(1), 2.2(1), 2.5(2)(a), (b), (c), and (f), 19.1.

**April 8, 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**
**SUN LIFE GLOBAL INVESTMENTS**
**(CANADA) INC.**
**(the Filer)**

**AND**

**IN THE MATTER OF**
**SUN LIFE BLACKROCK CANADIAN**
**BALANCED FUND**
**(the New Fund)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the New Fund and any other mutual fund for which the Filer or an affiliate acts or may in the future act as manager that are subject to National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Funds**), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) providing an exemption from the prohibitions in:

(a) subsections 2.1(1) and 2.2(1) and paragraphs 2.5(2)(a), (b), (c) and (f) of NI 81-102 to permit the Funds to invest in securities of any mutual fund that is an exchange-traded fund (an **ETF**) that, but for the fact that they are listed on a stock exchange in the United Kingdom and not on a stock exchange in Canada or the United States, would otherwise qualify as "index participation units" (**IPU**) as defined in NI 81-102 (**UK IPUs**); and

(b) subsection 2.5(2)(b) of NI 81-102 to allow the Funds to invest in other mutual funds that invest more than 10% of the market value of their net assets in securities of UK IPUs.

(Items (a) and (b) are the **Exemption Sought**.)

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

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

(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 each of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon (with Ontario, the **Jurisdictions**).

**Interpretation**

Terms defined in MI 11-102, National Instrument 14-101 *Definitions* and NI 81-102 have the same meanings if used in this decision unless otherwise defined.

**Representations**

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

*The Filer and the Funds*

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

2. The Filer is registered as a commodity trading manager, investment fund manager and portfolio manager in Ontario.

3. The Filer acts, or will act, as manager of each of the Funds.

4. Each Fund is, or will be, a mutual fund under the laws of Ontario or Canada and a reporting issuer under the laws of all the Jurisdictions.

5. Neither the Filer nor the Funds are in default of securities legislation in any of the Jurisdictions.

6. Each Fund is, or will be, governed by NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

7. Securities of each Fund are, or will be, qualified for distribution in some or all of the provinces and territories of Canada under a simplified prospectus and annual information form filed with, and receipted by, the securities regulators in the applicable Jurisdictions.

*The UK IPUs*

8. Each UK IPU will be a "mutual fund" within the meaning of applicable Canadian securities legislation and an ETF traded on a stock exchange in the United Kingdom.

9. Each UK IPU's only purpose will be to (a) hold the securities that are included in a specified widely quoted market index in substantially the same proportion as those securities are reflected in that index, or (b) invest in a manner that causes the UK IPU to replicate the performance of that index.

10. In replicating the performance of an index, a UK IPU may purchase securities of other mutual funds.

11. It is the Filer's understanding that the regulatory regime, administration, operation, investment objectives and restrictions applicable to UK IPUs are as rigorous as those applicable to similar Canadian IPUs.

12. It is the Filer's understanding that stock exchanges in the United Kingdom are subject to materially equivalent regulatory oversight to securities exchanges in Canada.

*Investment by Funds (Directly or Indirectly) in the ETFs*

13. Each Fund is or will be permitted, in accordance with its investment objectives and strategies, to invest in ETFs.

14. The amount of the loss that can result from an investment by a Fund in a UK IPU will be limited to the amount invested by the Fund in the UK IPUs.

15. The Filer considers that investments by the Funds in UK IPUs or in other Funds that invest in UK IPUs provide an efficient and cost effective means of achieving diversification and exposure.

16. On June 25, 2010, the Canadian Securities Administrators published for comment proposed amendments to NI 81-102 (the **Modernization Amendments**) which included a proposal to expand the definition of IPU to include UK IPUs (the **Proposed IPU Amendments**).

17. Because the current definition of IPU only includes securities that are traded on an exchange in Canada or the United States, in the absence of the Exemption Sought:

(a) a Fund would not be able to rely upon the IPU exemption in paragraph 2.1(2) of NI 81-102 from the concentration restriction in paragraph 2.1(1) to purchase or hold more than 10% of its net assets in securities of UK IPUs;

(b) a Fund would not be able to rely upon the IPU exemption in paragraph 2.2(1.1) of NI 81-102 from the control restriction in paragraph 2.2(1) to purchase or hold securities representing more than 10% of the votes attaching to the outstanding voting securities of a UK IPU or from purchasing securities of a UK IPU for the purpose of exercising control over or management of the UK IPU;

(c) a Fund would not be able to rely upon the IPU exemption in paragraph 2.5(3)(a) of NI 81-102 from the investment restriction in paragraph 2.5(2)(a) against purchasing or holding securities of the UK IPU unless the UK IPU is subject to NI 81-102 and National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

(d) a Fund would not be able to rely upon the IPU exemption in paragraph 2.5(4)(b)(ii) of NI 81-102 from the investment restriction in paragraph 2.5(2)(b) against purchasing or holding securities of a Fund or a UK IPU unless at the time of the purchase of that security, the Fund or UK IPU holds no more than 10% of the market value of its net assets in securities of other mutual funds;

(e) a Fund would not be able to rely upon the IPU exemption in paragraph 2.5(3)(a) of NI 81-102 from the investment restriction in paragraph 2.5(2)(c) against purchasing or holding securities of the UK IPU unless securities of the UK IPU were qualified for distribution in the local jurisdiction; and

(f) a Fund would not be able to rely upon the IPU exemption in paragraph 2.5(5) of NI 81-102 from the investment restriction in paragraph 2.5(2)(f) against purchasing or holding securities of the UK IPU unless no sales fees or redemption fees are payable by the Fund in relation to its purchases or redemptions of securities of the UK IPU that, to a reasonable person, would duplicate a fee payable by an investor in the Fund.

18. Each investments by a Fund in securities of a UK IPU will represent the business judgement of

responsible persons uninfluenced by considerations other than the best interests of the Fund.

**Decision**

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

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

(a) the investment by a Fund in securities of a UK IPU is in accordance with the fundamental investment objectives of the Fund;

(b) paragraphs 2.1(3) and 2.1(4) of NI 81-102 will apply with respect to the Fund's investments and holdings in UK IPUs in determining a Fund's compliance with the concentration restrictions of section 2.1 of NI 81-102;

(c) the relief from paragraph 2.5(2)(f) of NI 81-102 will only apply to brokerage fees incurred for the purchase or sale of UK IPUs;

(d) the prospectus of each Fund discloses, or will disclose the next time it is renewed after the date of this decision if the Proposed IPU Amendments are not yet in effect, in the investment strategy section, the fact that the Fund has obtained relief to invest in UK IPUs; and

(e) the Exemption Sought will terminate six months after the coming into force of the Modernization Amendments.

"Darren McKall"
Assistant Manager, Investment Funds Branch
Ontario Securities Commission

### 2.1.7 Educators Financial Group Inc. and Educators Global Fund

**Headnote**

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund merger – approval required because merger does not meet the criteria for pre-approval – The continuing fund does not have substantially similar fundamental investment objectives and fees compared to the terminating fund – Terminating fund's unitholders provided with timely and adequate disclosure regarding the merger and the continuing fund.

**Applicable Legislative Provisions**

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

**June 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**
**EDUCATORS FINANCIAL GROUP INC.**
**(the Manager) and**
**EDUCATORS GLOBAL FUND**
**(Global Fund and collectively with the Manager, the Filers)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval of the proposed merger (the **Merger**) of the Global Fund into the Educators Balanced Fund (the **Balanced Fund**) (together with the Global Fund, the **Funds**) pursuant to clause 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Merger Approval**).

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

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia.

**Interpretation**

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

**Representations**

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

1. The head office of each Filer is located in Toronto. Neither the Filers nor the Balanced Fund are not in default of securities legislation in any jurisdiction.

2. The Manager is registered as an investment fund manager in Ontario and as a dealer in the category of mutual fund dealer in Ontario and British Columbia.

3. Each of the Funds is a mutual fund trust established under the laws of Ontario and is part of a family of nine mutual funds (**Educators Financial Group Funds**) for which the Manager acts as trustee, investment fund manager and principal distributor. Each Fund is a reporting issuer in Ontario and British Columbia.

4. The Global Fund was established on August 21, 1991, and is currently governed by an amended, restated and combined declaration of trust dated October 6, 2008, as amended March 14, 2011 (the **Declaration of Trust**). The Balanced Fund was established on June 24, 1984, and is currently also governed by the Declaration of Trust, which applies to all of the Educators Financial Group Funds.

5. The authorized capital of the Funds consists of an unlimited number of class A units (the **Class A units**) and an unlimited number of class B units (the **Class B units**).

6. Class A units of the Funds are offered for sale only in the Provinces of Ontario and British Columbia to eligible purchasers, who must be members of the education community in those provinces, meaning teachers and non-teaching administration personnel and staff employed by a Board of Education and their immediate family members in Ontario or British Columbia. Class A units of the Funds may only be purchased from the Manager or from selected dealers authorized by the Manager to sell Class A units. Class B units are offered in Ontario and British Columbia through brokers, investment dealers and mutual fund dealers unaffiliated with the Manager, to members of the education community and their immediate family members in those provinces. To date, Class B units have not been issued.

7. On March 28, 2011, the Manager announced the calling of a special meeting (the **Meeting**) of the unitholders of the Global Fund to consider the amalgamation of the Global Fund into the Balanced Fund. The Meeting, which will be held June 15, 2011 is required as a result of the provisions of section 5.1(f) of NI 81-102. as the Global Fund will cease to exist following the merger, and unitholders of the Global Fund will become unitholders of the Balanced Fund pursuant to the Merger. The Manager has established a record date of April 18, 2011 for unitholders entitled to receive notice of, and to vote at, the Meeting.

8. The Manager determined that it was appropriate to recommend the Merger to unitholders of the Global Fund as a result of the following factors and concerns: (i) the declining size of the Global Fund; (ii) the lack of interest in the Global Fund; (iii) the high cost of operating and managing the Global Fund; (iv) the disappointing performance of the Global Fund; and (v) the availability of other, and better, investment options from third party fund companies for investors who want specialty equity funds. The Board of Directors of the Manager has also approved the Merger, subject to regulatory approval.

9. A press release dated March 28, 2011, a material change report dated March 28, 2011 and an amended and restated simplified prospectus and annual information form each dated March 31, 2011 were filed on SEDAR in connection with the Meeting.

10. A notice of meeting and management information circular (the **Circular**) which includes the most recently filed Fund Facts document for the Class A units of the Balanced Fund were mailed to unitholders of the Global Fund in connection with the Meeting on or about April 19, 2011.

11. A meeting of the unitholders of the Balanced Fund is not required in connection with the Merger, pursuant to the provisions of section 5.1(g) of NI 81-102, as the Balanced Fund will continue in existence after the Merger, the unitholders of the Balanced Fund will continue to hold units of the Balanced Fund, and the Merger will not result in a material change to the Balanced Fund.

12. Unitholders of the Global Fund will continue to have the right to redeem their units at the net asset value thereof at any time up to the close of business on the day prior to the date the Merger is effected (the **Effective Date**).

13. The Merger will be a "qualifying exchange" within the meaning of section 132.2 of the *Income Tax Act* (Canada).

14. The Circular includes disclosure about the Merger. The Circular also incorporates by reference the current prospectus, the financial statements of the Balanced Fund for the year ended December 31, 2010 and the annual management report of fund performance for the Balanced Fund for the year ended December 31, 2010. The Circular also discloses that these documents are available from the Manager upon request or on SEDAR at www.sedar.com.

15. The Circular also describes the tax implications of the Merger, the principal differences between the Global Fund and the Balanced Fund, and the right of unitholders of the Global Fund to redeem their units up to the Effective Date if they do not wish to participate in the Merger, and it also indicates that the Global Fund's Independent Review Committee (the **IRC**) concluded that submitting the proposed merger to such unitholders for their consideration and approval achieves a fair and reasonable result for unitholders.

16. The IRC of the Funds concluded that the Merger would achieve a fair and reasonable result for the Funds.

17. The costs of the Merger will be paid for by the Manager.

18. Section 5.5(1)(b) of NI 81-102 requires the approval of the securities regulatory authority of a mutual fund before a reorganization or transfer of assets of the mutual fund is implemented, if the transaction will result in the securityholders of the mutual fund becoming securityholders in another mutual fund.

19. Section 5.5(1)(b) of NI 81-102 applies to the Merger, which would result in unitholders of the Global Fund becoming unitholders of the Balanced Fund. Therefore, the Merger must be approved by the securities regulatory authority before it can be implemented, and the Filers cannot rely on section 5.6(1) of NI 81-102 because the fundamental investment objectives of the Balanced Fund, as well as its fee structure, are not substantially the same as for the Global Fund.

20. The Global Fund invests in a portfolio of global equities, with portfolio management being provided by HSBC Asset Management (Canada) Limited and its affiliate, Sinopia Asset Management S.A. The Balanced Fund, on the other hand, invests in a balanced portfolio of equities and fixed income investments, with no more than 25% of its net assets to be invested in foreign securities, and with AEGON Capital Management Inc. acting as portfolio manager.

21. Although the investment objective of the Balanced Fund is materially different from that of the Global Fund, the Manager is of the view that the Balanced Fund will be an appropriate investment vehicle for most Global Fund unitholders. If unitholders of the Global Fund wish to maintain their investment in a global equity fund, the Circular advised such unitholders that they should consider redeeming their units prior to the Merger, and then invest the net proceeds in a global equity fund managed by another fund company. Representatives of the Manager are available to speak to any such unitholder about the investment options available in this regard, and the Manager will arrange any such redemption and purchase, and the Circular so states.

22. Although the Balanced Fund does not have a substantially identical fee structure to the Global Fund, the differences are in the Global Fund unitholders' favour. The Balanced Fund has a lower management fee (1.75% versus 1.95% for the Global Fund) and a lower management expense ratio (1.83% versus 2.05% for the Global Fund for the period ended December 31, 2010, calculated after all absorptions of expenses and waivers of fees by the Manager; 1.92% versus 2.14% for the same period before such absorptions and waivers). It is a much larger fund and has also had better historic performance.

23. The Merger is expected to provide the following benefits:

    (a) Unitholders are expected to enjoy improved economies of scale and potentially lower proportionate fund operating expenses as part of the larger Balanced Fund following the Merger.

    (b) The Balanced Fund offers a lower management fee as compared to the current Global Fund management fee.

**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 Merger Approval is granted.

"Vera Nunes"
Manager, Investment Funds
Ontario Securities Commission

### 2.1.8 Mansfield Trust – s. 1(10)

**Headnote**

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

**Applicable Legislative Provisions**

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

June 13, 2011

Mansfield Trust
c/o BNY Trust Company of Canada
4 King Street West, Suite 1101
Toronto, Ontario
M5H 1B6

Dear Sirs/Mesdames:

**Re: Mansfield Trust (the Applicant) – application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the Jurisdictions) that the Applicant is not a reporting issuer**

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

### 2.1.9 Consolidated Thompson Iron Mines Limited

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for a decision that the issuer is not a reporting issuer under applicable securities legislation – As a result of an arrangement, the issuer has only one beneficial holder of its common shares, but more than 15 beneficial holders of debt securities in certain jurisdictions in Canada and more than 51 beneficial holders of debt securities in total in Canada – The debt securities are convertible debentures issued under an indenture – Pursuant to the indenture, the issuer is entitled to cause the trustee to release and discharge the indenture and to release the issuer from its covenants in the indenture (a discharge) upon proof being given to the reasonable satisfaction of the trustee that all the debentures have been called for redemption and that payment of the principal and interest on the debentures (and all other monies payable under the indenture) has been provided for in accordance with the provisions of the indenture – The issuer has satisfied the conditions of a discharge – The issuer has been released from its covenants under the indenture and no longer has any obligation under the indenture to maintain a listing of the debentures on the TSX or to maintain its status as a reporting issuer – The debentures no longer have the characteristics of an outstanding security, as they now only represent a right to receive a fixed amount of cash, the aggregate amount of which was deposited with the trustee in connection with the discharge – There is no longer any benefit or risk associated with the ownership of the debentures that relates to the issuer – Decision granted.

**Applicable Legislative Provisions**

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

*Translation*

**June 10, 2011**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**CONSOLIDATED THOMPSON IRON MINES LIMITED**
**(the "Applicant")**

**DECISION**

**Background**

The local securities regulatory authority or regulator in each of the Jurisdictions (the "**Decision Maker**") has received an application from the Applicant for a decision under the securities legislation of the Jurisdictions (the "**Legislation**") that the Applicant is not a reporting issuer (the "**Requested Relief**").

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

a. The Autorité des marchés financiers is the principal regulator for this application; and

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

**Interpretation**

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

**Representations**

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

1. The Applicant was incorporated under the name Thompson-Lundmark Gold Mines Limited under the laws of Canada pursuant to the *Companies Act, 1934* on August 31, 1938. By articles of continuance effective on November 19, 1980, the Applicant was continued under the *Canada Business Corporations Act* ("**CBCA**"). By articles of amalgamation effective on December 18, 1985, Thompson-Lundmark Gold Mines Limited and Hoffman Exploration and Minerals Limited amalgamated to form Consolidated Thompson Lundmark Gold Mines Ltd. under the CBCA. By articles of amalgamation effective July 1, 1989, Consolidated Thompson Lundmark Gold Mines Ltd. amalgamated with 166739 Canada Inc., a wholly-owned subsidiary, under the CBCA. By articles of amalgamation effective on July 1, 1989, Consolidated Thompson Lundmark Gold Mines Ltd. and Quebec Cobalt and Exploration Limited amalgamated under the CBCA to form Consolidated Thompson Lundmark Gold Mines Ltd. By articles of amendment effective August 21, 2006, Consolidated Thompson Lundmark Gold Mines Ltd. changed its name from Consolidated Thompson Lundmark Gold Mines Ltd. to Consolidated Thompson Iron Mines Limited.

2. The Applicant is a reporting issuer in the ten provinces of Canada and is applying for a decision that it is not a reporting issuer in the ten provinces of Canada.

3. The Applicant's head office and registered office is located at 1155 University Street, Suite 508, Montréal, Québec, Canada.

4. Pursuant to its Articles of Amalgamation dated July 1, 1989, the Applicant is authorized to issue an unlimited number of common shares (the "**Common Shares**"). As of May 12, 2011, there were 240,398,020 Common Shares outstanding.

5. Pursuant to a trust indenture (as supplemented or otherwise amended from time to time, the "**Convertible Debenture Indenture**") dated November 29, 2010 between the Applicant and Equity Financial Trust Company, as trustee (the "**Trustee**"), the Applicant issued US$230,000,000 aggregate principal amount of 5% convertible unsecured subordinated debentures maturing on November 30, 2017 (the "**Debentures**"). The principal amount outstanding of the Debentures as of May 25, 2011 is US$229,381,000.

6. Based on a report dated May 20, 2011 from Broadridge, as of May 17, 2011, there were 133 beneficial holders of the Debentures in Canada allocated geographically as follows: 5 in British Columbia, 3 in Alberta, 3 in Manitoba, 93 in Ontario, 22 in Quebec, 3 in New Brunswick and 4 in Nova Scotia. Furthermore, there were 2 beneficial holders of the Debentures in unspecified jurisdictions, which may or may not have been in Canada.

7. Pursuant to an arrangement agreement entered into with the Applicant on January 11, 2011, Cliffs Natural Resources Inc. ("**Cliffs**"), a corporation incorporated under the laws of the State of Ohio with its principal executive offices located in Cleveland, Ohio, agreed to acquire all of the outstanding Common Shares pursuant to a plan of arrangement (the "**Arrangement**") for C$17.25 per Common Share payable in cash. The Arrangement was approved at a special meeting of shareholders of the Applicant held on February 25, 2011 and was subsequently consummated on May 12, 2011.

8. Pursuant to a purchase agreement entered into with Marret Asset Management Inc. and CI Investment Inc. on April 12, 2011 in connection with the Arrangement, Cliffs purchased all of the Applicant's outstanding 8.5% senior secured bonds due 2017 that were issued pursuant to a trust indenture dated as of January 29, 2010 between the Applicant and Computershare Trust Company of Canada in an aggregate principal amount of US$100,000,000 for a price of US$122,500,000 plus accrued and unpaid interest.

9. As a result of the consummation of the Arrangement, Cliffs became the sole beneficial owner of all of the outstanding Common Shares. The Common Shares were delisted from the Toronto Stock Exchange (the "**TSX**") on May 13, 2011.

10. Prior to the consummation of the Arrangement, pursuant to the Convertible Debenture Indenture, the Debentures had been convertible at the option of the holders thereof at a conversion rate of approximately 65.6 Common Shares per US$1,000 principal amount of Debentures. However, the completion of the Arrangement constituted a "Cash Change of Control" under the Convertible Debenture Indenture, pursuant to which (i) the Debentures are no longer convertible into Common Shares, and (ii) upon the exercise by a holder of Debentures of the conversion right under the Debentures, such holder shall be entitled to receive a payment in cash (a "**Premium Conversion Payment**") per US$1,000 principal amount of Debentures equal to C$1,439.78 (plus accrued and unpaid interest) in the case of a conversion occurring until the close of business on June 11, 2011 or C$1,131.60 (plus accrued and unpaid interest) in the case of a conversion occurring thereafter (it being understood that no conversions will occur thereafter, since the Optional Redemption described below will occur on June 13, 2011, the first business day following June 11, 2011).

11. Pursuant to the Convertible Debenture Indenture, the Applicant is entitled, by giving not less than 15 and not more than 60 days' notice to the Trustee, to redeem (an "**Optional Redemption**") any Debentures that remain outstanding at the time of redemption (which may be any time after the close of business on June 11, 2011) at a redemption price per US$1,000 principal amount of Debentures equal to C$1,131.60 (plus accrued and unpaid interest), whereupon the Debentures will no longer be deemed to be outstanding, interest will cease to accrue on the Debentures, and all rights under the Convertible Debenture Indenture of the holders of such Debentures (except for the right to receive the redemption price) will cease. The Applicant delivered to the Trustee on May 13, 2011 a notice of Optional Redemption in respect of any Debentures that remain outstanding on June 13, 2011. Having delivered this notice, the Applicant has done everything necessary in order for the Optional Redemption to occur on June 13, 2011 and cannot withdraw the notice or otherwise stop the Optional Redemption process. Similarly, there is nothing that a holder of Debentures that remain outstanding on June 13, 2011 will be able to do to prevent the Optional Redemption of its Debentures on that date (it being understood that a holder of Debentures may, until the close of business on June 11, 2011, convert its Debentures and thereupon receive a Premium Conversion Payment). Accordingly, no Debentures will remain outstanding after June 13, 2011.

12. As a result of the consummation of the Arrangement, in order to comply with requirements of the Convertible Debenture Indenture, the Applicant delivered to the Trustee an offer (the "**Offer to Purchase**") to purchase all of its outstanding Debentures for 100% of the principal amount thereof (plus accrued and unpaid interest) on the terms and conditions set out in the Offer to Purchase. However, pursuant to the terms of the Convertible Debenture Indenture, as a result of the Optional Redemption, this Offer will automatically become void and of no effect on June 13, 2011.

13. Pursuant to the Convertible Debenture Indenture, the Applicant is entitled to cause the Trustee to release and discharge the Convertible Debenture Indenture and to release the Applicant from its covenants therein contained other than the provisions relating to the indemnification and the payment of remuneration and expenses of the Trustee (a "**Discharge**"), upon proof being given to the reasonable satisfaction of the Trustee that all the Debentures having been duly called for redemption, payment of the principal of and interest on such Debentures and of all other monies payable under the Convertible Debenture Indenture has been duly and effectually provided for in accordance with the provisions of the Convertible Debenture Indenture.

14. On May 20, 2011, the Applicant satisfied the conditions of a Discharge, including the deposit with the Trustee of an amount of funds sufficient for that purpose. As a result, the Trustee holds sufficient funds to pay (and will pay such funds to) any holders of Debentures who elect to convert their Debentures and receive a Premium Conversion Payment, as well as any holders of Debentures that are redeemed pursuant to the Optional Redemption. Accordingly, the Debentures have been fully Discharged, the Applicant has been released from its covenants under the Convertible Debenture Indenture and no longer has any obligation under the Convertible Debenture Indenture to maintain a listing of the Debentures on the TSX or to maintain its status as a reporting issuer, or to make payments of any kind on the Debentures, and the holders of the Debentures no longer have any right to require the Applicant to deliver any disclosure documents to them.

15. The Debentures were delisted from the TSX on May 30, 2011. As a result, there is no organized market for the Debentures in Canada.

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

17. Other than the Debentures, the outstanding securities of the Applicant, including debt securities, are beneficially owned by Cliffs.

18. The Applicant has no intention to seek financing by way of a public offering of its securities in Canada.

19. The Debentures no longer have the characteristics of an outstanding security, as they only represent a right to receive a fixed amount of cash, the aggregate amount of which was deposited with the Trustee in connection with the Discharge. There is no longer any benefit or risk related to the ownership of the Debentures of the Applicant.

20. The Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

21. The Applicant did not apply to revoke its status as a reporting issuer under the simplified procedure in CSA Staff Notice 12-307 *Applications for a decision that an Issuer is not a Reporting Issuer* ("**CSA Staff Notice 12-307**") or British Columbia Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* ("**Instrument 11-502**") because it does not meet the criteria set out in CSA Staff Notice 12-307 and Instrument 11-502.

**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 Requested Relief is granted.

"Louis Morisset"
Superintendant, Securities Markets
Autorité des marchés financiers

### 2.1.10 Maple Group Acquisition Corporation

**Headnote**

NP 11-203, MI 61-101 and Part XX of the Act – take-over bid and subsequent business combination – filer unable to rely on exemption from formal valuation requirement under MI 61-101 for a second step transaction because target shareholders will receive different consideration on the second step than that received by shareholders under the take-over bid – filer also unable rely on the exception to vote shares tendered to the bid on the second step business combination – relief granted from the requirement to obtain a formal valuation and minority approval on the second step business combination provided certain conditions met – relief also granted from take-up and payment requirements and withdrawal provisions in connection with bid to accommodate transaction structure, subject to conditions.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 97.2(1), 98.3(2), 98.1(1)(c), 104(2).
Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, ss. 4.3, 4.5, 9.1

**June 13, 2011**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**MAPLE GROUP ACQUISITION CORPORATION**
**(the Filer)**

**DECISION**

**Background**

The securities regulatory authority or regulator in Ontario and the securities regulatory authority or regulator in each of the Jurisdictions (the **Coordinated Exemptive Relief Decision Makers**) have received an application from the Filer for a decision under, as applicable, the securities legislation of the jurisdiction of the principal regulator (as defined below) and the securities legislation of the Jurisdictions (the **Legislation**), in connection with a take-over bid (the **Offer**) and subsequent plan of arrangement (the **Subsequent Arrangement** and, together with the Offer, the **Filer Acquisition**) for the acquisition by the Filer of all of the issued and outstanding common shares (the **TMX Shares**) of TMX Group Inc. (**TMX Group**), that:

i) the requirement to take up and pay for the TMX Shares proportionately, disregarding fractions, according to the number of securities deposited by holders of TMX Shares (the **TMX Shareholders**) will not apply in respect of the Offer;

ii) the requirement to pay for TMX Shares taken up under the Offer as soon as possible and in any event not later than three business days after the TMX Shares are taken up will not apply in respect of the Offer (together with (a) above, the **Passport Bid Relief**);

iii) the three business day period after which a TMX Shareholder may withdraw TMX Shares deposited under the Offer if the Filer has taken up but not paid for such deposited TMX Shares be varied (the **Coordinated Bid Relief**); and

iv) the requirements in sections 4.3 and 4.5 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) to obtain a formal valuation and minority approval, respectively, for a "business combination" do not apply to the Subsequent Arrangement (the **Passport Valuation and Minority Approval Relief**).

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

(a) the Ontario Securities Commission is the principal regulator for this application (the **Principal Regulator**);

(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: (i) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon, Northwest Territories and Nunavut in respect of the Passport Bid Relief, and (ii) in Québec in respect of the Passport Valuation and Minority Approval Relief;

(c) the decision is the decision of the Principal Regulator; and

(d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

**Interpretation**

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

**Representations**

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

***The Filer***

1. The Filer is a corporation existing under the *Business Corporations Act* (Ontario) (the **OBCA**). The Filer's registered office is located at 1 First Canadian Place, 100 King Street West, Suite 4400, Toronto, Ontario. The Filer has not carried on any material business other than in connection with the Offer and is not in default under the securities legislation of any jurisdiction.

2. The Filer was formed by five of Canada's largest pension funds and four Canadian bank-owned investment dealers, consisting of Alberta Investment Management Corporation, Caisse de Dépôt et Placement du Québec, Canada Pension Plan Investment Board, Fonds de solidarité des travailleurs du Québec (F.T.Q.) and Ontario Teachers' Pension Plan Board (the **Fund Investors**), and CIBC World Markets Inc., National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc. (the **Investment Dealer Investors**, and together with the Fund Investors and potential additional investors who may join the Filer, the **Investors**). As of June 7, 2011, the Investors and their affiliates beneficially owned or exercised control or direction over in the aggregate less than 6% of the outstanding TMX Shares.

3. The authorized share capital of the Filer consists of an unlimited number of common shares (the **Filer Shares**) and an unlimited number of preferred shares. As at June 7, 2011, there were 16 Filer Shares outstanding and no preferred shares were outstanding.

4. As at June 7, 2011, the Investors (other than Fonds de solidarité des travailleurs du Québec (F.T.Q.)), or their affiliates, own all of the outstanding Filer Shares. Each Investor has also agreed or will agree pursuant to an equity commitment letter to subscribe for additional Filer Shares in connection with the Offer.

5. The Filer is not currently a reporting issuer or the equivalent in any of the Jurisdictions.

***TMX Group***

6. TMX Group is a corporation existing under the OBCA. TMX Group is headquartered in Toronto with offices in Montréal, Calgary and Vancouver. TMX Group's registered office is located at The Exchange Tower, 130 King Street West, Toronto, Ontario.

7. TMX Group owns and operates two national stock exchanges, the Toronto Stock Exchange (the **TSX**), serving the senior equity market and TSX Venture Exchange, serving the public venture equity market; Montréal Exchange Inc., Canada's national derivatives exchange; Natural Gas Exchange Inc., an exchange providing a platform for the trading and clearing of natural gas, electricity, and crude oil contracts in North America; Shorcan Brokers Limited, an inter-

dealer broker; and The Equicom Group Inc., providing investor relations and related corporate communications services.

8. The authorized share capital of TMX Group consists of an unlimited number of TMX Shares and an unlimited number of preferred shares. As at May 20, 2011, there were 74,598,140 TMX Shares outstanding and no preferred shares were outstanding.

9. TMX Group is a reporting issuer or the equivalent in each of the provinces and territories of Canada. The TMX Shares are listed and posted for trading on the TSX.

***The Original Filer Proposal***

10. On February 9, 2011, TMX Group issued a press release announcing that it had entered into an agreement with the London Stock Exchange Group plc (**LSEG**) providing for a plan of arrangement whereby the holders of TMX Shares (the **TMX Shareholders**) would receive 2.9963 shares of LSEG for each TMX Share. If the transaction is completed, existing shareholders of LSEG would own 55% of the outstanding LSEG shares and TMX Shareholders would own 45% of the outstanding LSEG shares (such transaction, the **LSEG Acquisition**). Under the LSEG Acquisition, LSE shares (or securities exchangeable into LSE shares) issuable to U.S. shareholders of TMX Group (the **U.S. Shareholders**) will be issued in reliance on the exemption from the registration requirements of the U.S. Securities Act of 1933, as amended (the **U.S. Securities Act**) provided by section 3(a)(10) thereof (the **3(a)(10) Exemption**).

11. On May 13, 2011, the Filer submitted a proposal (the **Filer Proposal**) to the board of directors of TMX Group to acquire all of the issued and outstanding TMX Shares for, at the election of each TMX Shareholder, $48.00 in cash or one Filer Share per TMX Share, in each case subject to proration. The maximum aggregate amount of cash payable under the Filer Proposal was $2.5 billion and the maximum number of Filer Shares issuable was 22.5 million. On a fully prorated basis, each TMX Share would be exchanged for approximately $33.52 in cash plus 0.3016 of a Filer Share. Upon completion of the acquisition of TMX Group by the Filer, existing TMX Shareholders would own approximately 40% of the outstanding Filer Shares, the Fund Investors would own approximately 35% of the outstanding Filer Shares and the Investment Dealer Investors would own approximately 25% of the outstanding Filer Shares. It was contemplated that the Filer Proposal would be implemented by way of plan of arrangement so that Filer Shares would be issuable to U.S. Shareholders in reliance on the 3(a)(10) Exemption.

12. On May 14, 2011, TMX Group issued a press release announcing that it had received the Filer Proposal and on May 15, 2011, the Filer issued a news release announcing that it had submitted the Filer Proposal to TMX Group.

13. On May 20, 2011, TMX Group announced that the Filer Proposal did not constitute a superior proposal for purposes of its agreement with LSEG, thereby rejecting the Filer Proposal.

14. On May 25, 2011, the Filer issued a press release announcing its intention to commence an offer on the same terms as the Filer Proposal (the **May 25 Offer**). The press release announcing the May 25 Offer provided in the "Information for U.S. Shareholders" section of the press release that, unless the Filer Shares issuable to a U.S. Shareholder pursuant to the May 25 Offer could be issued pursuant to an exemption from the registration requirements of the U.S. Securities Act, Filer Shares issuable to U.S. Shareholders would be sold and such shareholders would be entitled to the net cash proceeds of the sale of such shares (such sale of Filer shares otherwise issuable to U.S. Shareholders being referred to as the **Vendor Placement**). Based on its knowledge as at May 25 of the number of TMX Shares held by U.S. Shareholders, the Filer believed that it would be entitled to rely on the Vendor Placement in making the May 25 Offer in compliance with the U.S. Securities Act.

***Reasons for Changes to the Filer Proposal***

15. Following the May 25, 2011 announcement, the Filer received shareholder lists of TMX Group which showed that the number of TMX Shares held by U.S. shareholders is substantially higher than was believed on May 25, 2011. Specifically, based on the list of TMX Shareholders provided to the Filer, as at May 20, 2011, the percentage of TMX Shares held by U.S. Shareholders was approximately 40%.

16. The Filer has been advised that the structure contemplated under the May 25 Offer would not comply with applicable U.S. securities laws to the extent that:

    (a) The SEC would not generally permit use of a Vendor Placement where there is such a significant proportion of TMX Shares held by the U.S. Shareholders.

    (b) The offering of Filer Shares to U.S. shareholders would require the preparation of a registration statement in accordance with U.S. securities laws. Such a registration statement would require significant time to prepare

and the Filer would be unable to commence its offer until the registration statement was filed with the U.S. Securities and Exchange Commission (the **SEC**). The registration statement would also require relief from the SEC requirement to provide a reconciliation of TMX Group's financial statements to U.S. generally accepted accounting principles (**U.S. GAAP**).

(c) Because the Filer Shares will not be listed in the U.S. and because the U.S.-Canadian Multijurisdictional Disclosure System registration forms are not available for SEC registration of the Filer Proposal due to absence of historic Canadian reporting by the Filer, the Filer Proposal would need to be filed in and cleared by state securities (blue sky) commissions in over half of the states in the United States and there is no assurance that all states would clear the Filer Proposal without a U.S. GAAP reconciliation.

(d) The obligation to register its securities under U.S. securities laws would result in the Filer being subject to significant additional SEC reporting obligations and the Filer and its board being subject to potential U.S. securities liability with respect to disclosure regarding the Filer and TMX Group in the SEC registration statement and other filings.

17. For these reasons, and in light of timing constraints because the TMX Group is seeking the approval of its shareholders for the LSEG Acquisition on June 30, 2011, the Filer concluded that the structure of the May 25 Offer is not viable in the circumstances.

***The Filer Acquisition***

18. The Filer wishes to proceed with a structure providing for an integrated two-step acquisition transaction designed to result in 100% of the existing TMX Shares being acquired from existing TMX Shareholders on substantially the same aggregate economic terms as the Filer Proposal and the May 25 Offer, and in compliance with the U.S. Securities Act.

19. The first step of the Filer Acquisition is the Offer, pursuant to which the Filer will seek to acquire 70% of the TMX Shares for $48.00 in cash per TMX Share. Since only cash consideration will be offered under the Offer, the Offer can be made to U.S. Shareholders without the requirement to file a registration statement under the U.S. Securities Act. Immediately following the successful completion of the Offer, the Investors, through the Filer, will own approximately 70% of TMX Group and TMX Shareholders will own approximately 30% of TMX Group.

20. The second step of the Filer Acquisition is the Subsequent Arrangement to be implemented pursuant to applicable Canadian corporate laws. This will be accomplished by way of a court-approved plan of arrangement providing for a share exchange transaction pursuant to which TMX Shareholders will receive Filer Shares in exchange for their TMX Shares. Following completion of the Subsequent Arrangement, the Investors will own approximately 60% of the outstanding Filer Shares and former TMX Shareholders will own approximately 40% of the outstanding Filer Shares. Since the Subsequent Arrangement will be effected pursuant to a court-approved plan of arrangement, U.S. Shareholders of TMX Group will be able to receive the Filer Shares in connection with the Subsequent Arrangement pursuant to the 3(a)(10) Exemption.

21. Following successful completion of the Offer, the Filer will have sufficient votes to cause the Subsequent Arrangement to be completed under applicable Canadian corporate laws and will use its best efforts to complete the Subsequent Arrangement within 35 days following the Deposit Extension Period Expiry Time (as defined below). The Subsequent Arrangement will be subject to a fairness review by the court, and the Filer Shares issuable to any remaining U.S. Shareholders will be issued in the United States in reliance upon the 3(a)(10) Exemption.

22. The economic result of the Filer Acquisition will be substantially the same as that of the Filer Proposal and the May 25 Offer if all TMX Shareholders were to elect the Full Deposit Election (as defined below).

23. The Filer intends to commence the Offer shortly by mailing the circular and related offer documents to TMX Shareholders and concurrently filing such documents on SEDAR.

24. If the Offer is varied, the Filer will ensure that the aggregate consideration payable for TMX Shares acquired under the Offer and the Subsequent Arrangement are substantially equivalent in value, regardless of the form of consideration.

***Terms of the Offer – Full Deposit Election and Minimum Deposit Election***

25. Under the Offer, the Filer will seek to acquire 70% of the outstanding TMX Shares (on a non-diluted basis), and the Offer will include a non-waivable minimum tender condition that at least 70% of the outstanding TMX Shares (on a non-diluted basis) shall have been tendered under the Offer at the Initial Expiry Time (as defined below) (the **Minimum Tender Condition**).

26. Each TMX Shareholder will be entitled to elect to accept the Offer either:

    (a) on the basis (the **Full Deposit Election**) that:

        i) if the number of TMX Shares deposited to the Offer in respect of which the Full Deposit Election has been made is sufficient to satisfy the Minimum Tender Condition as at the expiry of the Deposit Extension Period (as defined below), then the number of TMX Shares to be acquired and paid for from each TMX Shareholder that has made a Full Deposit Election shall be pro-rated, disregarding fractions by rounding down to the nearest whole number of TMX Shares, based on the number of TMX Shares deposited by each TMX Shareholder making the Full Deposit Election; and

        ii) if the number of TMX Shares deposited to the Offer in respect of which the Full Deposit Election has been made is not sufficient to satisfy the Minimum Tender Condition as at the expiry of the Deposit Extension Period (but the Minimum Tender Condition is satisfied after taking into account the number of TMX Shares deposited to the Offer in respect of which the Minimum Deposit Election has been made), all TMX Shares deposited under the Offer in respect of which the Full Deposit Election has been made shall be acquired and paid for; or

    (b) on the basis (the **Minimum Deposit Election**) that:

        i) if the number of TMX Shares deposited to the Offer in respect of which the Full Deposit Election has been made is sufficient to satisfy the Minimum Tender Condition as at the expiry of the Deposit Extension Period, then no TMX Shares deposited by any TMX Shareholder making the Minimum Deposit Election will be acquired and paid for under the Offer; and

        ii) if the number of TMX Shares deposited to the Offer in respect of which the Full Deposit Election has been made is not sufficient to satisfy the Minimum Tender Condition as at the expiry of the Deposit Extension Period (but the Minimum Tender Condition is satisfied after taking into account TMX Shares in respect of which the Minimum Deposit Election has been made), then only such number of TMX Shares deposited to the Offer in respect of which the Minimum Deposit Election has been made as is necessary, together with any TMX Shares in respect of which a Full Deposit Election has been made, to satisfy the Minimum Tender Condition will be acquired and paid for under the Offer (on a pro rata basis, disregarding fractions by rounding down to the nearest whole number of TMX Shares, based on the number of TMX Shares deposited by each TMX Shareholder making the Minimum Deposit Election).

27. TMX Shareholders who wish to receive as much cash as possible for their TMX Shares pursuant to the Filer Acquisition can make the Full Deposit Election because only cash will be paid as consideration pursuant to the Offer. TMX Shareholders who would like to support the Offer, but would like to receive as many Filer Shares as possible for their TMX Shares pursuant to the Filer Acquisition, would make the Minimum Deposit Election because this will result in the minimum number of their TMX Shares being acquired in order to satisfy the Minimum Tender Condition pursuant to the Offer to the extent that an insufficient number of TMX Shares have been tendered under the Full Deposit Election to satisfy the Minimum Tender Condition for the Offer, and the balance of their TMX Shares will be acquired in exchange for Filer Shares pursuant to the Subsequent Arrangement.

***Terms of the Offer – Deposit Extension Period***

28. Under the Offer, if all of the conditions of the Offer have been satisfied or waived by the Filer at or prior to the expiry time of the Offer, as it may be extended, except in connection with the Deposit Extension Period (as defined below) (the **Initial Expiry Time**), the Filer will make a public announcement of that fact and take up all TMX Shares deposited to the Offer, and the Offer will remain open for deposits and tenders of TMX Shares for ten days (the **Deposit Extension Period**) from the date of such announcement, following which the Offer will expire (the **Deposit Extension Period Expiry Time**). The Deposit Extension Period will permit TMX Shareholders who have not deposited their TMX Shares prior to the Initial Expiry Time the opportunity to deposit their TMX Shares under the Offer after TMX Shareholders know that the Offer will be successful.

29. The Deposit Extension Period provides a shareholder approval mechanism for the Filer Acquisition that is intended to ensure that a TMX Shareholder can separate the decision to tender its TMX Shares from the approval or disapproval of the Filer Acquisition.

30. At the Initial Expiry Time, the Filer will take up TMX Shares validly deposited under the Offer prior to the Initial Expiry Time. Any TMX Shares deposited under the Offer during the Deposit Extension Period will be taken up not later than the Deposit Extension Period Expiry Time.

31. At the Deposit Extension Period Expiry Time and based on the number of TMX Shares taken up under the Offer by such time, the Filer will calculate the appropriate proration factors to be applied for the TMX Shares deposited under the Offer in respect of which Full Deposit Elections and Minimum Deposit Elections have been made. Following the determination of the applicable proration factors, the Filer will:

    (a) pay for those TMX Shares that are to be acquired at the Deposit Extension Period Expiry Time; and

    (b) return, at the Filer's expense, those TMX Shares that are not to be acquired under the Offer to the applicable TMX Shareholders as soon as practicable following the Deposit Extension Period Expiry Time.

***Subsequent Arrangement***

32. The Subsequent Arrangement will be a "business combination" under MI 61-101 requiring a formal valuation and minority approval, unless exempt. In connection with the Subsequent Arrangement, the formal valuation exemption in section 4.4 of MI 61-101 and the ability, under section 8.2 of MI 61-101, to include votes of shares tendered by independent shareholders in obtaining minority approval under Part 8 of MI 61-101 are not available because the consideration to be received by a TMX Shareholder under the Subsequent Arrangement (i.e., Filer Shares) would not be in the same form as the consideration that the tendering TMX Shareholders will receive under the Offer (i.e., cash).

***Effect of Decision***

33. The Filer acknowledges that the granting of this decision does not constitute approval of the Filer Acquisition for any regulatory purpose.

**Decision**

Each of the Principal Regulator and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

The decision of the Principal Regulator under the Legislation is that the Passport Bid Relief is granted provided that:

(a) the Filer acquires TMX Shares under the Offer in accordance with the Full Deposit Election and Minimum Deposit Election as described in paragraph 26 above;

(b) the Filer extends the expiry time of the Offer as described in paragraph 28 above;

(c) the Filer pays for TMX Shares validly deposited under the Offer at the Deposit Extension Period Expiry Time and any TMX Shares deposited under the Offer during the Deposit Extension Period are taken up and paid for at the Deposit Extension Period Expiry Time; and

(d) the Subsequent Arrangement is completed no later than 35 days following the Deposit Extension Period Expiry Time.

The decision of the Coordinated Review Decision Makers under the Legislation is that the Coordinated Bid Relief is granted such that:

(a) a TMX Shareholder may withdraw TMX Shares deposited under the Offer if the TMX Shares taken up under the Offer have not been paid for within three business days after the Deposit Extension Period Expiry Time.

"James Turner"
Commissioner
Ontario Securities Commission

"James D. Carnwath"
Commissioner
Ontario Securities Commission

The further decision of the Principal Regulator under the Legislation is that the Passport Valuation and Minority Approval Relief is granted provided that:

(a) minority approval for the Subsequent Arrangement shall have been obtained by the Filer by acquiring under the Offer more than 50% of the TMX Shares held by TMX Shareholders who satisfy the following conditions:

    (i) the TMX Shareholder that tendered the TMX Shares to the Offer was not a joint actor with the Filer in respect of the Offer,

    (ii) the TMX Shareholder that tendered the TMX Shares to the Offer was not

(A) a direct or indirect party to any connected transaction to the Offer or the Subsequent Arrangement, or

(B) entitled to receive, directly or indirectly, in connection with the Offer

(x) consideration per TMX Share in the Offer that was not identical in amount and form to the entitlement of the general body of holders in Canada of TMX Shares pursuant to the Offer, or

(y) a collateral benefit,

(C) entitled to receive, directly or indirectly, in connection with the Subsequent Arrangement

(x) consideration per TMX Share in the Subsequent Arrangement that was not identical in amount and form to the entitlement of the general body of holders in Canada of TMX Shares pursuant to the Subsequent Arrangement, or

(y) a collateral benefit,

(b) the Subsequent Arrangement is completed no later than 35 days following the Deposit Extension Period Expiry Time,

(c) the disclosure document for the Offer

(i) disclosed that if the Filer acquired TMX Shares under the Offer, the Filer will use its best efforts to complete the Subsequent Arrangement within 35 days following the Deposit Extension Period Expiry Time,

(ii) stated that the Subsequent Arrangement would be subject to minority approval in accordance with the terms of this decision,

(iii) disclosed the number of votes attached to the TMX Shares that, to the knowledge of the Filer after reasonable inquiry, would be required to be excluded in determining whether minority approval for the Subsequent Arrangement had been obtained in accordance with the terms of this decision,

(iv) identified the holders of securities specified in subparagraph (iii) and set out their individual holdings,

(vi) described the expected tax consequences of both the Offer and the Subsequent Arrangement, and

(d) the Minimum Tender Condition is non-waivable.

"Naizam Kanji"
Deputy Director
Mergers & Acquisitions, Corporate Finance
Ontario Securities Commission

### 2.1.11 Plutonic Power Corporation – s. 1(10)

**Headnote**

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

**Applicable Legislative Provisions**

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

June 13, 2011

Jennifer Poirier
Borden Ladner Gervais LLP
1200 – 200 Burrard Street
Vancouver, BC V7X 1T2

Dear Ms. Poirier:

**Re: Plutonic Power Corporation (the Applicant) - application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting Issuer**

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

As the Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions in Canada and fewer than 51 security holders in total in Canada;

(b) no securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and

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

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

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

### 2.1.12 Alter NRG Corp. et al.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Dual application for exemptive relief – Equity line of credit distribution – Corporation to enter into an equity purchase agreement with a purchaser acting as an underwriter to distribute shares of the Corporation through the facilities of the TSX in the context of an equity line of credit distribution – Corporation granted exemption from the Prospectus Disclosure Requirements, subject to conditions – Purchaser granted exemption from the Dealer Registration Requirement and Prospectus Delivery Requirement, subject to conditions.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 71, 74(1), 147.
National Instrument 44-101 Short Form Prospectus Distributions.
National Instrument 44-102 Shelf Distributions.

**Citation:** Alter NRG Corp., Re, 2011 ABASC 301

**May 20, 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**
**ALTER NRG CORP. (the Issuer),**
**HAVERSTOCK MASTER FUND, LTD. (the Purchaser)**
**AND HAVERSTOCK MANAGER, LLC**
**(the Manager, and together with the Issuer and**
**the Purchaser, the Filers)**

**DECISION**

**Background**

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

(a) the following prospectus disclosure requirements under the Legislation (the **Prospectus Disclosure Requirements**) do not fully apply to the Issuer in connection with the Distribution (as defined below):

  (i) the statement in the Pricing Supplement (as defined below) respecting statutory rights of withdrawal and rescission or damages in the form prescribed by item 20 of Form 44-101F1 of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**); and

  (ii) the statements in the Base Shelf Prospectus required by subsections 5.5(2) and (3) of National Instrument 44-102 *Shelf Distributions* (**NI 44-102**);

(b) the prohibition from acting as a dealer unless the person is registered as such (the **Dealer Registration Requirement**) does not apply to the Purchaser and the Manager in connection with the Distribution; and

(c) the requirement that a dealer send a copy of the Prospectus (as defined below) to a subscriber or purchaser in the context of a distribution (the **Prospectus Delivery Requirement**) does not apply to the Purchaser, the Manager or the dealer(s) through whom the Purchaser sells the Shares (as defined below) and, as a result, rights of withdrawal or

rights of rescission, price revision or damages for non-delivery of the Prospectus do not apply in connection with the Distribution;

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

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

**Interpretation**

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

**Representations**

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

*The Issuer*

1. The Issuer is incorporated under the *Business Corporations Act* (Alberta) and its head and registered office is located in Calgary, Alberta.

2. The Issuer is a reporting issuer under the securities legislation of each of the provinces of Canada other than Québec, and is not in default of the securities legislation of any jurisdiction in Canada.

3. The Issuer's authorized share capital consists of an unlimited number of common shares (the **Shares**), without par value, of which 61,809,867 were issued and outstanding as at February 11, 2011.

4. The Shares are listed for trading on the Toronto Stock Exchange (the **TSX**). Based on their closing price of $1.56 on February 11, 2011, the market capitalization of the Issuer was approximately $96 million.

5. The Issuer is qualified to file a short form prospectus under section 2.2 and 2.7 of NI 44-101 and is also qualified to file a base shelf prospectus under NI 44-102.

6. The Issuer intends to file with the securities regulator in each of the provinces of Canada, other than Québec, a base shelf prospectus pertaining to various securities of the Issuer, including the Shares (such base shelf prospectus and any amendment thereto, the **Base Shelf Prospectus**).

7. The statements required by subsections 5.5(2) and (3) of NI 44-102 contained in the Base Shelf Prospectus will be qualified by adding the following statement: "*, except in cases where an exemption from such delivery requirements has been obtained.*".

*The Purchaser and the Manager*

8. The Purchaser is a Cayman Islands exempt limited company and its head office is located in Roslyn, New York.

9. The Purchaser is managed by the Manager, a limited liability corporation incorporated under the laws of Delaware, having its head office in Roslyn, New York. The Manager is an affiliate of the Purchaser under applicable securities laws.

10. Neither the Purchaser nor the Manager is a reporting issuer or registered as a registered firm as defined in National Instrument 31-103 *Registration Requirements and Exemptions* (**NI 31-103**) in any jurisdiction of Canada. The Purchaser and the Manager are not in default of securities legislation in any jurisdiction in Canada.

*The Distribution Agreement*

11. The Issuer and the Purchaser propose to enter into a committed equity facility agreement (the **Distribution Agreement**) pursuant to which the Purchaser will agree to subscribe for, and the Issuer will have the right but not the obligation to issue and sell, up to $20 million of Shares (the **Aggregate Commitment Amount**) over a period of 24 months in a series of drawdowns.

12. The Distribution Agreement will provide the Issuer with the ability to raise capital as needed from time to time. The Purchaser regularly engages in such transactions. The Purchaser may, in certain circumstances, finance its commitment to subscribe for Shares on a drawdown through short-sales or resales out of existing holdings of the Issuer's securities.

13. Under the Distribution Agreement, the Issuer will have the sole ability to determine the timing and the amount of each drawdown, subject to certain conditions, including a maximum investment amount per drawdown and the Aggregate Commitment Amount.

14. The subscription price per Share and therefore the number of Shares to be issued to the Purchaser for each drawdown will be calculated based on a predetermined percentage discount from the average daily volume-weighted average price per Share on the TSX over a period of five consecutive trading days following notice of a drawdown sent by the Issuer (the **Drawdown Pricing Period**). Specifically, the Shares will be issued at a subscription price equal to the average daily volume-weighted average price per Share on the TSX during the Drawdown Pricing Period multiplied by 94%. The Issuer may fix in such drawdown notice a minimum subscription price below which it will not issue any Shares. Notwithstanding the foregoing, the subscription price per Share may not be lower than the volume-weighted average price per Share on the TSX over a period of five consecutive trading days immediately preceding the applicable drawdown notice, less the permitted discount under the private placement rules contained in the TSX Company Manual (the **Floor Price**).

15. On the second trading day following the date that the Issuer receives a receipt for the Pricing Supplement with respect to the Shares issuable pursuant to the applicable drawdown notice (each, a **Settlement Date**), the amount of the drawdown will be paid by the Purchaser in consideration for the relevant number of newly issued Shares.

16. The Distribution Agreement will provide that, at the time of each drawdown notice and at each Settlement Date, the Issuer will make a representation to the Purchaser that the Base Shelf Prospectus, as supplemented (the **Prospectus**), contains full, true and plain disclosure of all material facts relating to the Issuer and the Shares being distributed. The Issuer would therefore be unable to issue, or decide to issue, Shares when it is in possession of undisclosed information that would constitute a material fact or a material change.

17. On or after each Settlement Date, the Purchaser may seek to sell all or a portion of the Shares subscribed under the drawdown.

18. During the term of the Distribution Agreement, the Purchaser and its affiliates, associates or insiders, as a group, will not own at any time, directly or indirectly, Shares representing more than 19.9% of the issued and outstanding Shares.

19. The Purchaser and its affiliates, associates and insiders will not engage in any short sales in respect of the Shares during the term of the Distribution Agreement. However, the Purchaser may, after the receipt of a drawdown notice, seek to sell Shares to hedge its obligation to purchase Shares under a drawdown notice provided that:

    (a) the Purchaser complies with applicable rules of the TSX, applicable securities laws and this decision document;

    (b) the Purchaser and its affiliates, associates, and insiders will not during the Drawdown Pricing Period, directly or indirectly, sell that number of Shares which exceeds that number of Shares the Purchaser will be required to purchase under the applicable drawdown; and

    (c) notwithstanding the foregoing, the purchaser and its affiliates, associates and insiders, will not directly or indirectly, sell Shares or grant any right to purchase or acquire any right to dispose of, nor otherwise dispose for value of, any Shares or any securities convertible into or exchangeable for Shares, between the time of delivery of a drawdown notice and the filing of the news release announcing the drawdown.

20. Disclosure of the activities of the Purchaser and its affiliates, associates or insiders, as well as the restrictions thereon, the whole as described in paragraphs 18 and 19 above, will be included in the Base Shelf Prospectus and Prospectus Supplement (as defined below). In addition, the Issuer will disclose in the Base Shelf Prospectus, as a risk factor, that the Purchaser may engage in short sales, resales or other hedging strategies to reduce investment risks associated

with a drawdown, and the possibility that such transactions may result in significant dilution to existing shareholders and could have a significant effect on the price of the Shares.

21. No extraordinary commission or consideration will be paid by the Purchaser or the Manager to a person or company in respect of the disposition of Shares by the Purchaser to purchasers who purchase the same on the TSX through dealer(s) engaged by the Purchaser (the **TSX Purchasers**).

22. The Purchaser and the Manager will also agree, in effecting any disposition of Shares, not to engage in any sales, marketing or solicitation activities of the type undertaken by dealers in the context of a public offering. More specifically, each of the Purchaser and the Manager will not (a) advertise or otherwise hold itself out as a dealer, (b) in the ordinary course of business purchase or sell securities as principal from or to customers, (c) carry a dealer inventory in securities, (d) quote a market in securities, (e) with the exception of any bridge facility or convertible debt facility provided to the Issuer by the Purchaser, extend, or arrange for the extension of credit, in connection with transactions of securities of the Issuer, (f) run a book of repurchase and reverse repurchase agreements, (g) use a carrying broker for securities transactions, (h) lend securities for customers, (i) guarantee contract performance or indemnify the Issuer for any loss or liability from the failure of the transaction to be successfully consummated, or (j) participate in a selling group.

23. The Purchaser and the Manager will not solicit offers to purchase Shares in any jurisdiction of Canada and will sell the Shares to TSX Purchasers through one or more dealer(s) unaffiliated with the Purchaser, the Manager and the Issuer.

*The Prospectus Supplements*

24. The Issuer intends to file with the securities regulator in each of the provinces of Canada, other than Québec, a prospectus supplement to the Base Shelf Prospectus (a **Prospectus Supplement**) as soon as commercially reasonable following the date on which the Base Shelf Prospectus is receipted by the applicable securities regulators and intends to file in each of the provinces of Canada, other than Québec, a pricing supplement (each, a **Pricing Supplement**) within two trading days after the end of the Drawdown Pricing Period for each drawdown under the Distribution Agreement.

25. The Pricing Supplement will disclose (i) the number of Shares issued to the Purchaser, (ii) the price per Share paid by the Purchaser, (iii) the information required by NI 44-102, including the disclosure required by subsection 9.1(3) thereof, and (iv) the following statement (the **Amended Statement of Rights**):

- *Securities legislation in certain of the provinces of Canada provides purchasers with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt or deemed receipt of a prospectus and any amendment. In several of the provinces, the securities legislation further provides a purchaser with remedies for rescission or, in some jurisdictions, revision of the price or damages if the prospectus and any amendment are not delivered to the purchaser, provided that the remedies for rescission, revision of the price or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province. However, such rights and remedies will not be available to purchasers of common shares distributed under this prospectus because the prospectus will not be delivered to purchasers, as permitted under a decision document issued by the Alberta Securities Commission on May [●], 2011.*

- *The securities legislation further provides a purchaser with remedies for rescission or, in some jurisdictions, revisions of the price or damages if the prospectus and any amendment contain a misrepresentation, provided that the remedies for rescission, revisions of the price or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province. Such remedies remain unaffected by the non-delivery of the prospectus permitted under the decision document referred to above.*

- *The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province for the particulars of these rights or consult with a legal adviser.*

26. The Base Shelf Prospectus, as supplemented by the Prospectus Supplement and each Pricing Supplement, will qualify, *inter alia*, (a) the distribution of Shares to the Purchaser on the Settlement Date, and (b) the disposition of Shares to TSX Purchasers during the period that commences on the date of issuance of a drawdown notice and ends on the earlier of (i) the date on which the disposition of such Shares has been completed or (ii) the 40th day following the relevant Settlement Date (collectively, the **Distribution**).

27. The Prospectus Delivery Requirement is not workable in the context of the Distribution because the TSX Purchasers will not be readily identifiable as the dealer(s) acting on behalf of the Purchaser may combine the sell orders made

under the Prospectus with other sell orders and the dealer(s) acting on behalf of the TSX Purchasers may combine a number of purchase orders.

28. The Pricing Supplement will contain an underwriter's certificate in the form set out in section 2.2 of Appendix B to NI 44-102 signed by the Purchaser.

29. At least three business days prior to the filing of any Pricing Supplement, the Issuer will provide for comment to the Decision Makers a draft of such Pricing Supplement.

*News Releases / Continuous Disclosure*

30. Following the issuance of this decision document, the Issuer will:

    (a) promptly issue and file on SEDAR a news release disclosing the material terms of the Distribution Agreement, including the Aggregate Commitment Amount; and

    (b) within ten days after said issuance:

        (i) file a copy of the Distribution Agreement on SEDAR; and

        (ii) file a material change report on SEDAR disclosing the material terms of the Distribution Agreement including the Aggregate Commitment Amount.

31. Promptly upon the issuance of each drawdown notice, regardless of the size of the drawdown, the issuer will issue and file on SEDAR a news release disclosing the aggregate amount of the drawdown, the maximum number of Shares to be issued, the minimum price per Share, if any, the Floor Price and the availability on SEDAR of the Base Shelf Prospectus, Prospectus Supplement and Pricing Supplement and specifying how a copy of those documents can be obtained.

32. Promptly upon any amendment to the minimum price set forth in a drawdown notice, the Issuer will issue and file on SEDAR a news release disclosing the amended minimum price per Share and the maximum number of Shares to be issued.

33. The Issuer will:

    (a) on or as soon as practicably possible after, the last day of each Drawdown Pricing Period, issue and file on SEDAR a news release disclosing:

        (i) the number of Shares issued to, and the price per Share paid by, the Purchaser;

        (ii) that the Base Shelf Prospectus, the Prospectus Supplement and the relevant Pricing Supplement will be available on SEDAR and specifying how a copy of these documents can be obtained; and

        (iii) the Amended Statement of Rights; and

    (b) file a material change report on SEDAR within ten days of each Settlement Date, if the relevant Distribution constitutes a material change under applicable securities legislation, disclosing at a minimum the information required in subparagraph (a) above.

34. The Issuer will also disclose in its financial statements and management's discussion and analysis filed on SEDAR under National Instrument 51-102 *Continuous Disclosure Obligations*, for each financial period, the number and price of Shares issued to the Purchaser pursuant to the Distribution Agreement.

*Deliveries upon Request*

35. The Issuer will deliver to the Decision Makers and to the TSX, upon request, a copy of each drawdown notice delivered by the Issuer to the Purchaser under the Distribution Agreement.

36. The Purchaser and the Manager will provide to the Decision Makers, upon request, full particulars of trading and hedging activities by the Purchaser or the Manager (and, if required, trading and hedging activities by their respective affiliates, associates or insiders) in relation to securities of the Issuer during the term of the Distribution Agreement.

**Decision**

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

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

(a) as it relates to the Prospectus Disclosure Requirements:

(i) the Issuer comply with the representations in paragraphs 7, 20, 25, 26, 28 , 29, 30, 31, 32, 33, and 35; and

(ii) the number of Shares distributed by the Issuer under the Distribution Agreement does not exceed, in any 12 month period, 20% of the aggregate number of Shares outstanding calculated at the beginning of such period;

(b) as it relates to the Prospectus Delivery Requirement and the Dealer Registration Requirement, the Purchaser and/or the Manager, as the case may be, comply with the representations in paragraphs 19, 21, 22, 23, 28, and 36; and

(c) this decision will terminate 25 months after the execution of the Distribution Agreement.

**For the Commission:**

“Glenda Campbell, QC”
Vice-Chair

“Stephen Murison”
Vice-Chair

## 2.2 Orders

### 2.2.1 Lakota Resources Inc. – s. 144

**Headnote**

Application by an issuer for a revocation of a cease trade order issued by the Commission – Cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – Defaults subsequently remedied by bringing continuous disclosure filings up-to-date – Cease trade order revoked.

**Applicable Legislative Provisions**

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

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

**AND**

**IN THE MATTER OF**
**LAKOTA RESOURCES INC.**

**ORDER**
**(Section 144)**

**WHEREAS** the securities of Lakota Resources Inc. (the **Applicant**) are subject to a temporary cease trade order made by the Director dated May 7, 2009 pursuant to subsections 127(1) and 127(5) of the Act and a further cease trade order made by the Director dated May 19, 2009 pursuant to subsection 127(1) of the Act directing that trading in the securities of the Applicant cease until the order is revoked by the Director (the **Ontario Cease Trade Order);**

**AND WHEREAS** the Ontario Cease Trade Order was made on the basis that the Applicant was in default of certain filing requirements under Ontario securities law as described in the Ontario Cease Trade Order;

**AND WHEREAS** the Applicant having applied to the Ontario Securities Commission (the **Commission**) for an order pursuant to Section 144 of the Act to revoke the Ontario Cease Trade Order;

**AND UPON** the Applicant having represented to the Commission that:

1. The Applicant is a corporation incorporated under the laws of the Province of Ontario. The head office of the Applicant is located in Calgary, Alberta, and its registered office is located in Toronto, Ontario.

2. The Applicant is a reporting issuer or the equivalent under the securities legislation of the provinces of Alberta, British Columbia and Ontario (the **Reporting Jurisdictions**). The Applicant is not a reporting issuer in any other jurisdiction in Canada.

3. The Applicant is authorized to issue an unlimited number of common shares of which 59,249,966 common shares (the **Common Shares**) are issued and outstanding as of the date hereof.

4. The Applicant's Common Shares were delisted from the TSX Venture Exchange on July 13, 2009 because the Applicant failed to maintain listing requirements. The Applicant currently has no securities listed or quoted on any market.

5. Other than the Common Shares and 100,000 options to acquire Common Shares, the Applicant has no other securities outstanding.

6. The Applicant is also subject to cease trade orders issued by the Alberta Securities Commission on August 10, 2009 (the **Alberta Cease Trade Order**) and the British Columbia Securities Commission on May 11, 2009 (the **British Columbia Cease Trade Order**).

7. The Ontario Cease Trade Order was issued as a result of the Applicant's failure to file its annual audited financial statements and annual management discussion and analysis for the year ended December 31, 2008.

8. On August 4, 2009, Lakota initiated proposal proceedings pursuant to the *Bankruptcy and Insolvency Act* (Canada).

9. In August 2009, a proposal (the **BEC Proposal**) was made by BEC International Corporation (**BEC**) whereby BEC would make loans to the Corporation totaling approximately $620,000. On September 14, 2009, approval of the BEC Proposal was obtained from the Ontario Superior Court of Justice.

10. On October 28, 2009, all of the directors and management of the Applicant resigned and were replaced by Paul Conroy, as President and Chief Executive Officer and a director, Derek Batorowski, Chief Financial Officer and a director, and Raymond Hodgkinson, a director.

11. Since the issuance of the Ontario Cease Trade Order, the Applicant has filed, among other things, the following continuous disclosure documents with the Reporting Jurisdictions:

    a. On January 20, 2011, annual audited financial statements, annual management discussion and analysis and certification of annual filings for the year ended December 31, 2008, together with Form 13-502F1;

b. On January, 20, 2011, interim unaudited financial statements, interim management discussion and analysis, and certification of interim filings for the interim period ended March 31, 2009;

c. On January 20, 2011, interim unaudited financial statements, interim management discussion and analysis, and certification of interim filings for the interim period ended June 30, 2009;

d. On January 20, 2011, interim unaudited financial statements, interim management discussion and analysis, and certification of interim filings for the period ended September 30, 2009;

e. On January 20, 2011, annual audited financial statements, annual management discussion and analysis and certification of annual filings for the year ended December 31, 2009, together with Form 13-502F2;

f. On January 20, 2011, interim unaudited financial statements, interim management discussion and analysis, and certification of interim filings for the interim period ended March 31, 2010;

g. On January 20, 2011, interim unaudited financial statements, interim management discussion and analysis, and certification of interim filings for the interim period ended June 30, 2010;

h. On January 20, 2011, interim unaudited financial statements, interim management discussion and analysis, and certification of interim filings for the period ended September 30, 2010;

i. On May 12, 2011, amended management discussion and analysis for the year ended December 31, 2009;

j. On May 12, 2011, annual audited financial statements, annual management discussion and analysis and certification of annual filings for the year ended December 31, 2010, together with Form 13-502F2; and

k. On May 13, 2011, a technical report pursuant to National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* dated March 16, 2011, together with the certification and consent of the qualified person.

(collectively, the **Continuous Disclosure Documents**).

12. The Applicant is not in default of any requirements of the Act or the rules and regulation made thereunder.

13. Since the issuance of the Ontario Cease Trade Order, material changes in the Applicant's business were disclosed in a material change report filed by the Applicant on October 29, 2009.

14. The Applicant has provided an undertaking to the securities regulatory authorities in the Reporting Jurisdictions to hold an annual general meeting within three months after the date on which this Order is granted.

15. The Applicant has paid all outstanding filing fees, participation fees and late filing fees in the Reporting Jurisdictions.

16. The Applicant's SEDAR and SEDI profiles are current and accurate.

17. The Applicant is not considering, nor is it involved in any discussions relating to, a reverse take-over, merger, amalgamation or other form of combination or transaction similar to any of the foregoing.

18. Upon the issuance of this revocation order, the Applicant will issue a news release announcing the revocation of the Ontario Cease Trade Order, the Alberta Cease Trade Order and the British Columbia Cease Trade Order. The Applicant will concurrently file the news release and material change report on SEDAR.

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

**AND UPON** the Director being satisfied that it would not be prejudicial to the public interest to revoke the Ontario Cease Trade Order.

**IT IS ORDERED** pursuant to Section 144 of the Act that the Ontario Cease Trade Order is revoked.

**DATED** this 9th day of June, 2011.

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

### 2.2.2 ScotOil Petroleum Limited – s. 144

**Headnote**

Application by an issuer for a revocation of a cease trade order issued by the Commission – Cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – Defaults subsequently remedied by bringing continuous disclosure filings up-to-date – Cease trade order revoked.

**Applicable Legislative Provisions**

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

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

**AND**

**IN THE MATTER OF**
**SCOTOIL PETROLEUM LIMITED**
**(the "Applicant")**

**ORDER**
**(Section 144)**

**WHEREAS** the securities of the Applicant are subject to a cease trade order made by the Director dated March 12, 2010 under paragraph 2 of subsection 127(1) and 127(5) of the Act and as extended by a further cease trade order made by the Director dated March 24, 2010 under paragraph 2 of subsection 127(1) of the Act directing that all trading in securities of the Applicant, whether direct or indirect, shall cease until a further order by the Director (together, the "**Cease Trade Order**").

**AND WHEREAS** the Applicant has applied to the Ontario Securities Commission (the "**Commission**") pursuant to section 144 of the Act (the "**Application**") for a full revocation of the Cease Trade Order.

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

1. The Applicant is a reporting issuer in British Columbia, Alberta and Ontario.

2. The Cease Trade Order was issued due to the default of the Applicant to file annual financial statements, for its financial year ended December 31, 2008, its annual audited financial statements, related management's discussion & analyses ("**MD&A**") and certifications pursuant to National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**Certifications**") and an annual information form all pursuant to National Instrument 51-102 – *Continuous Disclosure Obligations*, and, for its interim financial periods ended March 31, 2009, June 30, 2009 and September 30, 2009, and related MD&A and Certifications (the "**Continuous Disclosure Documents**").

3. The Applicant was also subject to similar cease trade orders issued by the Alberta Securities Commission (the "**ASC**") on March 2, 2010 and British Columbia Securities Commission (the "**BCSC**") on March 3, 2010 for similar reasons.

4. The Applicant has requested full revocation of the cease trade orders from the British Columbia Securities Commission and Alberta Securities Commission.

5. On February 5, 2009, the Applicant commenced proceedings (the "**CCAA Proceedings**") and obtained an Order from the Alberta Court of Queen's Bench (the "**Court**") for protection under the *Companies' Creditors Arrangement Act* ("**CCAA**").

6. Pursuant to the CCAA Proceedings, all of the Applicant's assets were liquidated and set aside for distribution to its creditors (the "**Distribution Pool**") under a consolidated plan of arrangement and reorganization of the Applicant (the "**Plan**") approved by the Applicant's creditors at a meeting held on August 25, 2009 and by the Court on September 16, 2009. In addition and pursuant to the Plan, all of the Applicant's common shares were consolidated on the basis of one (1) post-consolidation common share for every ten (10) pre-consolidation common shares, and the Applicant's name was changed from "Oilexco Incorporated" to "ScotOil Petroleum Limited". The Applicant filed articles of reorganization on September 18, 2009 in respect thereof. Pursuant to an Order on February 14, 2011, the Court directed the court-appointed monitor under the CCAA (the "**Monitor**") to make the final distribution of the Distribution Pool to creditors and discharged the Monitor from its duties under the CCAA Proceedings.

7. As at the date hereof, as a result of the CCAA Proceedings and the implementation of the Plan, the Applicant does not have any assets.

8. The Applicant's failure to file the Continuous Disclosure Documents was a consequence of financial hardship as a result of a complete lack of funds and the CCAA Proceedings, pursuant to which all of the Applicant's assets had been liquidated and set aside for distribution to its creditors.

9. To bring its disclosure up to date, the Applicant has filed the following continuous disclosure documents:

   (a) audited annual financial statements for the years ended December 31, 2008 and

2009 and related MD&A and Certifications;

(b) interim unaudited financial statements for the periods ended March 31, 2010, June 30, 2010 and September 30, 2010 and related MD&A and Certifications; and

(c) annual information form and audited annual financial statements for the year ended December 31, 2010 and related MD&A and Certifications.

10. The Applicant has paid all outstanding participation fees, filing fees and late fees which are owing to the Commission.

11. The Applicant intends to call and hold an annual meeting within three months of the date of the revocation of the Cease Trade Order.

12. The Applicant's SEDAR profile and SEDI issuer profile supplement are current and accurate.

13. To the best of management's knowledge, the Filer is not in default of any of the requirements of the Act or the rules and regulations made pursuant thereunder.

14. The Applicant will issue a news release and file a material change report upon issuance of the order revoking the Cease Trade Order to announce the revocation of the Cease Trade Order.

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

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

**IT IS ORDERED** pursuant to section 144 of the Act that the Cease Trade Order be and is hereby revoked.

**DATED** at Toronto, Ontario this 9th day of June, 2011.

"Michael Brown"
Assistant Manager
Ontario Securities Commission

### 2.2.3 QuantFX Asset Management Inc. – 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**
**QUANTFX ASSET MANAGEMENT INC.,**
**VADIM TSATSKIN,**
**LUCIEN SHTROMVASER and**
**ROSTISLAV ZEMLINSKY**

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

**WHEREAS** on April 9, 2010, the Ontario Securities Commission (the "Commission") issued a temporary order pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering the following (the "Temporary Order"):

(i) that QuantFX Asset Management Inc. ("QuantFX"), Vadim Tsatskin ("Tsatskin"), Lucien Shtromvaser ("Shtromvaser") and Rostislav Zemlinsky ("Zemlinsky"), collectively the "Respondents", cease trading in all securities; and

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

**AND WHEREAS** on April 9, 2010, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

**AND WHEREAS** on April 13, 2010, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on April 23, 2010;

**AND WHEREAS** on April 23, 2010 and October 13, 2010, the Commission extended the Temporary Order;

**AND WHEREAS** the Temporary Order expires on November 19, 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, issued by Staff of the Commission ("Staff") with respect to QuantFX, Tsatskin, Shtromvaser and Zemlinsky;

**AND WHEREAS** on November 17, 2010, the Commission issued an Amended Notice of Hearing to correct a typographical error;

**AND WHEREAS** on November 18, 2010, a hearing was held at 4:00 p.m. and Staff and counsel for QuantFX, Shtromvaser and Zemlinsky appeared before the Commission, Tsatskin did not attend the Hearing, but had advised Staff that he consents to Staff's request for an extension of the Temporary Order and the Commission was satisfied that Staff properly served the Respondents;

**AND WHEREAS** on November 18, 2010, counsel for QuantFX, Shtromvaser and Zemlinsky advised the Commission that QuantFX, Shtromvaser and Zemlinsky consented to Staff's request for an extension of the Temporary Order;

**AND WHEREAS** on November 18, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to extend the Temporary Order;

**AND WHEREAS** the Commission ordered that:

(i) pursuant to subsections 127(7) and (8) of the Act, the Temporary Order be extended to January 27, 2011;

(ii) the hearing in this matter be adjourned to January 26, 2011 at 12:00 p.m. or on such other date as provided by the Secretary's Office and agreed to by the parties; and

(iii) the purpose of the hearing to be held on January 26, 2011 be to set dates for the hearing on the merits.

**AND WHEREAS** on January 26, 2011, a hearing was held at 12:00 p.m. and Staff appeared before the Commission and no one appeared on behalf of any of the Respondents;

**AND WHEREAS** Staff requested an extension of the Temporary Order for six weeks to March 8, 2011;

**AND WHEREAS** Staff advised the Commission that Tsatskin and counsel for QuantFX, Shtromvaser and Zemlinsky consented to the extension of the Temporary Order and the adjournment of the hearing and the Commission was satisfied that Staff properly served the Respondents;

**AND WHEREAS** the Commission ordered that the Temporary Order be extended to March 9, 2011 and that the hearing in this matter be adjourned to March 8, 2011 at 12:00 p.m.;

**AND WHEREAS** on March 8, 2011, a hearing was held at 12:00 p.m. and Staff appeared before the Commission and no one appeared on behalf of any of the Respondents;

**AND WHEREAS** the Commission was satisfied that the Respondents were properly served with notice of the hearing;

**AND WHEREAS** Staff advised the Commission that counsel for QuantFX, Shtromvaser and Zemlinsky consented to an adjournment of the hearing and an extension of the Temporary Order for one month;

**AND WHEREAS** Staff requested that the hearing be adjourned and the Temporary Order extended for approximately six weeks;

**AND WHEREAS** the Commission ordered that the Temporary Order be extended to April 28, 2011 and that the hearing in this matter be adjourned to April 27, 2011;

**AND WHEREAS** on March 28, 2011, the Commission approved settlement agreements between Staff and the Respondents QuantFX, Shtromvaser and Zemlinsky;

**AND WHEREAS** on April 27, 2011, a hearing was held at 10:00 a.m. and Staff appeared before the Commission and no one appeared on behalf of Tsatskin;

**AND WHEREAS** the Commission was satisfied that Tsatskin was properly served with notice of the hearing;

**AND WHEREAS** Staff requested that the Temporary Order in respect of Tsatskin be extended for approximately six weeks;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to extend the Temporary Order in respect of Tsatskin;

**AND WHEREAS** QuantFX, Shtromvaser and Zemlinsky are subject to the orders of the Commission made on March 28, 2011;

**AND WHEREAS** on April 27, 2011, the Commission ordered that the Temporary Order be extended with respect to Tsatskin to June 13, 2011 and that the hearing in this matter be adjourned to June 10, 2011 at 10:00 a.m.;

**AND WHEREAS** on June 10, 2011, a hearing was held at 10:00 a.m. and Staff appeared before the Commission and no one appeared on behalf of Tsatskin;

**AND WHEREAS** Staff filed the affidavit of Charlene Rochman sworn June 9, 2011 outlining the efforts of Staff to serve Tsatskin with notice of the hearing and determine his availability to set this matter down for a hearing on the merits;

**AND WHEREAS** the Commission was satisfied that Tsatskin was properly served with notice of the hearing;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to extend the Temporary Order in respect of Tsatskin;

**IT IS ORDERED** that the hearing on the merits is scheduled to commence on October 31, 2011 at 10:00 a.m. and to continue on November 1, 2 and 3, 2011 or on such other dates as provided by the Secretary's Office and agreed to by the parties;

**IT IS FURTHER ORDERED** that the Temporary Order with respect to Tsatskin is extended to the conclusion of the hearing on the merits in this matter.

**DATED** at Toronto this 10th day of June, 2011.

"Mary Condon"

### 2.2.4 Enersource Corporation – s. 1(10)(a)(ii)

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for an order that the filer is not a reporting issuer under applicable securities laws – requested relief granted.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c.S.5, as am., s. 1(10)(b).
CSA Staff Notice 12-307 Applications for a Decision that an Issuer is not a Reporting Issuer.

**May 20, 2011**

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

**AND**

**IN THE MATTER OF**
**ENERSOURCE CORPORATION**

**ORDER**
**(Subclause 1(10)(a)(ii) of the Act)**

**UPON** the application (the "**Application**") of Enersource Corporation (the "**Filer**") for an order pursuant to subclause 1(10)(a)(ii) of the Act that, for the purposes of Ontario Securities law, the Filer is not a reporting issuer in Ontario (the "**Order Sought**");

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

**AND UPON** the Filer having represented to the Commission that:

1. The Filer is incorporated under the laws of Ontario, with its head office in Mississauga, Ontario.

2. The Filer is an electronic filer as defined under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* ("**SEDAR**").

3. The Filer is not in default of any of the requirements under the Act.

4. The authorized share capital of the Filer consists of an unlimited number of Class A shares, 1,000 Class B shares and 100 Class C shares. As of the date hereof, there are 180,555,562 Class A shares, 1,000 Class B shares and 100 Class C shares issued and outstanding (collectively, the "**Outstanding Shares**"). The Outstanding Shares are held by two shareholders, The Corporation of the City of Mississauga and BPC Energy

Corporation (a subsidiary of OMERS), each of which are resident in Ontario.

5. Pursuant to a prospectus filed by Borealis Infrastructure Trust ("**Borealis**") in all provinces of Canada and dated April 25, 2001 and a prospectus supplement dated April 26, 2001, Borealis distributed to the public, bonds in the principal amount of $290,000,000 (the "**Borealis-Enersource Bonds**").

6. The Borealis-Enersource Bonds are direct obligations of Borealis, secured by a credit agreement with the Filer dated April 25, 2001 (the "**Credit Agreement**"). The funds received by Borealis from the Borealis-Enersource Bonds were advanced to the Filer under the terms of the Credit Agreement in the form of a term loan (the "**Term Loan**").

7. Under the Credit Agreement, the Filer contractually agreed to be subject to certain reporting issuer requirements in Ontario. The terms of the Credit Agreement specifically required the Filer to file its interim and annual financial statements on SEDAR, to file material change reports on SEDAR and to comply with the continuous and episodic disclosure requirements of applicable Canadian securities laws as if it were a reporting issuer in each province of Canada during the term of the Credit Agreement. Such reporting issuer requirements were only intended to apply during the term of the Credit Agreement.

8. The Filer, upon application for an order to the Commission, was deemed to be a reporting issuer for the purposes of the Act on March 19, 2002.

9. Pursuant to a private placement offering (the "**Offering**") the Filer issued on April 29, 2011 $110 million principal amount of Series A Senior Unsecured Debentures due April 29, 2021 and $210 million principal amount of Series B Senior Unsecured Debentures due April 29, 2041 (collectively, the "**Debentures**"). The proceeds received from the Offering were used to repay the Term Loan in full on May 2, 2011 and the Filer intends to use the balance for general corporate purposes including capital expenditures.

10. The Borealis-Enersource Bonds matured on May 3, 2011. The Filer has received confirmation from Borealis that the Borealis-Enersource Bonds have been repaid in full.

11. The Filer has received an acknowledgement and release from Borealis confirming that all amounts owing under the Credit Agreement have been paid in full and releasing the Filer from its obligations under the Credit Agreement, other than those provisions which by their terms are expressly intended to survive any termination of the Credit Agreement.

12. All purchasers of the Debentures (the "**Debentureholders**") in the Offering are "accredited investors" as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*. Of these Debentureholders, 15 are resident in Ontario, 3 are resident in British Columbia, 1 is resident in Alberta, 1 is resident in Saskatchewan, 1 is resident in Manitoba and 9 are resident in Quebec.

13. Each prospective purchaser in the Offering was provided with a preliminary offering memorandum and a final offering memorandum, each of which contained a statement that the Filer currently is a reporting issuer but intends to apply to cease to be a reporting issuer.

14. Pursuant to the terms of the trust indenture governing the Debentures, the Filer is required to deliver its annual audited consolidated financial statements, consolidated interim financial statements and such other non-confidential information relating to the business of the Filer as the trustee for the Debentures (the "**Trustee**") may require. If such documents are not publicly available, the Trustee will, upon the request of a Debentureholder, provide a copy of such documents to the requesting Debentureholder.

15. Other than the Class A shares, the Class B shares, the Class C shares and the Debentures, the Filer has no securities outstanding.

16. The Filer meets all of the requirements to be able to apply for relief pursuant to the simplified procedure set out in CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* other than the requirement that it have fewer than 15 securityholders in Canada. The Filer has 17 securityholders in Ontario and it has fewer than 51 securityholders in total in Canada.

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

18. The Filer is not in default of any of its obligations under the applicable legislation as a reporting issuer.

19. The Filer will not be a reporting issuer in any jurisdiction in Canada immediately after such relief is granted.

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

**IT IS ORDERED** pursuant to subclause 1(10)(a)(ii) of the Act that, for purposes of Ontario securities law, the Filer is not a reporting issuer.

**DATED** in Toronto on this 20th day of May, 2011.

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

"Wes M. Scott"
Commissioner
Ontario Securities Commission

### 2.3 Ruling

### 2.3.1 Davis-Rea Ltd. et al. – ss. 74(1), 144(1)

**Headnote**

Relief from the prospectus requirement of the Securities Act (Ontario) to permit the distribution of pooled fund securities to certain managed accounts held by non-accredited investors on an exempt basis – NI 45-106 containing carve-out for managed accounts in Ontario prohibiting portfolio manager from making exempt distributions of securities of its proprietary funds to its managed account clients in Ontario unless managed account client qualifies as accredited investor or invests $150,000 – portfolio manager providing bona fide portfolio management services to high net worth clients – not all managed account clients are accredited investors.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74(1), 144(1).

**Rules Cited**

National Instrument 45-106 Prospectus and Registration Exemptions.
National Instrument 81-102 Mutual Funds.

**May 27, 2011**

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

**AND**

**IN THE MATTER OF**
**DAVIS-REA LTD.**
**(the Filer)**

**AND**

**DAVIS-REA BALANCED POOLED FUND**
**(the Existing Fund)**

**RULING**
**(Subsections 74(1) and 144(1) of the Act)**

**Background**

The Ontario Securities Commission (the **Commission**) has received an application from the Filer, on its own behalf, and on behalf of the Existing Fund and any other pooled fund that the Filer may establish and manage in the future as part of the Davis-Rea Pooled Funds (the **Future Funds** and together with the Existing Fund, the **Funds**) for a ruling pursuant to Subsections 74(1) and 144(1) of the Act:

(a) to revoke the Previous Ruling (defined below); and

(b) for a ruling that distributions of units of the Funds to Secondary Managed Accounts (defined below) of clients for which the Filer provides discretionary investment management services will not be subject to the prospectus requirements (the **Prospectus Requirements**) in section 53 of the Act.

**Interpretation**

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

**Representations**

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

1. The Filer is a corporation incorporated under the laws of Ontario and has its head office in Toronto, Ontario. The Filer is registered as a portfolio manager, as an exempt market dealer and as an investment fund manager in Ontario. The Filer is also registered as a portfolio manager in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia and Prince Edward Island.

2. Each Fund is, or will be, an open-end mutual fund trust established under the laws of the Province of Ontario, and is, or will be, a "mutual fund" under the Act. The Existing Fund is not, and no Future Fund will be, a reporting issuer under the Act.

3. The Filer is or will be the manager, portfolio advisor and principal distributor of each Fund.

4. The Funds will be sold on an exempt basis to investors in Ontario pursuant to applicable exemptions from the Prospectus Requirements (e.g., the accredited investor exemption or the $150,000 exemption in National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**)).

5. The Filer provides discretionary investment management services (**Managed Services**) to clients pursuant to managed account agreements between such clients and the Filer (each a **Managed Account Agreement**). Pursuant to a Managed Account Agreement, each client, in accordance with its investment objectives, authorizes the Filer to manage that client's investment portfolio on a fully-discretionary basis, which depending on its size, may be managed by the Filer on a segregated account basis or invested in one or more of the Funds.

6. The Managed Services are provided by employees of the Filer who are registered under Ontario securities law to provide advice on securities to clients.

7. The Managed Services consist of the following:

   (a) each client who accepts Managed Services executes a Managed Account Agreement whereby the client authorizes the Filer to supervise, manage and direct purchases and sales, at the Filer's full discretion on a continuing basis;

   (b) the Filer's qualified employees perform investment research, securities selection and management functions with respect to all securities, investments, cash equivalents or other assets in that client's Managed Account (defined below);

   (c) each Managed Account holds securities as selected by the Filer, including where appropriate units of one or more of the Funds; and

   (d) the Filer retains overall responsibility for the Managed Services provided to each client and has designated a senior officer to oversee and supervise such Managed Services.

8. The Filer's minimum aggregate balance for all the managed accounts of a client is usually $250,000 (each a **Primary Managed Account**). From time to time, the Filer will accept a person as a client who does not meet this minimum threshold if there are exceptional factors that have persuaded the Filer for business reasons to accept such person as a client and to waive its usual minimum aggregate balance.

9. Most of the holders of the Primary Managed Accounts investing in units of one or more of the Funds will qualify as an accredited investor (as such term is defined in NI 45-106) or will rely on another exemption such as the $150,000 exemption in NI 45-106.

10. From time to time, the Filer may provide Managed Services to clients with less than $250,000 under management, which will usually consist of family members of Primary Managed Account clients (the **Secondary Managed Accounts**, and together with the Primary Managed Accounts, the **Managed Accounts**). The assets managed by the Filer for such family members are incidental to the assets the Filer manages for the holder of the applicable Primary Managed Account.

11. The holders of Secondary Managed Accounts do not always qualify as an accredited investor. The Filer typically services the Secondary Managed Account clients as a courtesy to its Primary Managed Account clients.

12. Investments in individual securities may not be ideal for the Secondary Managed Account clients since they may not receive the same asset diversification benefits and may incur disproportionately higher brokerage commissions relative to the Primary Managed Account clients due to minimum commission charges.

13. NI 45-106 currently does not recognize a portfolio manager acting on behalf of a managed account in Ontario as being an accredited investor if that account is acquiring a security of an investment fund. In the absence of relief from the Prospectus Requirements, the Funds will be available only to clients that are accredited investors in their own right or are able to invest a minimum of $150,000 in a Fund in accordance with the requirements of NI 45-106. These requirements either act as a barrier to Secondary Managed Account clients investing in a Fund, or may cause the Filer to invest more of a Secondary Managed Account client's portfolio in such a Fund than it might otherwise prefer to allocate.

14. To improve the diversification and cost benefits to Secondary Managed Account clients, the Filer wishes to distribute units of the Funds to Secondary Managed Accounts without a minimum investment. The Secondary Managed Account client would thereby be able to receive the benefit of the Filer's investment management expertise, regarding both asset allocation and individual stock selection, as well as receive the benefits of lower costs and broader asset diversification associated with pooled investments relative to direct holdings of individual securities.

15. Managed Services provided by the Filer under a Managed Account Agreement are usually covered by a base management fee calculated as a fixed percentage of the assets under management in the Managed Account (the **Base Management Fee**). The Base Management Fee includes investment research, portfolio selection and management with respect to all securities or other assets in the Managed Account. The Base Management Fee is not intended to cover brokerage commissions and other transaction charges in respect of each transaction which occurs in a Managed Account, nor does it cover interest charges on funds borrowed or charges for standard administrative services provided in connection with the operation of the Managed Account, such as account transfers, withdrawals, safekeeping charges, service charges, wire transfer requests and recordkeeping. The terms of the Base Management Fee are detailed in the Managed Account Agreement.

16. When the Filer invests on behalf of a Managed Account in units of one or more of the Funds, which would otherwise pay a management fee to the Filer as manager, the Managed Account will purchase units of a class of the applicable Fund(s) without such fees. Accordingly, there will be no duplication of fees between a Managed Account and the Funds. The only management fees that are paid by a Managed Account that holds units of a Fund(s) are paid directly to the Filer, pursuant to the Managed Account Agreements.

17. There will be no commission payable by a client on the sale of units of a Fund(s) to a Secondary Managed Account, nor will referral fees be paid by the Filer to a person or company in connection with the referral to the Filer of Secondary Managed Account clients that invest in units of a Fund(s).

18. Pursuant to a decision of the Commission dated January 16, 2009 (the **Previous Ruling**), the Commission granted relief to the Filer and the Funds from the Prospectus Requirements in connection with a distribution of units of the Funds to Secondary Managed Accounts, subject to certain conditions.

**Ruling**

The Commission being satisfied that the relevant tests contained in Subsections 74(1) and 144(1) of the Act have been met, the Commission:

1. revokes the Previous Ruling; and

2. rules that relief from the Prospectus Requirements is granted in connection with the distribution of units of the Funds to Secondary Managed Accounts, provided that:

    (a) this Ruling will terminate upon the coming into force of any legislation or rule of the Commission exempting a trade in a security of a mutual fund to a fully managed account from the Prospectus Requirements;

    (b) this Ruling will only apply with respect to a Secondary Managed Account, where the holder of the Secondary Managed Account is, and in the case of clauses (iii) to (vi) remains:

        (i) an individual (of the opposite sex or same sex) who is or has been married to the holder of a Primary Managed Account, or is living or has lived with the holder of a Primary Managed Account in a conjugal relationship outside of marriage;

        (ii) a parent, grandparent, child or sibling of either the holder of a Primary Managed Account or the individual referred to in clause (i) above;

        (iii) a personal holding company controlled by an individual referred to in clause (i) or (ii) above;

(iv) a trust, other than a commercial trust, of which an individual referred to in clause (i) or (ii) above is a beneficiary;

(v) a private foundation controlled by an individual referred to in clause (i) or (ii) above; or

(vi) a close business associate, employee or professional adviser to a holder of a Primary Managed Account provided that:

(A) there are exceptional factors that have persuaded the Filer for business reasons to accept such close business associate employee or professional adviser as a Secondary Managed Account client, and a record is kept and maintained of the exceptional factors considered; and

(B) the Secondary Managed Account clients acquired through such relationships to holders of Primary Managed Accounts shall not at any time represent more than five percent of the Filer's total Managed Account assets under management; and

(c) the Filer does not receive any compensation in respect of the sale or redemption of units of the Funds, including any redemption fees, and the Filer does not pay a referral fee to any person or company who refers Secondary Managed Account clients who invest in units of the Funds.

"Paulette L. Kennedy"
Commissioner
Ontario Securities Commission

"C. Wesley M. Scott"
Commissioner
Ontario Securities Commission

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# Chapter 3

# Reasons: Decisions, Orders and Rulings

## 3.1 OSC Decisions, Orders and Rulings

### 3.1.1 Hill Harris Hunt Capital Limited – s. 31

**IN THE MATTER OF**
**STAFF'S RECOMMENDATION**
**FOR TERMS AND CONDITIONS ON THE REGISTRATION OF**
**HILL HARRIS HUNT CAPITAL LIMITED**

**OPPORTUNITY TO BE HEARD BY THE DIRECTOR**
**Section 31 of the Securities Act (Ontario)**

**Decision**

1. For the reasons outlined below, my decision is to impose the terms and conditions set out below on Hill Harris Hunt Capital Limited (Hill Harris Hunt) for a minimum period of six months.

**Overview**

2. By letter dated May 6, 2011, Staff of the Ontario Securities Commission advised Hill Harris Hunt that it was recommending to the Director that terms and conditions be imposed on Hill Harris Hunt in relation to the non-filing of its annual audited financial statements. The terms and conditions had two parts (Terms and Conditions). Part one required the filing of monthly year-to-date unaudited financial statements and capital calculations for a minimum period of six months. Part two required Hill Harris Hunt to review its procedures for compliance with Ontario securities law and to provide a report to the Commission. The letter also advised Hill Harris Hunt that the late filing of the required financial statements results in the imposition of late fees of $100 per business day, subject to a maximum of $5,000.

**Process for requesting an opportunity to be heard**

3. Under section 31 of the *Securities Act* (Ontario), if a registrant wants to oppose Staff's recommendation for terms and conditions, the registrant may request an opportunity to be heard (OTBH). By letter dated May 16, 2011, Adrian Russell, the President and Chief Compliance Officer (CCO) requested an OTBH. My decision is based on the written submissions of Staff (Mark Skuce, Legal Counsel, Compliance and Registrant Regulation Branch) and Adrian Russell on behalf of Hill Harris Hunt.

**Submissions**

4. The fiscal year end for Hill Harris Hunt is December 31. Under section 12.12(1)(a) of National Instrument 31-103 *Registration Requirements and Exemptions*, the annual audited financial statements of Hill Harris Hunt were due no later than March 31, 2011. As of June 3, 2011, Hill Harris Hunt had not yet filed its annual audited financial statements.

5. Staff submits that the filing of annual audited financial statements by registrants is a serious regulatory obligation placed on registrants and that financial statements are the principal tool enabling Staff to monitor a registrant's financial viability and capital position.

6. For these reasons, Staff regularly recommends the imposition of terms and conditions on the registration of registrants that do not file their annual audited financial statements on a timely basis. Only in rare circumstances would Staff not recommend imposing terms and conditions on a registrant that filed its financial statements late.

7. Hill Harris Hunt submits that it was unaware that the filing of annual financial statements was necessary given that the firm is "not yet started and is not currently operating and has never had any revenue". They also provided me with a preliminary statement from the auditors confirming that the firm is solvent and told me that they had been informed by their auditors that the audited financial statements would be completed by early June. As well, Hill Harris Hunt did not request an exemption from paying the applicable filing fees.

8. Hill Harris Hunt also submits that:

   a. If part one of the Terms and Conditions were imposed, they should not be imposed for longer than six months, and

   b. Part two of the Terms and Conditions is not necessary given their previous submissions.

**Decision and reasons**

9. My decision is to impose both parts of the recommended Terms and Conditions on the registration of Hill Harris Hunt.

10. It is Staff's longstanding position that it is the responsibility of the registrant to ensure that its annual audited financial statements are filed on a timely basis. In this case, the audited financial statements were not filed as of June 3, 2011. Thus the filing requirements of section 12.12(1)(a) of NI 31-103 have not been met and, in accordance with decided cases, including *Re Chou Associates Management Inc.* (2006) 29 OSCB 4773, *Re AIG Global Investment Corp*. (2008) 31 OSCB 4639, *Re CR Advisers Corporation* (2008) 31 OSCB 6269 and *Re Minvestec Capital Corp*. (2011) 34 OSCB 5475, the Terms and Conditions should be applied to the registration of Hill Harris Hunt. Staff submits, and I agree, that the submissions of Hill Harris Hunt do not meet the rare and extenuating circumstances for not imposing the recommended Terms and Conditions.

11. I also do not agree with the submission of Hill Harris Hunt that Part 2 of the recommended Terms and Conditions are not necessary. The firm should have been aware of the requirement to file its annual audited financial statements. As at June 3, 2011, the firm was more than two months late in filing these statements. As a result, in my view, the report contemplated in Part 2 is an appropriate requirement in these circumstances.

12. The terms and conditions imposed on Hill Harris Hunt's registration are as follows:

    The Firm shall file on a monthly basis with the Registrant Conduct and Risk Analysis team of the Ontario Securities Commission, attention Financial Analyst, starting with the month ending June 30, 2011 the following information:

    (a) year-to-date unaudited financial statements including a balance sheet and an income statement, both prepared in accordance with generally accepted accounting principles; and

    (b) month end calculation of minimum required capital;

    no later than three weeks after each month end.

    The Firm will review its procedures for compliance with Ontario securities law and, no later than July 15, 2011, will file with the Compliance and Registrant Regulation Branch of the Ontario Securities Commission, addressed to the attention of the "Financial Analyst", a report setting out:

    (a) the reasons for its failure to meet the filing requirements as at December 31, 2010 as required under Ontario securities law (the Filing Requirement);

    (b) a certification from its Chief Compliance Officer to the effect that the Firm has reviewed its system for on-going compliance with Ontario securities law and rectified the problem(s) that led to its failure to satisfy the Filing Requirement; and

    (c) details of the specific measures that will be taken to ensure that the Filing Requirement will be satisfied at all times in the future.

"Marrianne Bridge", FCA
Deputy Director
Compliance and Registrant Regulation Branch
June 10, 2011

### 3.1.2 VenGrowth Funds et al.

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

**AND**

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

**AND**

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

**REASONS FOR DECISION**

| | | | |
|---|---|---|---|
| Hearing: | June 1 and 2, 2011 | | |
| Order: | June 9, 2011 | | |
| Reasons for Decision: | June 14, 2011 | | |
| Panel: | James E. A. Turner | – | Vice-Chair and Chair of the Panel |
| | Mary G. Condon | – | Vice-Chair |
| Appearances: | Philip Anisman<br>(Barrister and Solicitor) | – | Counsel for The Special Committee of Directors of The VenGrowth Funds, Applicant |
| | Emily Cole<br>Jay Hoffman<br>(Miller Thomson LLP) | | |
| | R. Paul Steep<br>Jonathan R. Grant<br>Andrew B. Matheson<br>(McCarthy Tetrault LLP) | – | Counsel for GrowthWorks Canadian Fund Ltd. and Growth Works Ltd., Respondents |
| | James Doris<br>James Bunting<br>J. Alexander Moore<br>(Davies Ward Phillips & Vineberg LLP) | | |
| | Robert W. Staley<br>Johnathan G. Bell<br>Derek J. Bell<br>(Bennett Jones LLP) | – | Counsel for the VenGrowth Managers, Intervenors |
| | James Sasha Angus<br>Naizam Kanji<br>Shannon O'Hearn<br>Vera Nunes | – | For Staff of the Ontario Securities Commission |

**TABLE OF CONTENTS**



**REASONS FOR DECISION**

## 1. INTRODUCTION

[1] GrowthWorks Canadian Fund Ltd. ("**GrowthWorks**") has commenced a hostile merger proposal (the "**GrowthWorks Proposal**") to acquire The VenGrowth Investment Fund Inc., The VenGrowth II Investment Fund Inc., The VenGrowth III Investment Fund Inc., The VenGrowth Advanced Life Sciences Fund Inc. and The VenGrowth Traditional Industries Fund Inc. (collectively, the "**VenGrowth Funds**") by making a proposal directly to the shareholders of the VenGrowth Funds (the "**VenGrowth shareholders**"). It has initiated the GrowthWorks Proposal by soliciting VenGrowth shareholders to enter into support agreements (the "**Support Agreements**") with it. Those Support Agreements purport, among other matters, to give GrowthWorks an irrevocable power of attorney (i) to requisition meetings of the VenGrowth shareholders, (ii) to vote the VenGrowth shares that are subject to the Support Agreements (the "**Subject Shares**") in favour of the GrowthWorks Proposal, (iii) to vote the Subject Shares to elect certain directors of the VenGrowth Funds and to make certain amendments to the articles of the VenGrowth Funds, and (iv) to vote against any transaction competing with the GrowthWorks Proposal.

[2] In connection with the solicitation of the Support Agreements, GrowthWorks has sent an information circular dated March 14, 2011 (the "**GrowthWorks Circular**") to VenGrowth shareholders together with the form of the Support Agreement being solicited. The GrowthWorks Circular provides very substantial information with respect to the GrowthWorks Proposal and the solicitation of the Support Agreements.

[3] In response to its solicitation, as of the date of the hearing, GrowthWorks indicates that it has received over 10,500 signed Support Agreements from VenGrowth shareholders representing over eight million shares of the VenGrowth Funds and approximately 7.5% to 10.8% of the outstanding shares of each of the VenGrowth Funds.

[4] The special committee of independent directors of the VenGrowth Funds (the "**Special Committee**") has brought this application pursuant to subsection 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") to challenge GrowthWorks' solicitation of the Support Agreements and its right to vote the Subject Shares.

[5] The Special Committee submits that GrowthWorks' novel mechanism for acquiring control of the VenGrowth Funds deprives the VenGrowth shareholders of rights that they would have in a take-over bid or proxy contest to decide whether to accept the GrowthWorks Proposal or any competing transaction. The Special Committee submits that GrowthWorks' actions contravene the proxy solicitation requirements of the Act and of the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (the "**CBCA**") and are inconsistent with the animating principles underlying the Act's requirements for take-over bids and proxy contests. The Special Committee also submits that the GrowthWorks Circular and other documents distributed by GrowthWorks contain incomplete and materially misleading disclosure. The Special Committee submits that GrowthWorks' solicitation of the Support Agreements is thus both illegal and contrary to the public interest.

[6] The Special Committee asks us to issue a cease trade order under subsection 127(1) of the Act prohibiting GrowthWorks and its related entities from continuing to solicit VenGrowth shareholders and from taking further steps in pursuit of the GrowthWorks Proposal unless it complies with Ontario securities law and applicable corporate law. The Special Committee requests us to issue a cease trade order in respect of the GrowthWorks Proposal that would, amongst other things, prevent GrowthWorks from voting any of the Subject Shares at any meeting of VenGrowth shareholders.

[7] We note that no VenGrowth shareholders appeared at the hearing of this matter or made any complaint with respect to the solicitation by GrowthWorks of the Support Agreements. GrowthWorks has indicated that, as of the date of the hearing, it has received 26 revocation requests in respect of Support Agreements, representing 40 shareholding positions.

[8] We issued our Order in this matter on June 9, 2011, and our reasons on June 14, 2011, on an expedited basis in view of the ongoing actions of GrowthWorks to advance the GrowthWorks Proposal and the Special Committee's ongoing conduct of the auction process referred to below.

## 2. BACKGROUND

### *a. The VenGrowth Funds*

[9] The VenGrowth Funds are labour-sponsored venture capital corporations ("**LSVCCs**") under the *Income Tax Act* (Canada) that have over 130,000 individual shareholders across Canada and approximately $400 million in assets under management. The VenGrowth Investment Fund Inc. and The VenGrowth II Investment Fund Inc. are corporations continued under the *Business Corporations Act* (British Columbia). The other three VenGrowth Funds are corporations incorporated under the CBCA.

[10] Each of the VenGrowth Funds is a mutual fund and reporting issuer under Ontario securities law. The securities of the VenGrowth Funds are not listed on any stock exchange.

[11] The shares of the VenGrowth Funds are not directly transferable and the VenGrowth Managers have effective control over the election of the board of directors of the VenGrowth Funds. As a result, the VenGrowth shareholders have limited ability to initiate a sale of the VenGrowth Funds or sell their interests in those funds.

[12] In January, 2011, following the public announcement of the GrowthWorks Proposal, the VenGrowth board of directors formed the Special Committee to lead a strategic review process to arrive at a transaction that would improve VenGrowth shareholder value and liquidity. We refer to that process as the "auction process".

[13] The Special Committee announced at the hearing of this matter that it entered into a letter of intent with Covington Capital Corporation ("**Covington**") on May 31, 2011 which provides, amongst other things, that each of the Special Committee and Covington will use its best efforts to agree, by June 9, 2011, on the form of a final definitive merger agreement, and that the VenGrowth Funds and Covington will sign a definitive merger agreement if, and at such time that, (i) the Commission or the Courts order that the Subject Shares cannot be voted at a VenGrowth shareholders' meeting in favour of the GrowthWorks Proposal or against the Covington transaction; or (ii) GrowthWorks agrees that it will not vote the Subject Shares in that manner.

### *b. GrowthWorks*

[14] GrowthWorks is one of Canada's oldest and largest retail venture capital funds. It is incorporated under the CBCA and registered as a LSVCC under the *Income Tax Act* (Canada).

[15] GrowthWorks has over 100,000 shareholders across Canada and approximately $240 million in assets under management. It is a mutual fund and reporting issuer under Ontario securities law. GrowthWorks' securities are not listed on any stock exchange.

[16] GrowthWorks publicly announced the GrowthWorks Proposal on December 9, 2010. The auction process being conducted by the Special Committee appears to be, at least in part, a response to that announcement.

[17] GrowthWorks has made the GrowthWorks Proposal directly to the VenGrowth shareholders by mailing the GrowthWorks Circular and soliciting the Support Agreements. If approved, the GrowthWorks Proposal would result in a merger of the VenGrowth Funds into GrowthWorks. That transaction is described in the GrowthWorks Circular as follows:

> The Merger will be completed through an asset purchase transaction whereby GrowthWorks Canadian Fund buys the net assets of each of the VenGrowth Funds in exchange for one or more newly created series of Class A shares of GrowthWorks Canadian Fund … that would then be distributed to Class A shareholders of the VenGrowth Funds. This is the structure commonly used by mutual funds in Canada to complete mergers. The Merger is expected to be completed pursuant to terms and conditions set out in a merger agreement … and/or court-approved plan of arrangement … .

The GrowthWorks Circular describes the terms and conditions expected to be set out in the merger agreement or plan of arrangement and summarizes a number of the expected conditions to the merger.

[18] The Support Agreements are generally irrevocable by VenGrowth shareholders. The Support Agreements provide for their suspension to enable VenGrowth shareholders to accept a "superior proposal". However, the determination of whether a transaction is a "superior proposal" is made by three individuals (who were designated by GrowthWorks and who GrowthWorks submits are independent of GrowthWorks and VenGrowth) and not by the VenGrowth shareholders who are parties to the Support Agreements.

[19] At the hearing, GrowthWorks confirmed its intention to send a letter to each VenGrowth shareholder who has entered into a Support Agreement, offering to amend the Support Agreement to allow the shareholder to terminate the Support Agreement and revoke the powers granted to GrowthWorks, or limit the authority granted to GrowthWorks to only requisitioning shareholder meetings.

## 3. LEAVE TO BRING THE APPLICATION

[20] The Special Committee has applied for relief under subsection 127(1) of the Act. The Commission has held that a person, other than Staff, is not entitled as of right to bring an application under that subsection. The Commission will not permit such an application where it is "at its core" an enforcement proceeding intended to impose sanctions for past breaches of the Act or for conduct alleged to be contrary to the public interest. The Commission has, however, exercised its discretion to permit an application that, although based on past conduct and/or breaches of the Act, seeks relief that is forward-looking and intended to prevent the completion or continuation of conduct that is contrary to the Act or the public interest. The Commission will permit such an application only where the Commission has authority to impose an appropriate remedy if it concludes that it is in the public interest to do so.

[21] In our view, the Special Committee has met the criteria set out in *Re MI Developments Inc.*, (2010) 33 OSCB 126 at paras. 107-110 to bring this application. The application is not "at its core" an enforcement matter focused only on past conduct but relates to competing proposals to acquire the VenGrowth Funds and the continuing actions by GrowthWorks to advance the GrowthWorks Proposal. The application raises a serious question whether GrowthWorks has breached, and is continuing to breach, the proxy solicitation rules under Ontario securities law intended for the protection of shareholders and whether GrowthWorks has acted contrary to the public interest.

[22] Accordingly, we granted the Special Committee's application to bring this matter under subsection 127(1) of the Act.

## 4. LIMITED STANDING GRANTED TO THE VENGROWTH MANAGERS

[23] The Special Committee, GrowthWorks and Staff consented to limited standing being granted to the management companies that manage the VenGrowth Funds (the "**VenGrowth Managers**") for the purpose of making submissions and to advance limited evidence relating to (i) the management and administration agreements between the VenGrowth Funds and the VenGrowth Managers that GrowthWorks allegedly intends to abrogate if the GrowthWorks Proposal is successful, and (ii) the allegedly material deficiencies in disclosure and material misrepresentations in the GrowthWorks Circular.

[24] We granted limited standing on the terms referred to in paragraph 23 of these reasons to the VenGrowth Managers, subject to them complying with the agreed schedule for the conduct of this hearing. We note for the record that we should not be taken to have concluded that management or senior officers of an issuer are automatically entitled to such standing. In our view, the VenGrowth Managers are only indirectly affected by this application. We note, however, that the Special Committee appears to be acting independently of the VenGrowth Managers and we are advised that the Special Committee did not discuss the application with the VenGrowth Managers before it was filed with the Commission. Accordingly, the VenGrowth Managers may provide valuable assistance to us in understanding the business and disclosure issues raised by this matter.

## 5. SUBMISSIONS

### *a. Special Committee*

[25] Further to the submissions made in paragraph 5 of these reasons, the Special Committee submits that the Support Agreements constitute "proxies" within the meaning of Ontario securities law and that such proxies do not comply with applicable securities and corporate law. The Special Committee submits, in particular, that under applicable corporate law, a proxy must authorize a holder to vote only at a specified shareholders' meeting and must be revocable by the shareholder. The Support Agreements do not comply with these requirements. In any event, the Special Committee submits that the solicitation of the Support Agreements undermines the animating principles of the Act with respect to take-over bids and proxy contests and is contrary to the public interest.

### *b. VenGrowth Managers*

[26] The VenGrowth Managers submit that the GrowthWorks Circular and other documents distributed by GrowthWorks contain material deficiencies in disclosure and material misrepresentations.

### *c. GrowthWorks*

[27] GrowthWorks submits that by signing the Support Agreements in its favour, an "overwhelming" number of VenGrowth shareholders have sent "a clear message" that they have lost confidence in the VenGrowth board and are not prepared to entrust the fate of their VenGrowth investments to the exclusive control of that board.

[28] GrowthWorks recognises that its solicitation of the Support Agreements from VenGrowth shareholders in these circumstances is novel and unprecedented. It submits, however, that it is not illegal or abusive. In any event, GrowthWorks submits that any concerns raised by the Special Committee have been fully answered by GrowthWorks' decision to provide shareholders who signed Support Agreements a right to revoke those agreements or limit the authority under those agreements to only requisitioning VenGrowth shareholder meetings.

[29] GrowthWorks acknowledges that the Special Committee is in the process of soliciting transactions to maximize value for VenGrowth shareholders and that the Special Committee has invited GrowthWorks to participate in that process. GrowthWorks submits, however, that VenGrowth requested GrowthWorks to enter into a process agreement that would have prohibited GrowthWorks, without the Special Committee's consent, from soliciting the shareholders of the VenGrowth Funds, making proposals directly to them or attempting to influence how they vote. GrowthWorks says that, if it had signed the requested process agreement, it would have had no assurance that the GrowthWorks Proposal would be presented to VenGrowth shareholders even if it was the best transaction. It appears, however, that GrowthWorks did not attempt to negotiate these terms of the process agreement.

[30] Finally, GrowthWorks submits that, at a later stage in this process, when a shareholders' meeting or meetings of the VenGrowth Funds will be called, VenGrowth shareholders will receive an information circular and a form of proxy, both in compliance with applicable law. GrowthWorks submits that circular will provide VenGrowth shareholders sufficient information with respect to the GrowthWorks Proposal to make an informed decision.

### *d. Staff*

[31] Staff submits that GrowthWorks' solicitation of the Support Agreements appears to constitute an illegal proxy solicitation under the Act. Further, Staff alleges that the GrowthWorks Circular does not, at this stage of the process, contain sufficient information to permit the VenGrowth shareholders to make an informed decision with respect to the GrowthWorks Proposal. Staff submits that the Support Agreements should be revocable by VenGrowth shareholders and that GrowthWorks should not be permitted to vote the Subject Shares on any vote related to the GrowthWorks Proposal or any competing transaction. Staff submits that if GrowthWorks wishes to vote VenGrowth shares on the approval of the GrowthWorks Proposal, it should carry out a subsequent proxy solicitation, pursuant to a new circular with improved disclosure, in accordance with applicable law.

## 6. OUR PUBLIC INTEREST JURISDICTION

[32] The Commission's mandate, set out in section 1.1 of the Act, 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. To achieve these objectives, section 127 of the Act gives the Commission "the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so" (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("***Asbestos***") at para. 45). In *Asbestos*, the Supreme Court of Canada indicated that the Commission's public interest jurisdiction "is not unlimited" and is subject to two constraints:

> In exercising its discretion, the OSC should consider the protection of investors and the efficiency of, and public confidence in, capital markets generally. In addition, s. 127(1) is a regulatory provision. The sanctions under the section are preventive in nature and prospective in orientation. Therefore, s. 127 cannot be used merely to remedy Securities Act misconduct alleged to have caused harm or damages to private parties or individuals.
>
> (*Asbestos*, *supra*, at para. 45)

[33] The Commission recognises that its public interest jurisdiction must be exercised "with caution and restraint" (see, for example, *Re Sterling Centrecorp Inc.* (2007), 30 OSCB 6683 ("***Sterling Centrecorp***"), at para. 212; *Re Patheon Inc.* (2009), 32 OSCB 6445 ("***Patheon***"), at para. 114; and *Re Hudbay* (2009), 32 OSCB 3733 ("***Hudbay***"), at para. 231).

[34] It is not the role of the Commission to assess the business or financial merits of any proposed transaction or transactions (*Hudbay*, *supra*, at para. 233).

[35] The Commission has authority to intervene in the public interest where an abuse of investors or the capital markets has occurred (see *Re Canfor Corp.* (1995), 18 OSCB 475 at 487; *Re Canadian Tire Corp.* (1987), 10 OSCB 857 ("***Canadian Tire***") at 947-948, aff'd *C.T.C. Dealer Holdings Ltd. v. Ontario (Securities Commission)* (1987), 59 O.R. (2d) 79 (Div. Ct.); *Sterling Centrecorp*, *supra*, at para. 208; and *Re Financial Models* (2005), 2 B.L.R. (4th) 223 at para. 62 (OSC) ("***Financial Models***").

[36] When considering the exercise of its public interest jurisdiction, the Commission must have regard to "all of the facts, all of the policy consideration[s] at play, all of the underlying circumstances of the case, and all of the interests affected by the matter and the remedy sought" (*Sterling Centrecorp*, *supra*, at para. 212).

[37] Further, as stated in *Patheon*, the Commission's public interest jurisdiction "allows us to intervene in a take-over bid even if there is no breach of the Act, the regulations or any policy statement". In *Patheon*, the Commission stated:

> There should be no doubt in the minds of market participants that the Commission will intervene in the public interest where the take-over bid rules have been complied with but the animating principles underlying those rules have not. In *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600 at 1617 and 1618, the Commission stated that:
>
> > It should be clear to all that the underlying purpose of Part XIX of the Act is the protection of the integrity of the capital markets in which take-over bids are made, and in particular the protection of investors who are solicited in the course of a takeover bid. Those purposes are carried out through provisions which, among other things, attempt to ensure that equal treatment is accorded to all offerees in a bid, that offerees have a reasonable time within which to consider the terms of a bid, and that adequate information is available to offerees to allow them to make a reasoned decision as to whether to accept or reject a bid. These provisions exist to protect investors, of course, but their over-arching purpose is the protection of the integrity of the capital markets in which those investors have placed their money – and their trust.
>
> (*Patheon*, *supra*, at para. 116; see also *Re Cablecasting Ltd.*, [1978] OSCB 37, at 43; *Canadian Tire*, *supra*, at 947-948; *Re H.E.R.O. Industries Ltd.* (1990), 13 OSCB 3775, at 3794; *Sterling Centrecorp*, *supra*, at para. 212; *Financial Models*, *supra*, at para. 50; *Re Sears Canada Inc.* (2006), 22 B.L.R. (4th) 267, at para. 242; and *Re Magna International Inc.* (2011), 34 OSCB 1290, at paras. 180-195)

[38] A proxy solicitation in connection with a merger or acquisition transaction raises the same investor protection issues as a take-over bid.

## 7. DISCUSSION AND ANALYSIS

### *a. Introduction*

[39] There is no question that the circumstances of this matter are unique as a result of the nature of the VenGrowth Funds as LSVCCs and because the VenGrowth shareholders have limited rights as such (see paragraph 11 of these reasons).

[40] By soliciting Support Agreements from the approximately 130,000 holders of VenGrowth shares, GrowthWorks has bypassed the auction process being conducted by the Special Committee in soliciting competing transactions that are intended to maximize value for VenGrowth shareholders. That process has resulted in a letter of intent under which Covington has agreed with the Special Committee to make a merger proposal to acquire the VenGrowth Funds. The letter of intent states that

Covington will enter into a formal merger agreement only if the Commission or a Court issues a decision preventing GrowthWorks from voting the Subject Shares on the GrowthWorks Proposal or against any competing transaction.

[41] None of the parties disputed that, if GrowthWorks can vote the Subject Shares, GrowthWorks would likely carry any vote at a VenGrowth shareholders' meeting with respect to any merger proposal or other transaction. In particular, those votes appear to be sufficient to approve the GrowthWorks Proposal and to defeat any competing transaction.

[42] Accordingly, the issues we are required to address in this matter arise in the midst of a battle for the support of VenGrowth shareholders for competing proposals. GrowthWorks submits that these issues must be considered in the context of an earlier failed merger transaction agreed to by the VenGrowth Funds and Covington that was ultimately defeated in late 2010 by shareholder opposition significantly led by GrowthWorks. GrowthWorks also submits that, at a later stage in this process, when a shareholders' meeting or meetings of the VenGrowth Funds will be called, VenGrowth shareholders will receive an information circular and a form of proxy, both in compliance with applicable law. GrowthWorks submits that circular will provide VenGrowth shareholders sufficient information with respect to the GrowthWorks Proposal to make an informed decision.

***b. Solicitation by GrowthWorks***

[43] We are required in this matter to consider the relatively fine distinctions between the nature and legal effect of a "proxy", the nature and legal effect of a power of attorney to vote shares and grant proxies, and the right of shareholders to agree with other shareholders or a third party as to how they will vote their shares.

[44] We believe that it is clear that GrowthWorks' solicitation of the Support Agreements constitutes a "communication to a security holder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy" within the meaning of the definition of "solicitation" in section 84 of the Act. In substance, the Support Agreements are being used as a means to permit GrowthWorks to vote the Subject Shares, personally or by proxy, at any meeting of VenGrowth shareholders that may be called to consider the GrowthWorks Proposal or any competing transaction. That solicitation would likely ultimately result in the procurement or withholding of a "proxy" in respect of any VenGrowth shareholders' meeting that may be called to consider the GrowthWorks Proposal or any competing transaction.

***c. Are the Support Agreements Proxies?***

[45] The legal question we must address, however, is whether that solicitation currently constitutes a solicitation of a "proxy" from the holders of VenGrowth shares within the meaning of subsection 86(1) of the Act. The Special Committee submits that the Support Agreements are proxies within the meaning of the Act because they are powers of attorney permitting GrowthWorks to vote the Subject Shares at VenGrowth shareholder meetings. This submission rests on the view that, in these circumstances, there is no difference in the legal effect of a proxy and of a power of attorney: both authorize the holder to vote VenGrowth shares at a shareholders' meeting.

[46] GrowthWorks submits, however, that there are important legal differences between a proxy and the Support Agreements. The Support Agreements are agreements entered into between GrowthWorks and the VenGrowth shareholders to support the GrowthWorks Proposal and they provide broader authority than is represented by a proxy for voting at a specified meeting. The Support Agreements authorize the requisitioning of shareholder meetings as well as the voting of the Subject Shares at multiple future meetings of the VenGrowth shareholders. Further, GrowthWorks submits that they are agreements entered into for consideration or under seal, unlike a proxy for which no consideration is given. (We note that counsel for the Special Committee disputed whether consideration was given for those agreements and whether they were made under seal. We do not find it necessary to resolve those issues.)

[47] GrowthWorks refers to subsection 148(2) of the CBCA and says that section requires a proxy to be executed by "the shareholder or by the shareholder's attorney authorized in writing". GrowthWorks submits that section thereby recognizes the difference between a proxy and a power of attorney to grant a proxy. GrowthWorks submits that the Support Agreements constitute powers of attorney to execute or grant proxies but are not themselves proxies. GrowthWorks says that the Act and the CBCA do not apply to the solicitation of powers of attorney, they apply only to solicitations of proxies.

[48] A "proxy" is defined in subsection 1(1) of the Act as "a completed and executed form of proxy by means of which a security holder has appointed a person … as the security holder's nominee to attend and act for and on the security holder's behalf at a meeting of security holders."

[49] A "form of proxy" is defined in the Act as "a written or printed form that, upon completion and execution by or on behalf of a security holder, becomes a proxy". Section 9.4 of National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**") imposes specific requirements as to the form of a proxy. However, there is no requirement under Ontario securities law that a proxy be revocable (see paragraph 56 of these reasons).

[50] There is some circularity in the definitions of "proxy" and "form of proxy". Clearly, a proxy is an instrument by which a security holder can appoint a person to attend and act on the security holder's behalf at a meeting of security holders. However, little guidance is provided by the provisions of the Act on the question of whether agreements such as the Support Agreements can themselves constitute proxies.

[51] In coming to our decision, we have reviewed the proxy solicitation cases submitted to us by the parties, although we did not find them helpful on the specific question of whether the Support Agreements themselves constitute proxies (those cases include *SEC v. Okin*, (1943) 132 F.2d 784 (2d Cir.); *Studebaker Corp. v. Gittlin*, (1966) 360 F. 2d 692 (2d Cir.); *Capital Real Estate Investors Tax Exempt fund Limited Partnership v. Schwartzberg*, (1966) 917 F. Supp. 1050 (S.D.N.Y.); *Pacifica Papers Inc. v. Johnstone* (2001), 15 B.L.R. (3d) 249 (B.C.S.C.), affirmed (2001), 19 B.L.R. (3d) 62 (B.C.C.A.); *Polar Star Mining Corp. v. Willock* (2009), 96 O.R. (3d) 688 (Ont. S.C.); *Brown v. Duby* (1980), 11 B.L.R. 129 (Ont. H.C.); *Calumet Industries, Inc. v. MacClure*, (1978) 464 F. Supp. 19 (N.D. III.); and *Montreal Trust Co. of Canada v. Call-Net Enterprises Inc.* (2002), 57 O.R. (3d) 775).

[52] On balance, it seems to us that the Support Agreements are not proxies. The Support Agreements authorize GrowthWorks, among other things, to execute proxies as attorney for VenGrowth shareholders to vote at shareholders' meetings; but the Support Agreements are not themselves proxies. Certainly, the Support Agreements do not comply with the form requirements for a proxy and are not documents intended to be lodged at a meeting of shareholders as a proxy. The Support Agreements are agreements between the parties constituting GrowthWorks as attorney for the VenGrowth shareholders for certain purposes. Accordingly, in our view, the solicitation of the Support Agreements was not illegal or contrary to Ontario securities law.

***d. Solicitation of the Support Agreements is Contrary to the Public Interest***

[53] In substance, however, the solicitation of the Support Agreements is at its core the solicitation of the right to vote shares held by VenGrowth shareholders at VenGrowth shareholder meetings called to consider the GrowthWorks Proposal or any competing transaction. A very large number of shareholders were solicited (130,000 VenGrowth shareholders) and each of those shareholders held a relatively small number of shares. Shareholders were solicited to enter into a standard form agreement and there was no negotiation between the parties as to the terms of that agreement. This solicitation process is quite different from the usual process under which so-called "lock up agreements" are negotiated and entered into between a potential acquirer and a significant shareholder of a target issuer. Accordingly, there is little difference between the process of solicitation of the Support Agreements and the solicitation of proxies entitling the holder to vote at a shareholders' meeting.

[54] Further, if a shareholder enters into a Support Agreement then, by its terms, that shareholder cannot vote the Subject Shares by proxy or otherwise at any VenGrowth shareholders' meeting thereafter called to consider the GrowthWorks Proposal or any competing transaction. The Support Agreements are expressed to be irrevocable, thereby preventing a shareholder who enters into a Support Agreement from changing his or her mind as to how the Subject Shares should be voted. Accordingly, a shareholder has no ability to choose between the GrowthWorks Proposal and any competing transaction that may arise, including the proposed Covington transaction.

[55] We note, in this respect, that the CBCA provides that a proxy is valid only at the meeting in respect of which it is given or any adjournment of that meeting (subsection 148(3)) and that a shareholder may revoke a proxy in the manner provided for in the CBCA (subsection 148(4)).

[56] Ontario securities law does not require that a proxy be revocable. In this respect, Form 51-102 F5 – Information Circular to NI 51-102 requires that an information circular:

> State whether the person or company giving the proxy has the power to revoke it. If any right of revocation is limited or is subject to compliance with any formal procedure, briefly describe the limitation or procedure.
>
> (Item 2 of Part 2 of Form 51-102 F5)

[57] In contrast, the take-over bid rules in the Act permit a security holder to withdraw securities deposited under a bid at any time before the securities have been taken up by the bidder. As a result, security holders have a broad right to change their decision whether to deposit their securities pursuant to a take-over bid. That right of withdrawal is crucial where a competing take-over bid is made.

[58] The comparable right in the context of a merger or acquisition transaction requiring shareholder approval is the right of shareholders to change their vote by revoking any proxy they may have granted. That right is crucial to shareholders in circumstances in which there may be competing proposals or transactions.

[59] Accordingly, the right of shareholders to revoke a proxy or other voting authority, such as the Support Agreements, in circumstances such as those before us, is fundamental to protecting the interests of those shareholders. In our view, the principles underlying the take-over bid and proxy solicitation provisions of the Act require that a shareholder be able to make an informed decision as to how to vote, and that a shareholder be able to change that decision, if the shareholder wishes to do so. The Support Agreements by their terms prevent a shareholder from choosing between competing proposals or transactions. Accordingly, in our view, the solicitation of the Support Agreements, and the terms of those agreements, undermine one of the animating principles of the Act.

[60] In our view, the solicitation of the Support Agreements in these circumstances, and the voting of the Subject Shares under those agreements, is contrary to the public interest and engages our public interest jurisdiction under section 127 of the Act.

[61] Shareholders who have entered into Support Agreements should be entitled to terminate those agreements at any time for the purpose of voting the Subject Shares at any VenGrowth shareholders' meeting called to consider the GrowthWorks Proposal or any competing proposal or transaction. Further, any subsequent valid submission by a VenGrowth shareholder of a proxy for voting on such matters should constitute an automatic revocation of the right to vote under the Support Agreement on that matter. It was unnecessary for us to address these specific matters in our Order given our conclusion in paragraph 67 of these reasons.

[62] Given the efforts by GrowthWorks to provide substantial relevant disclosure in the GrowthWorks Circular, we have not concluded that the solicitation of the Support Agreements in these circumstances was abusive of shareholders or the capital markets.

***e. Disclosure Matters***

[63] We heard submissions from the Special Committee and the VenGrowth Managers with respect to what they considered to be material deficiencies in disclosure or material misrepresentations in the GrowthWorks Circular. We are not in a position, based on the evidence before us, to come to any conclusions with respect to those matters. We expect GrowthWorks to appropriately address any outstanding disclosure issues in any amendment or supplement to the GrowthWorks Circular that GrowthWorks may decide to circulate or in any subsequent information circular sent by GrowthWorks to VenGrowth shareholders in connection with a shareholders' meeting to consider the GrowthWorks Proposal. We are not, however, making any order in this respect or imposing any such requirement.

[64] We also heard submissions from Staff as to the various questions that the GrowthWorks Circular fails to adequately address or answer. Those submissions related, for instance, to questions around determining the purchase price payable under the GrowthWorks Proposal, failure to disclose the potential amounts of termination fees that could become payable to the VenGrowth Managers, the manner of calculation of the management expense ratios of the GrowthWorks funds and the failure to provide a more detailed merger agreement that can be compared with the Covington transaction. Staff submits that they cannot resolve these disclosure issues without further discussions with GrowthWorks.

[65] In our view, it is important that we not unduly interfere with the rights of the VenGrowth shareholders to support the GrowthWorks Proposal if that is what they wish to do. Because the GrowthWorks Proposal is a proposal for a hostile merger, GrowthWorks may face challenges with respect to access to information related to the VenGrowth Funds and its ability, at this stage of the process, to create certainty around certain elements or terms of its proposal. As long as there is adequate disclosure of such uncertainties and the risks of them, they should not prevent GrowthWorks from presenting a proposal to VenGrowth shareholders or prevent those shareholders from voting to support that proposal. Provided the VenGrowth shareholders can make an informed decision based on the disclosure made to them, it is ultimately up to them to decide how they will vote or which proposal or transaction they will support. We note, in this respect, that VenGrowth has an obligation to disclose to VenGrowth shareholders, in connection with any VenGrowth shareholders' meeting that may be called to consider the GrowthWorks Proposal, any information that would reasonably be relevant to shareholders in considering that proposal. GrowthWorks and VenGrowth have not been reticent in criticising each other's disclosure in connection with this matter.

***f. Subsequent Shareholders' Meetings and Voting***

[66] In our view, if GrowthWorks wishes to proceed with the GrowthWorks Proposal, (i) a meeting or meetings of VenGrowth shareholders should be requisitioned in due course to consider the GrowthWorks Proposal, and (ii) a new information circular containing sufficient information to permit VenGrowth shareholders to make an informed decision should be sent to VenGrowth shareholders, together with a form of proxy that is in compliance with applicable law.

[67] Further, in our view, none of the Subject Shares should be voted by GrowthWorks or its related entities in connection with any VenGrowth shareholders' meeting or meetings to consider the GrowthWorks Proposal or any competing transaction. We reach that conclusion on the basis that the GrowthWorks Circular may provide insufficient information, at this stage of the process, to permit VenGrowth shareholders to make an informed decision as to how those shares should be voted on the

GrowthWorks Proposal. Staff submits that is the case. Counsel for GrowthWorks acknowledges that a subsequent solicitation of proxies, with appropriate disclosure, would be required in connection with any GrowthWorks merger proposal ultimately put to a shareholder vote. In our view, GrowthWorks should not be entitled in these circumstances to vote the Subject Shares because (i) the right to do so was obtained based on the information contained in the GrowthWorks Circular, which may not be adequate, at this stage of the process, to permit VenGrowth shareholders to make an informed decision, and (ii) the voting rights were obtained in connection with a solicitation that undermined an animating principle of the Act related to take-over bids and proxy contests that is intended for the protection of shareholders. In these circumstances, GrowthWorks should not be permitted to vote the Subject Shares and thereby influence or determine the outcome of a VenGrowth shareholder vote.

[68] Nothing in these reasons prevents GrowthWorks from relying on the Support Agreements to requisition any meeting or meetings of VenGrowth shareholders or from soliciting proxies in connection with any such meetings.

## 8. OTHER MATTERS

[69] For greater clarity, our conclusions in this matter reflect the following principles or assumptions:

(1) GrowthWorks is not required to participate in the Special Committee auction process if it does not wish to do so. GrowthWorks may face challenges in advancing the GrowthWorks Proposal on a hostile basis, but that should not prevent GrowthWorks from making a proposal or proposals directly to VenGrowth shareholders. VenGrowth shareholders may well consider those proposals to be in their best interests.

(2) We have no reason to believe that the Special Committee process to solicit competing transactions is not being carried out appropriately and diligently. That process has been successful in obtaining a possible competing transaction from Covington. Accordingly, the VenGrowth shareholders have benefited from the Special Committee process.

(3) In our view, the proxy solicitation rules are intended for the benefit and protection of shareholders and those rules should be interpreted and applied to further the fundamental rights of shareholders and not to frustrate those rights.

(4) It is not for us to assess or attempt to determine the financial or economic desirability of any particular proposal or transaction for the acquisition of the VenGrowth Funds. That is ultimately a matter for the VenGrowth shareholders to decide.

[70] Nothing in these reasons shall restrict Staff in any way in considering whether to approve any acquisition of the VenGrowth Funds under National Instrument 81-102 – *Mutual Funds* or in applying the proxy solicitation requirements of Ontario securities law to any solicitation of proxies by GrowthWorks or the VenGrowth Funds. In particular, Staff is entitled to assess whether any disclosure made by GrowthWorks or the VenGrowth Funds in connection with this matter, including any disclosure made prior to this hearing, is in compliance with applicable law, and to determine whether any other action should be taken in that respect.

## 9. CONCLUSION

[71] To give effect to our conclusions, we issued the Order attached as Schedule “A” on June 9, 2011. In our view, the issue of that order was in the public interest.

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

| | |
|---|---|
| “James E. A. Turner” | “Mary G. Condon” |
| James E. A. Turner | Mary G. Condon |

**SCHEDULE "A"**

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

**AND**

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

**AND**

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

**ORDER**
**(Section 127 of the Act)**

**WHEREAS** The VenGrowth Investment Fund Inc., The VenGrowth II Investment Fund Inc., The VenGrowth III Investment Fund Inc., The VenGrowth Advanced Life Sciences Fund Inc. and the VenGrowth Traditional Industries Fund Inc. (collectively, the "**VenGrowth Funds**") are registered as labour-sponsored venture capital corporations under the *Income Tax Act* (Canada) ("**LSVCCs**");

**AND WHEREAS** each of the VenGrowth Funds is a mutual fund and reporting issuer under Ontario securities law;

**AND WHEREAS** GrowthWorks Canadian Fund Ltd. ("**GrowthWorks**") is an LSVCC and a mutual fund and reporting issuer under Ontario securities law;

**AND WHEREAS** on May 2, 2011, the Special Committee of Directors of the VenGrowth Funds (the "Special Committee") applied to the Ontario Securities Commission (the "**Commission**") for an order under paragraphs 2 and 5.ii of subsection 127(1) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 (the "**Act**") prohibiting GrowthWorks and GrowthWorks Ltd. from continuing to solicit VenGrowth shareholders and from taking further steps in pursuit of its proposed acquisition of the VenGrowth Funds, unless it complies with Ontario securities law and applicable corporate law (the "**Application**");

**AND WHEREAS** we heard the Application on June 1 and June 2, 2011 (the "**Application Hearing**");

**AND WHEREAS** VenGrowth Capital Management Inc., VenGrowth II Capital Management Inc., VenGrowth III Capital Management Inc., VenGrowth Advanced Life Sciences Management Inc., and VenGrowth Traditional Industries Management Inc. (collectively, the "**VenGrowth Managers**") applied for and on consent were granted limited intervenor status under Rule 1.8 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017;

**AND WHEREAS** counsel for VenGrowth, GrowthWorks, the VenGrowth Managers and Staff of the Commission ("**Staff**") appeared at the Application Hearing and presented evidence and made submissions;

**AND WHEREAS** on March 14, 2011, GrowthWorks mailed an Information Circular (the "**GrowthWorks Information Circular**") and a form of support agreement (the "**Support Agreement**") to VenGrowth shareholders, filed them on SEDAR and posted them on a GrowthWorks website;

**AND WHEREAS** the Support Agreement purports, among other matters, to give GrowthWorks an irrevocable power of attorney to requisition meetings of the VenGrowth shareholders and to vote the VenGrowth shareholders' shares in favour of a proposal by GrowthWorks to buy the assets of the VenGrowth Funds in exchange for shares issued by GrowthWorks (the "**GrowthWorks Proposal**");

**AND WHEREAS** VenGrowth alleges that the GrowthWorks Proposal contravenes the proxy solicitation requirements of Ontario securities law and section 148 of the Canada Business Corporations Act; that it is inconsistent with the animating principles underlying the Act's requirements for take-over bids and proxy contests; and that GrowthWorks' public statements, including statements made in the GrowthWorks Information Circular, are incomplete and materially misleading;

**AND WHEREAS** GrowthWorks has received over 10,500 Support Agreements from VenGrowth shareholders representing over eight million VenGrowth shares and approximately 7.5 to 10.8 percent of VenGrowth shareholders (the "**Supporting Shareholders**");

**AND WHEREAS** on May 13, 2011, GrowthWorks announced its intention that, despite the irrevocable nature of the power of attorney granted by the Support Agreements, VenGrowth shareholders who have executed or will execute Support Agreements will be given the right to revoke the Support Agreements, or limit the authority granted to GrowthWorks under the Support Agreements to the requisition of shareholder meetings;

**AND WHEREAS** GrowthWorks submits that the GrowthWorks Proposal provides prospectus-level disclosure to VenGrowth shareholders, does not contravene Ontario securities law and is not abusive of the capital markets so as to justify the Commission intervening in the public interest;

**AND WHEREAS** we find that it is in the public interest to make this Order;

**IT IS ORDERED**, pursuant to subsections 127(1)2 and 127(2) of the Act, that any issuance of securities by GrowthWorks, GrowthWorks Ltd. or any related entity in connection with the GrowthWorks Proposal is cease traded (including all acts, advertisements, solicitations, conduct or negotiations directly or indirectly in furtherance of any such trade) unless and until:

(i) such time as GrowthWorks ceases to have any right, power or authority to vote, on any matter, the shares of the VenGrowth Funds that are or may become subject to the Support Agreements, and

(ii) GrowthWorks publicly announces that it has ceased to have any such voting rights;

provided that this Order shall not affect:

(a) the ability of GrowthWorks to requisition a shareholders' meeting or meetings of the VenGrowth Funds pursuant to the authority granted under the Support Agreements, or

(b) the ability of GrowthWorks to hereafter solicit, in accordance with applicable law, proxies for use at any shareholders' meeting or meetings of the VenGrowth Funds.

**DATED** at Toronto this 9th day of June, 2011.

"James E. A. Turner"
James E. A. Turner

"Mary G. Condon"
Mary G. Condon

# 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 |
|---|---|---|---|---|
| CIC Mining Resources Ltd. | 13 June 11 | 24 June 11 | | |
| Lakota Resources Inc. | 07 May 09 | 19 May 09 | 19 May 09 | 09 June 11 |
| ScotOil Petroleum Limited | 12 Mar 10 | 24 Mar 10 | 24 Mar 10 | 09 June 11 |
| CCR Technologies Ltd. | 12 May 10 | 25 May 10 | 25 May 10 | 14 June 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 |
|---|---|---|---|---|---|
| Enssolutions Group Inc. | 11 May 11 | 24 May 11 | 24 May 11 | 15 June 11 | |

### 4.2.2 Outstanding Management & Insider Cease Trading Orders

| Company Name | Date of Order or Temporary Order | Date of Hearing | Date of Permanent Order | Date of Lapse/ Expire | Date of Issuer Temporary Order |
|---|---|---|---|---|---|
| Canada Lithium Corp. | 10 May 11 | 20 May 11 | 20 May 11 | | |
| Enssolutions Group Inc. | 11 May 11 | 24 May 11 | 24 May 11 | 15 June 11 | |

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# Chapter 6

# Request for Comments

**6.1.1 Proposed Amendments to NI 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer and Companion Policy 54-101CP Communication with Beneficial Owners of Securities of a Reporting Issuer and Proposed Amendments to NI 51-102 Continuous Disclosure Obligations and Companion Policy 51-102CP Continuous Disclosure Obligations**

**NOTICE AND REQUEST FOR COMMENTS**

**PROPOSED AMENDMENTS TO**
**NATIONAL INSTRUMENT 54-101**
***COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER***
**AND**
**COMPANION POLICY 54-101CP *COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER***

**PROPOSED AMENDMENTS TO**
**NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS***
**AND**
**COMPANION POLICY 51-102CP *CONTINUOUS DISCLOSURE OBLIGATIONS***

**June 17, 2011**

**1. Introduction**

We, the members of the Canadian Securities Administrators (the **CSA**), are publishing for a 60-day comment period revised versions of proposals (the **Proposals**) intended to improve the process by which reporting issuers send proxy-related materials to and solicit voting instructions from registered holders and beneficial owners of their securities (the **Shareholder Voting Communication Process**).

Specifically, we are publishing the following materials (the **Revised Materials**):

- a revised proposed amendment instrument to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and the related forms (**NI 54-101**);
- a revised proposed amendment instrument to National Instrument 51-102 *Continuous Disclosure Obligations* and Form 51-102F5 *Information Circular* (**Form 51-102F5**) (collectively, **NI 51-102**); and
- revised proposed changes to:
    - Companion Policy 54-101CP *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**54-101CP**); and
    - Companion Policy 51-102CP *Continuous Disclosure Obligations* (**51-102CP**).

The original versions of the above materials (the **Original Materials**) were first published on April 9, 2010. We received 27 comment letters. A summary of the comments we received and our responses to those comments are included in Schedule A.

The Original Materials also included proposed amendments to National Policy 11-201 *Delivery of Documents by Electronic Means* (**NP 11-201**). We are not publishing revised amendments to NP 11-201 at this time. An amended and restated version of NP 11-201 201 (**Proposed New NP 11-201**) was published for comment on April 29, 2011. We will consider at a later date what, if any, additional changes to Proposed New NP 11-201 should be made in connection with the Proposals.

The Revised Materials are contained in the following Schedules to this Notice. Certain jurisdictions may include additional local information in Annex I.

| | |
|---|---|
| Schedule A: | Summary of Comments |
| Schedule B: | Revised Proposed Amendment Instrument to NI 54-101 and Blackline to the Original Materials |
| Schedule C: | Revised Proposed Changes to 54-101CP |
| Schedule D: | Revised Proposed Amendment Instrument to NI 51-102 and Blackline to the Original Materials |
| Schedule E: | Revised Proposed Changes to 51-102CP |
| Annex I: | Local Information |

The Revised Materials will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.nbsc-cvmnb.ca
www.osc.gov.on.ca
www.sfsc.gov.sk.ca
www.msc.gov.mb.ca

**For more information on the comment process, see below under "How to provide your comments on the Revised Materials".**

**2. Substance and purpose of the Proposals and the Revised Materials**

The most significant features of the Proposals are as follows:

- providing reporting issuers with a new "notice-and-access" mechanism to send proxy-related materials to registered holders and beneficial owners of securities, collectively **shareholders**;
- simplifying the process by which beneficial owners are appointed as proxy holders in order to attend and vote at shareholder meetings; and
- requiring reporting issuers to provide enhanced disclosure regarding the beneficial owner voting process.

The Revised Materials contain proposed changes affecting these three features of the Proposals, which we describe below. We also briefly describe additional changes to other aspects of the Original Materials.

**(a) Changes to notice-and-access (proposed sections 2.7.1 to 2.7.6 of NI 54-101; proposed sections 9.1.1 to 9.1.6 of NI 51-102)**

Under notice-and-access, a reporting issuer would be permitted to deliver proxy-related materials by sending a notice package to shareholders containing the following:

- a notice to shareholders informing them that proxy-related materials have been filed on SEDAR and posted on another non-SEDAR website and explaining how to access them; and
- the relevant voting document (a proxy, Form 54-101F6 or Form 54-101F7, as applicable).

The notice package would not contain the information circular. Instead, the information circular would be filed on SEDAR and also posted on a non-SEDAR website. A shareholder could request that a paper copy of the information circular be mailed to the shareholder free of charge.

We continue to take the view that properly designed notice-and-access procedures can enhance the Shareholder Voting Communication Process as well as increase the overall efficiencies of the system. We now propose several changes to our original proposal in response to the comments we received, as well as our ongoing examination of the Shareholder Voting Communication Process.

**(i) Reporting issuers other than investment funds can use notice-and-access for all meetings**

The original notice-and-access proposal would not have permitted reporting issuers to use notice-and-access for "special meetings" as defined in NI 54-101. We now propose that notice-and-access be permitted for all meetings of reporting issuers that are not investment funds. See proposed section 2.7.1 of NI 54-101 and proposed section 9.1.1 of NI 51-102.

This proposed change is intended to address concerns that restricting notice-and-access to meetings that are not special meetings:

- adds an additional layer of complexity to the voting process and may cause shareholder confusion;
- implies that "routine" annual matters such as director elections and auditor appointments are not important; and
- limits the potential efficiencies that can be realized by notice-and-access.

The proposed change also excludes investment funds from using notice-and-access. We did not explicitly request comment on, nor did we receive any comments that specifically addressed, the issue of whether investment fund reporting issuers should also be permitted to use notice-and-access for meetings. We would like to consider further and seek feedback on the appropriate form and content of notice for meetings involving investment funds, particularly those involving fundamental changes to an investment fund.

We also propose additional companion policy guidance on factors that reporting issuers should take into account when deciding when and how to use notice-and-access. Factors include:

- the nature of the meeting business; and
- whether notice-and-access resulted in material declines in shareholder voting rates where it was used for prior meetings.

**(ii) Reporting issuers must provide advance notice of their first use of notice-and-access and disclosure and provide information regarding use of notice-and-access in the notification of meeting and record dates**

The original notice-and-access proposal would have permitted a reporting issuer to use notice-and-access without giving shareholders any prior notification. This raises concerns that a shareholder who receives a notice package for the first time would be confused about what he or she is being sent.

We now propose that prior to using notice-and-access for the first time, a reporting issuer must provide advance notice that it intends to do so three to six months before the meeting. The issuer must issue a news release and post information regarding notice-and-access on a website that is not SEDAR. See proposed section 2.7.2 of NI 54-101 and proposed section 9.1.2 of NI 51-102.

We also no longer propose to require that each time a reporting issuer uses notice-and-access it issue a news release disclosing that fact at least 30 days before the meeting. We now propose that the reporting issuer state its intention to use notice-and-access in the notification of meeting and record dates required by section 2.2 of NI 54-101.

In addition, we provide companion policy guidance encouraging issuers to consider what additional methods of advance notice are appropriate, such as a mailing in advance of the meeting.

**(iii) Reporting issuers must provide explanatory material regarding notice-and-access in the notice package**

The original notice-and-access proposal did not require that any explanatory material regarding notice-and-access be included in the notice package. We now think that shareholders who receive a notice package always should have basic information about notice-and-access as part of the notice package.

We now propose that a reporting issuer must include a plain-language explanation of notice-and-access in the notice package that is sent to shareholders. The reporting issuer must also post the explanation on the website where the full set of proxy materials is posted. See proposed subparagraph 2.7.1(1)(a)(ii) of NI 54-101, and proposed subparagraph 9.1.1(1)(a)(ii) of NI 51-102.

**(iv) Reporting issuers cannot include additional material in the notice package other than explanatory material regarding notice-and-access**

The original notice-and-access proposal would have permitted reporting issuers to include additional material regarding the meeting (but not an information circular) in the notice package. We now propose to restrict a reporting issuer from including such additional material in the notice package unless a copy of the information circular is also included. We are concerned that provision of such additional material without an information circular encourages shareholders to only read the additional material without referring to the information circular.

**(v) Inclusion of paper copies of the information circular with the notice package pursuant to standing instructions**

The original notice-and-access proposal did not explicitly address whether it was permissible for a shareholder to provide annual or standing instructions to receive a paper copy of the information circular where a reporting issuer uses notice-and-access. Under the original proposal, the only specified method by which a shareholder could obtain a paper copy of the information circular was to contact the reporting issuer (or the reporting issuer's service provider) to request a paper copy after the notice package had been sent out.

We now think that shareholders should be able to request that a paper copy of the information circular be automatically included with the notice package. Having the information circular automatically included, as opposed to having to wait until the notice package has been sent out, is more user-friendly to shareholders.[1] Standing instructions also provide reporting issuers with information that can assist them in planning print volumes.

We therefore propose that reporting issuers be permitted to obtain standing instructions from registered holders, and intermediaries be permitted to obtain standing instructions from beneficial owners. Where a reporting issuer or intermediary obtains such instructions, they must comply with these instructions. We also impose obligations on reporting issuers and intermediaries to facilitate compliance with these standing instructions once they have been obtained. See proposed section 2.7.6 of NI 54-101 and proposed section 9.1.5 of NI 51-102.

**(vi) Inclusion of paper copies of the information circular with the notice package where annual financial statements and MD&A are requested and sent as part of proxy-related materials**

Section 4.6 of NI 51-102 establishes an annual request form mechanism for shareholders to request copies of a reporting issuer's annual financial statements and annual MD&A for the following year. These documents are generally found in an annual report, so for ease of reference, we will use the term annual report to refer to those documents.

If a reporting issuer does not send the annual report to all shareholders, the reporting issuer must send the annual request form to its shareholders to enable shareholders to request the annual report for the following financial year. In practice, service providers have integrated the annual request form mechanism with the Shareholder Communication Voting Process by:

- incorporating the annual request form into the proxy or the voting instruction form sent as part of proxy-related materials to shareholders. This avoids a separate mailing of the request form; and
- where the annual report has been requested, automatically inserting the annual report into the proxy-related materials sent to the relevant shareholders. This avoids a separate mailing of the annual report.

We also encourage reporting issuers to send their audited annual financial statements or annual report at the same time as other proxy-related materials. See section 7.2 of 54-101CP.

We have received feedback from Broadridge Investor Communications Corporation, the primary intermediary service provider, that in order to facilitate the efficient integration of the annual request form mechanism with the Shareholder Communication Voting Process, annual instructions to receive the annual report should also constitute instructions to include a paper copy of the information circular where the reporting issuer uses notice-and-access. Conversely, standing instructions to receive paper copies of the information circular as part of the notice package should also constitute instructions to include the annual report as part of the notice package.

If the instructions were not integrated in the above fashion, service providers would need to modify the existing infrastructure to accommodate four types of notice packages:

[1] We note that data from the U.S. suggests that where retail beneficial owners receive full packages of materials as a result of standing instructions, their rate of vote return is extremely high. 60% of beneficial owner accounts that received full packages as a result of standing instructions voted, as compared to approximately 19% of beneficial owner accounts where notice-and-access was not used. See "Notice and Access: Statistical Overview of Use with Beneficial Shareholders As of December 31, 2010." Slides available at http://www.broadridge.com/notice-and-access/index.asp.

- notice package without paper copy of information circular and annual report;
- notice package with paper copy of information circular;
- notice package with paper copy of annual report; and
- notice packages with paper copy of information circular and annual report.

In contrast, integrating the instructions as requested would reduce the types of notice packages to two:

- notice package without paper copy of information circular and annual report;
- notice package with paper copy of information circular and annual report.

Having two types of notice packages would be simpler to design, implement and maintain.

We do not have any concerns with automatically including a paper information circular with the notice package for those shareholders who have requested to receive the annual report, and therefore propose that section 4.6 of NI 51-102 be amended so that paper copies of the information circular will be included with the notice package where the annual report is requested and sent as part of proxy-related materials.

However, we are not proposing at this time to explicitly prescribe the converse, i.e., the automatic inclusion of an annual report with the notice package where a paper information circular is included pursuant to standing instructions. While we acknowledge that having two types of notice packages would be simpler to design, implement and maintain, we would appreciate additional input from stakeholders before proposing such a change. Is it reasonable to infer that a shareholder who wishes to receive a paper copy of the information circular would also wish to receive the annual report?

**(vii) Stratification**

The original notice-and-access proposal contemplated that a reporting issuer could choose to send a notice package to some shareholders, and send a standard package (which would contain the notice of meeting, voting document and information circular) to others.

We now propose that where a reporting issuer uses notice-and-access, it must send the same basic notice package containing the required notice, the voting document, and the explanation of notice-and-access to all shareholders. However, the notice package for those shareholders who have provided standing instructions and who have provided annual instructions (as discussed above) would also include the paper copy of the information circular.

We refer to the process of including a paper copy of the information circular in the notice package as “stratification”, and have added a new definition in subsection 1(1) of NI 54-101 and subsection 1.1(1) of NI 51-102.

We do not propose at this time to prescribe other criteria for when stratification can be used by a reporting issuer. We would require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which shareholders will receive a paper copy of the information circular. However, we are proposing companion policy guidance that states our expectation that a reporting issuer that uses stratification for purposes other than complying with shareholder instructions would do so in order to enhance effective communication, and not to disenfranchise shareholders.[2] The guidance also explains that we would not mandate the provision of stratification by reporting issuers or intermediaries, other than in order to comply with standing instructions or annual requests for paper copies of information circulars that they may have chosen to obtain from registered holders or beneficial owners. We expect any additional stratification criteria will evolve through market demand and practice, and we will monitor developments in this area.

**(viii) The proposed exemption for delivery of proxy-related materials using US notice-and-access is available only to SEC issuers with a limited Canadian presence**

The original notice-and-access proposal would have exempted reporting issuers who are SEC issuers from the obligation to deliver proxy-related materials to beneficial owners under NI 54-101 where they use the notice-and-access process prescribed

[2] One example of how stratification could enhance communication is where a reporting issuer wishes to send proxy-related materials to all its beneficial owners, including those who have declined to receive materials (**declining beneficial owners**). These declining beneficial owners could be sent a notice package only, while the reporting issuer would send other beneficial owners who wished to receive all materials the notice package and the information circular. All beneficial owners thus would receive the documentation necessary to vote, but those declining to receive materials would not receive a paper copy of the information circular unless they requested it.

by the SEC (**U.S. notice-and-access**). A similar exemption was proposed in respect of registered holders. We propose to amend the exemption to clarify that it is available only to SEC issuers with a limited Canadian presence. We also are exempting intermediaries who deliver proxy-related materials on behalf of the issuer using U.S. notice-and-access from their obligations under NI 54-101. See section 9.1.1 of NI 54-101 and section 9.1.6 of NI 51-102.

**(ix) Methods for sending notice package**

The original notice-and-access proposal contemplated that issuers would deliver the notice package either using:

- prepaid mail, courier or the equivalent; or
- any other method previously consented to by the shareholder.

We now propose to remove the reference to "any other method previously consented to by the shareholder", as it was not clear what such methods would be and how in practice they could be used to send the notice package. The revised provisions now only refer to sending the notice package by prepaid mail, courier or the equivalent. See paragraph 7.1(1)(b) of NI 54-101 and paragraph 9.1.1(1)(c) NI 51-102.

However, a reporting issuer's decision to use notice-and-access would not preclude a shareholder from also being sent proxy-related materials using an alternate method to which the shareholder previously has consented. See section 2.7.5 of NI 54-101 and section 9.14 of NI 51-102. For example, our understanding is that one or more service providers acting on behalf of reporting issuers or intermediaries have previously obtained consents from shareholders for proxy-related materials to be sent by email (with links to the materials included in the body of the email). This delivery method would still be available to issuers and intermediaries even if notice-and-access is used.

**(x) Specific times by which a reporting issuer must provide materials for forwarding to proximate intermediaries**

The original notice-and-access proposal did not mandate specific times by which a reporting issuer would have to provide the documents for the notice package to proximate intermediaries for forwarding. We now propose specific timelines: three business days before the 30th day before the date fixed for the meeting where materials are sent by first class mail, courier or the equivalent, and four business days before the 30th day in the case of other types of prepaid mail. See subsection 2.12(3) of NI 54-101.

We provide guidance in 54-101CP that "first class mail" is the equivalent of Canada Post Lettermail.

**(xi) Methods and timing for fulfilling request for paper information circulars**

We propose that there be two different sets of fulfillment requirements for requests received prior to the date of the meeting, and on or after the date of the meeting. Where the request is received prior to the date of the meeting, the paper information circular must be sent by first class mail, courier or the equivalent within three business days. Where the request is received on or after the date of the meeting, and within one year of the information circular being filed, the paper information circular must be sent by prepaid mail, courier or the equivalent within 10 calendar days. Requests for a paper copy of the information circular do not need to be fulfilled more than one year after the date of the applicable meeting. See paragraph 2.7.1(1)(f) of NI 54-101.

**(xii) Other changes to the notice-and-access proposal**

We are also making the following additional changes to the notice-and-access proposal:

- The information circular and other documents in the notice package must be filed on SEDAR and posted on a non-SEDAR website on or before the day that the reporting issuer sends the notice package (paragraph 2.7.1(1)(d) of NI 54-101). The original proposal that the posting had to occur on the same day as the sending of the notice package meant that reporting issuers potentially would have to choose between mailing the annual financial statements and annual MD&A with the notice package, and incorporating by reference the information circular in the AIF.
- We have modified the provisions that restrict information gathering by reporting issuers who receive requests for paper copies of information circulars or via the non-SEDAR website so that the prohibitions address intentional information gathering by the reporting issuer (section 2.7.3 of NI 54-101). Intentional information gathering can be contrasted with situations where information is volunteered by a requester, or where certain website functionality could be, but is not used, to identify a shareholder who accesses the non-SEDAR website.

**(b) Simplification of beneficial owner proxy appointment process (sections 2.18 and 4.5 of NI 54-101)**

**(i) Authority to act for and on behalf of the beneficial owner in respect of all matters that may come before the meeting**

The Original Materials proposed the repeal of the provisions relating to legal proxies, and replaced them with a provision that requires intermediaries and management as applicable to appoint a beneficial owner (or another person designated by the beneficial owner) as proxy holder to attend and vote at the meeting, if requested by the beneficial owner. However, there was no explicit requirement that an intermediary or reporting issuer management give discretionary authority to a beneficial owner to vote on all matters that would come before the meeting. The lack of an explicit requirement would permit an intermediary or management to limit the scope of voting authority to only those matters identified in the voting instruction form, and therefore potentially prevent the beneficial owner from voting on important matters that might come before the meeting but that were not set out in the voting instruction form.

We therefore propose that unless a beneficial owner has instructed otherwise, where an intermediary appoints a beneficial owner or a nominee of the beneficial owner as a proxy holder, the beneficial owner or nominee also must be given authority to attend, vote and otherwise act for and on behalf of the intermediary (or the issuer's management, where the reporting issuer is sending proxy-related materials directly to NOBOs) in respect of all matters that may come before the applicable meeting and at any adjournment or continuance.

We also propose consequential changes to the instructions regarding attending and voting at a meeting in Form 54-101F6 and Form 54-101F7.

**(ii) Deposit of proxy prior to proxy cut-off**

The Original Materials proposed to require an intermediary (or if applicable the reporting issuer) to deposit any proxy appointing a beneficial owner as a proxy holder within any time specified under corporate law for the deposit of proxies (a **proxy cut-off**). We propose to modify this requirement so that it applies only where the intermediary or reporting issuer (as the case may be) obtains the instructions from the beneficial owner to appoint it as proxy holder at least one business day before the proxy cut-off.

**(c) Enhanced disclosure of voting process (subsection 2.2(2) of NI 54-101)**

We propose to add a requirement that the notification of meeting and record dates under subsection 2.2(2) of NI 54-101 also include disclosure regarding the reporting issuer's use of notice-and-access, whether it is sending proxy-related materials directly to NOBOs, and whether it intends to pay for delivery of proxy-related materials directly to OBOs. We think that including this information in the notification will enhance the transparency of the voting process. This requirement is in addition to the requirement to disclose the above information in the information circular if applicable.

**(d) Other changes to NI 54-101**

We propose several other changes in respect of the amendments to NI 54-101:

- Subsection 2.5(4): We propose that a reporting issuer or person or company retained by the reporting issuer may request beneficial ownership information for the purpose of obtaining a NOBO list, if the intermediary to whom the request is being made reasonably believes that the person or company making the request has the technological capacity to receive the NOBO list. We think this change balances the concern with opening up the entire process of obtaining beneficial ownership information with streamlining the process for obtaining NOBO lists. It also enables the entity in the best position to assess a requester's technological capacity to receive the NOBO list to make that assessment.

- Removal of proposed changes to processing times in section 2.12: We no longer propose to have a single three-day processing time for proxy-related materials sent indirectly by prepaid mail. We are retaining the existing provision, which requires an additional day for processing proxy-related materials that are not sent by first class mail.

- Subsections 2.18(5) and 5.4(4): We propose to clarify that the confirmation provided to the intermediary must identify the specific meeting to which the confirmation applies, but is not required to specify each proxy appointment.

- Subsection 2.20(a.1) of NI 54-101: We propose to clarify that where a reporting issuer uses notice and access, a reporting issuer can abridge the record date for notice to not less than 30 days before the meeting date, and the sending of the notification of meeting and record dates under section 2.2 to not less than 30

days before the date of the meeting. This is to enable shareholders to have sufficient time to request and receive a paper copy of the information circular in advance of the meeting, if they wish to receive one.

- Removal of certain proposed record keeping requirements: We are removing the proposed requirements for issuers and intermediaries to retain a record of each Form 54-101F6 or Form 54-101F7 sent and the date and time of any voting instructions, including proxy appointment instructions, at this time. We will consider the broader issue of record-keeping generally in the proxy voting system at another time.

- Form 54-101F2 *Request for Beneficial Ownership Information*: We propose to amend the form to require the reporting issuer to state whether it is using notice-and-access, and any stratification criteria being used.

**3. Other possible reforms to the proxy voting process**

We received a number of comments on possible reforms to the proxy voting process which are set out and discussed in Appendix A. We thank all the commentators for their feedback. We are not at this stage publishing any specific regulatory proposals, other than the Proposals, in response to the comments we received. However, we continue to assess the proxy voting process, and may publish additional materials for consultation at a later date. We note that the proxy voting system is complex, and changes intended to improve one part of the system can cause "ripple effects" on other parts. Any proposed reforms must be carefully designed in order to minimize the likelihood of unintended consequences.

**4. How to provide your comments on the Revised Materials**

You must submit your comments in writing by **August 16, 2011**. If you are sending your comments by email, you should also send an electronic file containing the submissions in Microsoft Word.

Please address your comments to all of the CSA member commissions as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission – Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Please send you comments only to the addresses below. Your comments will be forwarded to the remaining CSA jurisdictions.

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Please note that all comments received during the comment period will be made publicly available. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

We will post all comments received during the comment period to the OSC website at www.osc.gov.on.ca to improve the transparency of the policy-making process.

**Questions**

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## SCHEDULE A
## SUMMARY OF COMMENTS AND RESPONSES

We received comment letters from the following:

British Columbia Investment Management Corporation
Broadridge Investor Communication Solutions Canada
Canadian Bankers Association
Canadian Coalition for Good Governance
Canadian Foundation for Advancement of Investors Rights
Canadian Oil Sands
Canadian Society of Corporate Secretaries
Computershare Trust Company of Canada
Davies Ward Phillips & Vineberg LLP
GG Consulting
Hermes Equity Ownership Services Limited
Investment Industry Association of Canada
Kempenfelt House Consulting Inc.
Kenmar Associates
Kingsdale Shareholder Services
Laurel Hill Advisory Group
Manitoba Telecom Services Inc.
Manulife Financial Corporation
Mouvement d'Education et de Défense des Actionnaires
Ontario Bar Association
Pension Investment Association of Canada
RBC Dominion Securities
Scotia Capital Inc.
Securities Transfer Association of Canada
Shareholder Association for Research and Education
TMX Group Inc.
TransCanada Corporation

### A. Comments on the Original Materials

| # | Issue/Comment | Response |
|---|---|---|
| **Notice-and-Access** | | |
| **1.** | *Whether notice-and-access generally is a positive development, particularly for retail investors* | |
| | The majority of comments, including comments from reporting issuers, institutional shareholders, intermediaries and service providers, were generally supportive of notice-and-access as being a positive step toward encouraging proxy voting and making the system more efficient. A transfer agent group noted that in its view, the main cause for a decrease of retail voting in the U.S. was the absence of the voting instruction form from the notice package. Several comment letters, however, recommended improvements be made to the proposed notice-and-access procedures, particularly a greater focus on shareholder education regarding notice-and-access.<br><br>We received several comments from groups with a shareholder focus that did not support notice-and-access. Two commentators were very concerned that notice-and-access would be an obstacle to informed voting by requiring beneficial owners to take additional steps to access the information circular. One of the commentators stated that fundamental changes needed to be made to the procedures, and | We continue to think that permitting issuers to use notice-and-access to send proxy-related materials can improve the beneficial owner communication process.<br><br>We are, however, proposing several changes to the notice-and-access procedures we originally proposed in order to address concerns that notice-and-access will be an obstacle to voting, particularly by retail shareholders.<br><br>We now propose that reporting issuers who use notice-and-access must provide advance notification before they use notice-and-access for the first time; and explanatory material on notice-and-access must be included in the notice package along with the notice and voting instruction form.<br><br>We also propose to permit registered holders and beneficial owners to provide standing instructions on whether they wish to receive paper copies of information circulars in all instances where a |

| # | Issue/Comment | Response |
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| | said that the proposal as currently designed should not be adopted.<br><br>We received one comment that was neither in favour of nor opposed to notice-and-access, but that recommended that the CSA should monitor the effect of notice-and-access on the participation of Canadian retail shareholders, with the aim of holding voting participation rates at 2010 levels or increasing them. | reporting issuer is using notice-and-access. |
| **2.** | *Whether notice-and-access should be available for special meetings under NI 54-101* | |
| | Only one comment supported restricting notice-and-access to meetings that are not special meetings under NI 54-101 and to only extend it to all meetings until the impact of notice-and-access on voting participation rates had been demonstrated.<br><br>All other comments disagreed with restricting notice-and-access to meetings that are not special meetings.<br><br>The comments expressed the following concerns regarding the proposed restriction:<br><br>(a) it would add an additional layer of complexity to an already complex system;<br><br>(b) the distinction between special and non-special meetings is not meaningful in many cases, as controversial matters are often voted on at non-special meetings (e.g., the case of proxy contests);<br><br>(c) it could perpetuate a view that the election of directors and (re)appointment of auditors require less attention;<br><br>(d) it would significantly reduce the number of meetings for which notice-and-access could be used, thus significantly reducing the efficiency gains for the beneficial owner communication process. | We agree with the large majority of comments that notice-and-access should be available for all meetings, not just special meetings. We therefore propose to eliminate this restriction. In addition, we also propose additional companion policy guidance on what factors reporting issuers should consider when deciding whether to use notice-and-access. |
| **3.** | *Whether there should be a prescribed form of notice* | |
| | Comments were divided on this issue.<br><br>Those who supported a prescribed or standardized form of notice expressed concern that lack of specific requirements could create inconsistency between proxy-related materials and result in shareholder confusion.<br><br>Those who did not think that a prescribed or standardized form was necessary noted that as long as the basic information about matters to be voted on was provided, it would be appropriate to provide additional information. | Regardless of whether commentators supported a prescribed or standardized form, all commentators appeared to agree that the notice should contain basic information about the matters to be voted on, and that investor confusion should be minimized.<br><br>With the above objectives in mind, we have revised the proposal to specify that the notice must only state certain information. With respect to matters being voted on at the meeting, the notice must only state each matter or group of related matters to be voted on as identified in the form of proxy. This will facilitate consistency between the notice and other proxy-related materials, as well as standardization of the notice among issuers, both of which are intended to minimize investor confusion. We also propose companion policy guidance that states our expectations that reporting issuers draft the items to |

| # | Issue/Comment | Response |
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| | | be voted on in the proxy in a clear and user-friendly manner. |
| **4.** | *Whether additional information (that is not an information circular) can be provided with the notice* | |
| | Comments were divided on this issue. Most commentators shared a concern that additional materials could be confusing and in some cases, intentionally or unintentionally inaccurate or misleading. One comment suggested mandating a plain language summary of the notice with all relevant voting information. Another comment suggested prescribing rules regarding the type, tone, content and purpose of additional materials. One comment also proposed requiring any additional materials to be provided to all investors, regardless of how the materials were delivered. | We think that permitting additional materials to be included in the notice-and-access package without any prescribed rules around type, tone, content and purpose could contribute to investor confusion. Furthermore, we are concerned that providing such additional materials without the information circular encourages shareholders not to review the information circular. We therefore propose to prohibit additional material from being included in the notice-and-access package without an information circular also being included. |
| **5.** | *Whether notice-and-access can be used only in respect of some beneficial owners* | |
| | Comments were divided on this issue. Some comments expressed concern that selective use of notice-and-access would be confusing to shareholders, and in some cases could be used to manipulate voting outcomes by reporting issuers. Other comments viewed selective use of notice-and-access as being consistent with effective communication with shareholders while maximizing cost efficiencies in the communication process.<br><br>One comment noted that there is a distinction to be made between selective use of notice-and-access, and "stratification". Stratification refers to procedures whereby an issuer that uses notice-and-access includes paper copies of the information circular in the notice package sent to a subset of beneficial owners. | In order to minimize the complexity of the system and investor confusion, we propose that an issuer that uses notice-and-access under NI 54-101must use it in respect of all its beneficial owners (subject to any alternate delivery methods such as e-mail delivery to which the shareholder has consented or may consent). However, the issuer can choose to include a paper copy of the information circular in the notice package that is delivered to a subset of its shareholders. We have added a definition of "stratification" to describe these procedures.<br><br>We think that stratification as part of notice-and-access can be consistent with effective communication while maximizing cost efficiencies in the communication process. However, in order to increase transparency, we propose to require that stratification criteria be disclosed in the notification of meeting and record dates required by s. 2.2 of NI 54-101, the notice-and-access explanation required by s. 2.7.1(1)(a)(ii), and the information circular. We also propose companion policy guidance that states our expectation that a reporting issuer will use stratification in order to enhance effective communication, and not to disenfranchise shareholders. |
| **6.** | *Costs and benefits of notice-and-access* | |
| | Comments were divided on whether notice-and-access would result in cost savings to the Shareholder Voting Communication Process. Some commentators were of the view that notice-and-access would result in significant cost savings, while others were of the view that it would depend on the particular circumstances of the issuer. One commentator noted that notice-and-access also had costs associated with building and maintaining the infrastructure, lost economies of scale in printing and mailing materials and cost transfers to investors to access and print materials. In addition, several comments expressed concern that potential cost | Based on the comments, it appears that the potential for costs savings will depend on a number of factors. For example, one issuer provided an estimate of $75,000 to $500,000 in savings (depending on the type of meeting), while another estimated savings of $500,000 to $700,000.<br><br>We acknowledge concerns that the notice-and-access process not be overly complicated and expensive to design and maintain, and therefore have proposed a number of changes that are intended to streamline and standardize the procedures. With regard to the issue of service |

| # | Issue/Comment | Response |
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| | savings of notice-and-access would not be passed on to issuers absent regulatory intervention on fees charged by service providers.<br><br>An intermediary service provider noted that on a proportional basis, the opportunity for significant cost savings for issuers in Canada is likely to be less than that seen in the U.S. Issuers in Canada have already received cost savings due to regulatory changes. In particular, reporting issuers are not required to send annual financial statements and annual MD&A to all registered holders and beneficial owners if they use the annual request form mechanism in NI 51-102.<br><br>The same intermediary service provider also noted that it is unclear at this stage whether building and maintaining a notice-and-access system is justified given the potential number of corporations that may use the proposed notice-and-access procedures. It also noted that notice-and-access as an additional option for distribution of proxy-related materials, can increase cost and complexity for participants in the Shareholder Voting Communication Process. | provider fees, we note that the use of notice-and-access is voluntary, and that it is up to each reporting issuer to assess whether fees charged in connection with notice-and-access will be sufficiently offset by the savings associated with printing and mailing. |
| **7.** | *Whether notice-and-access is adequately integrated with the process for requesting copies of financial statements and MD&A* | |
| | The comments received on this issue were divided, although a small majority took the view that the two processes could be better integrated. | We have made the following changes in response to the comments:<br><br>(a) We propose to permit proxy-related materials to be filed on or prior to the day the notice is sent. This will enable a reporting issuer to both incorporate by reference the information circular in its AIF (by filing the information circular prior to filing its AIF, annual financial statements and annual MD&A); and send a single set of proxy-related materials that includes the annual financial statements and annual MD&A.<br><br>(b) We propose to amend NI 51-102 so that an annual request form used to request the annual financial statements and MD&A will also constitute a request for a paper copy of the information circular where the reporting issuer uses notice-and-access.<br><br>(c) We propose to reduce the period that a reporting issuer is obligated to fulfil requests for annual or interim financial statements and annual or interim MD&A to one year from the date that the materials were filed, which is consistent with the proposed provision that a reporting issuer is only required to fulfil a request for a paper information circular one year from the date of the meeting to which it relates. |
| **8.** | *Requirement that reporting issuer issue news release regarding use of notice-and-access* | |
| | The majority of comments questioned the utility of the news release requirement. One comment noted that the information required in the news release should be drafted to refer to both registered holders and beneficial owners. | We propose several changes as to how shareholders learn about a reporting issuer's use of notice-and-access. First, we propose a new requirement that a reporting issuer provide advance notice three to six months before the first meeting where notice-and-access is used by issuing a news release and |

| # | Issue/Comment | Response |
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| | | posting information on a website that is not SEDAR. Second, we propose that information regarding notice-and-access subsequently be disseminated in the notification of meeting required in s. 2.2(2) of NI 54-101. Finally, the information to be disclosed must be in respect of both registered holders and beneficial owners. |
| **9.** | *Requirement that reporting issuer post "document with same information" on non-SEDAR website* | |
| | One comment noted that this requirement should be redrafted to require that the reporting issuer post the "information circular" on the non-SEDAR website. | We are adopting the suggested change. |
| **10.** | *Requirement that reporting issuer provide "information" to the intermediary* | |
| | One comment requested that this requirement be redrafted to clarify that the reporting issuer must provide the materials for forwarding, as the provision as currently drafted would require intermediaries to be responsible for producing the required notice. | We are adopting the suggested change. |
| **11.** | *Requirement that requests for paper copies of information circular be fulfilled within 3 business days* | |
| | One comment recommended that the requirement should only apply if a request is received at least 3 business days prior to the meeting. Another comment requested that guidance be provided on how to deal with last-minute requests. | In our view, it is appropriate for any request for an information circular that is received on or before a meeting date to be fulfilled in a prompt manner. We therefore are not proposing to change the 3 business day fulfillment requirement. We also propose to require that first class mail, courier or the equivalent be used in those cases. However, we propose to permit requests received after the date of the meeting to be fulfilled within 10 calendar days and by prepaid mail other than first class mail, which is consistent with the new proposed fulfillment time frames for annual financial statements and annual MD&A. The new proposed mandatory notice-and-access explanation must contain information about when requests should be received in order for the requester to receive the paper copy in advance of any deadline for the submission of voting instructions and the date of the meeting. |
| **12.** | *Requirement not to "obtain" information when fulfilling requests for paper copies* | |
| | One comment requested a change from the word "obtain" to "request". | We have adopted the suggested change. |
| **13.** | *Use of term "enable" in context of prohibition against identification of person accessing website where materials are posted* | |
| | One comment stated that the proposed prohibition against a reporting issuer using any means that would "enable" the reporting issuer to identify a person or company is too broad, and recommended that the provision be changed to read that the reporting issuer "must not collect" such information. | We have adopted the suggested change. |
| **14.** | *Reporting issuer must send notice and post materials on non-SEDAR website at least 30 days before the meeting and on same day that notice package is sent* | |
| | One comment stated that the 30-day period was too far in advance of the meeting, and that sending of the | We are not adopting the suggestion regarding reducing the 30-day period as we continue to take |

| # | Issue/Comment | Response |
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| | notice and posting of materials should be able to take place at least 21 days before the meeting.<br><br>One comment raised a concern that the requirement that the notice be sent out on the same day that the proxy-related materials are made publicly available through filing on SEDAR could result in reporting issuers having to choose between mailing the annual financial statements and annual MD&A with the notice, and incorporating disclosure from the information circular in the AIF. | the view that 30 days is an appropriate period to reasonably enable shareholders who receive the notice to request and obtain a paper copy of the information circular if they wish.<br><br>We have adopted the change suggested to permit the proxy-related materials to be filed on SEDAR on or before the day the notice package is sent. |
| **15.** | *No specific time frame mandated for when intermediaries must receive notice materials for sending to beneficial owners* | |
| | One comment recommended that there be a specific time frame mandated for when intermediaries must receive notice materials where the reporting issuer is sending the materials indirectly to beneficial owners. | We propose that the time frames now track the time frames that apply to standard mailings of proxy-related materials. See s. 2.12 of NI 54-101. |
| **16.** | *No provision that permits beneficial owners to provide standing instructions to receive paper copy of information circular* | |
| | Two comments suggested that there should be provision for beneficial owners to give standing instructions that they wish to receive paper copies of information circulars in every case. One commentator noted that under the SEC notice-and-access rules, investors are permitted to give standing instructions to receive paper copies of meeting materials, and that statistics indicate that those investor who give these instructions tend to vote more often than the average retail investor. | We are adopting this suggestion. We propose that reporting issuers be permitted to obtain standing instructions in respect of registered holders, and that intermediaries be permitted to obtain standing instructions in respect of beneficial owners. We considered proposing that reporting issuers be permitted to obtain standing instructions from beneficial owners, but were not able to envision how reporting issuers could implement a mechanism to obtain, maintain and execute such instructions given the current infrastructure whereby intermediaries are primarily responsible for collecting and maintaining beneficial owner shareholder communication data. We therefore are not proposing such a provision at this time. |
| **17.** | *Reporting issuers who use notice-and-access are not required to pay for delivery to OBOs* | |
| | One comment stated that reporting issuers who use notice-and-access should be required to pay for delivery of the notice to OBOs. See also Issue/Comment 32, which relates to reporting issuers not being required to pay for delivery to OBOs generally. | We are not adopting this suggestion. The notice-and-access proposal is not intended to address the general question of how the cost of delivering proxy-related materials to OBOs should be allocated. However, we strongly encourage those reporting issuers who use notice-and-access to pay for delivery of the notice package to OBOs. |
| **18.** | *Integrating other delivery methods with notice-and-access (s. 2.7(2)(c) and 4.2(2)(c) of NI 54-101 in the Original Materials)* | |
| | One comment noted that it was unclear what other delivery methods are being contemplated and how they would be integrated into the beneficial owner communication process. | We are removing the originally proposed sections that enumerate the permitted delivery methods for proxy-related materials as these provisions are no longer necessary. We also are removing the reference to delivery methods other than prepaid mail, courier or the equivalent for the notice package. |

| # | Issue/Comment | Response |
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| **19.** | *Exemption for SEC issuers who use U.S. notice-and-access* | |
| | A comment identified several technical issues with the proposed exemption for SEC issuers, including how the exemption would interact with the obligations of intermediaries subject to obligations under NI 54-101, but who might not be subject to the U.S. notice-and-access rules. | The proposed exemption is revised as follows:<br><br>(a) We propose to eliminate the original condition that the SEC issuer obtain confirmation from each intermediary that it will "comply" with the U.S. notice-and-access rules, and replace it with a condition that the issuer arrange with each intermediary to send the materials using the U.S. notice-and-access procedures;<br><br>(b) We narrow the application of the exemption to SEC issuers that have a limited Canadian presence;<br><br>(c) We expand the exemption to apply to any intermediary that, at the request of an SEC issuer, uses U.S. notice-and-access procedures to deliver proxy-related materials to beneficial owners. |
| **20.** | *No consequential amendments to Form 54-101F2* | |
| | Two comments requested that the Form 54-101F2 *Request for Beneficial Ownership Information* be amended to reflect the changes proposed in NI 54-101 relating to notice-and-access and also require the issuer to indicate which method(s) of delivery were going to be used, i.e., direct delivery to NOBOs, indirect delivery to both types of beneficial owners, selective/complete use of N&A, etc. | We are adopting this suggestion. We note that some of the information listed is already required to be provided in Form 54-01F2, i.e., Items 7.4 and 10 of Part 1 – Reporting issuer Information. |
| **Repeal of legal proxy provisions and appointment of beneficial owner or its nominee as proxy holder** | | |
| **21.** | *Reporting issuer must provide confirmation in a format that is acceptable to the intermediary that reporting issuer will appoint the NOBO as proxy holder where NOBO has so requested* | |
| | One comment noted that the clause as drafted could result in multiple confirmation formats, and recommended that it not be at the sole discretion of the intermediary. Furthermore, the clause as drafted also could permit an intermediary to demand confirmation of every proxy appointment submitted on behalf of its clients. This could create logistical issues, especially on meetings for large reporting issuers during the height of meeting season. | We removed the requirement that the confirmation be in a format acceptable to the intermediary. We also have added a new provision that clarifies that the confirmation does not need to specify every proxy appointment submitted, and that it is sufficient simply to identify the meeting to which the confirmation applies. |
| **22.** | *Beneficial owner or nominee that is appointed as proxy holder does not have power of attorney to act as principal with authority to vote on all matters before the meeting* | |
| | Issuers should clearly outline in the information circular and on the form of proxy/VIF that the appointee will have authority to present matters to the meeting and to vote on all matters brought before the meeting. Furthermore, issuers should clearly state this fact in the voting instruction form/form of proxy and the information circular. | We have added a provision that the appointee has full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if these matters are not set out in the VIF or the information circular. |
| **23.** | *No specific mechanism outlined for appointing a beneficial owner to attend and vote at a meeting* | |
| | One comment requested that there should be a specific mechanism outlined in NI 54-101 for appointing a beneficial owner to attend and vote at a meeting. | We are not adopting this change. However, as we noted in the notice accompanying the Original Materials, the appointee system has been developed and in place for some time, and we are adding a |

| # | Issue/Comment | Response |
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| | | discussion of it in the companion policy. |
| **24.** | *Obligation to deposit proxy by proxy cut-off* | |
| | A comment requested that the requirement to deposit the proxy by the proxy cut-off pursuant to voting instructions from a beneficial owner only apply where the voting instructions were received at least one business day prior to the proxy cut-off. | We are adopting this suggestion. However, we propose companion policy guidance that we expect that reporting issuers and intermediaries will make best efforts to deposit the proxy even if the instructions are obtained less than one business day before the proxy cut-off. |
| **Enhanced disclosure of proxy voting process in information circular** | | |
| **25.** | *Requirement to disclose where notice-and-access used only for some beneficial owners* | |
| | Comments were divided on the whether the disclosure would be helpful to shareholders. | We continue to take the view that this disclosure is helpful to shareholders. We have made changes to the proposed requirement so that the disclosure regarding stratification is in respect of registered holders and beneficial owners. We also propose to require that the information be disclosed earlier, when the issuer files the notification of meeting. |
| **26.** | *Requirement to disclose non-payment for delivery to OBOs* | |
| | One comment supported disclosure, while two comments questioned the utility of the disclosure. One of the latter two comments noted that the more fundamental issue was the potential that an OBO would not receive proxy-related materials as a result of the reporting issuer not paying for OBO delivery. The second comment suggested that the disclosure of non-payment should be included in the press release. | As noted in our responses to Issue/Comment 17 and 32, we do not intend to address the issue of requiring reporting issuers to pay for delivery to OBOs as part of the Proposals. We are maintaining the proposed disclosure requirement, but also propose to require reporting issuers to disclose whether they will pay for OBOs in the notification of meeting. |
| **Use of NOBO information** | | |
| **27.** | *Increased restrictions on use of NOBO information* | |
| | The comments were generally supportive, although one comment questioned why such restrictions were necessary. One comment suggested that issuers, intermediaries and subcontractors be required to adopt specific privacy standards, such as those in PIPEDA and the Canadian Standards Association's Model Code. | We continue to think that the restrictions are appropriate. We are not adopting the suggestion regarding adoption of specific privacy standards. We expect issuers, intermediaries and service providers to comply with their obligations under privacy legislation, and encourage adoption of appropriate best practices. |
| **Requests for beneficial ownership information** | | |
| **28.** | *Permitting non-transfer agents to request beneficial ownership information on behalf of reporting issuers* | |
| | Comments generally supported this proposed amendment. One comment suggested that s. 2.5(4) be eliminated completely, as information can be delivered using a variety of media and by direct electronic exchange with a much wider array of parties than was anticipated when the original provision was drafted. In the alternative, the assessment regarding technological capacity should be made by the intermediary, as it is the party providing the information.<br><br>However, one comment strongly disagreed with the proposed amendment, noting that: | We continue to think that issuers and third parties should be able to obtain NOBO lists directly (subject to the permitted purposes for obtaining NOBO lists, and permitted uses of NOBO lists in NI 54-101). We therefore propose changes to the provision that clarify that a reporting issuer can request a NOBO list without using a transfer agent provided the intermediary reasonably believes that the reporting issuer (or the person or company making the request on its behalf) has the technological capacity to receive the information. We note that the client response reform does not indicate that beneficial ownership information will only be released to a |

| # | Issue/Comment | Response |
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| | (a) beneficial owners completing their client response form do not have the expectation that their information would be accessible to non-transfer agents; and<br><br>(b) transfer agents are trusted entities that are recognized by the regulator and exchanges and are active participants in the daily affairs of publicly traded companies. | transfer agent. |
| **Miscellaneous comments** | | |
| **29.** | *Requirement for issuers/intermediaries to retain a record of the Form 54-101F6/7 and the date and time of any voting instructions and proxy appointment* | |
| | One comment was supportive of this requirement. However, other comments took the view that the proposed requirements were unclear. For example, one comment noted that the purpose of the proposed requirement was unclear. If the aim was to generate an audit trail for voting, then the recordkeeping requirements should go further to mandate keeping the date(s) the materials were sent to investors, full details of the instructions received and the date(s), time(s) and details of tabulated votes that were sent by an intermediary to the issuer. If the longer term aim was to have a system that can confirm voting instructions and that proxies were executed as securityholders intended, then it would be less expensive and more efficient to require full records to be kept now, rather than introduce additional requirements over time, necessitating multiple systems changes. | We propose to remove the proposed requirements at this stage. We will consider the broader issue of appropriate recordkeeping in the proxy voting system separately from the Proposals. |
| **30.** | *Differences in definitions of special resolution and proxy-related material in NI 51-102 and NI 54-101* | |
| | A comment noted that there were differences in the drafting of the definitions of special resolution and proxy-related material in NI 51-102 and NI 54-101. | We propose to harmonize the definitions. |
| **31.** | *Reasonable assurance of payment to intermediaries before mailing materials* | |
| | A comment noted that the language in Part 4 of NI 54-101 relating to the intermediary's obligation to deliver NOBO lists to issuers and proxy-related materials to beneficial owners on behalf of issuers should be amended to make the conditions contingent on the intermediary receiving reasonable assurance of payment. | We are not proposing to adopt this change at this time. We will consider this issue separately from the Proposals. |

**B. Comments on other aspects of NI 54-101**

| # | Comments | Response |
|---|---|---|
| **32.** | *Issuers should pay for delivery to OBOs under all circumstances.* | We are not adopting this suggestion at this time. We will consider the issue of whether NI 54-101 should require reporting issuers to deliver to OBOs separately from the Proposals. |

| # | Comments | Response |
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| **33.** | *NI 54-101 needs to be strengthened to make intermediaries more accountable.* | We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals. |
| **34.** | *For special meetings as defined in NI 54-101, materials should be sent 45 days in advance.* | We are not adopting this suggestion as we continue to take the view that 21 days (30 days where notice-and-access is used) is an appropriate period. We note that existing companion policy guidance states that for meetings that deal with contentious matters, good corporate practice will often require that meeting materials be sent earlier than the time frames set out in NI 54-101 so that shareholders have the full opportunity to understand and react to matters raised. |
| **35.** | *NOBO status should be the default for beneficial owners; shareholders who wish to remain anonymous must sign waiver of right to receive materials directly.* | We are not adopting this suggestion at this time. We will consider issues generally related to OBO and NOBO status separately from the Proposals. |
| **36.** | *Issuers should not be able to override a security holder's choice not to receive materials. In the alternative, securityholders who have declined to receive materials altogether should only be sent a notice package under notice-and-access.* | We are not adopting this suggestion, as we think that reporting issuers are entitled to contact securityholders in connection with voting matters. Nor do we propose to effectively prohibit a reporting issuer from sending a beneficial owner a paper copy of the information circular. However, we encourage issuers to consider whether notice-and-access and stratification can be used to enhance effective communication in the beneficial owner communication process by sending notice-only packages to securityholders who do not wish to receive materials, and including paper copies of the information circulars in notice packages for shareholders who do wish to receive materials. |
| **37.** | *Include FINS number in the NOBO list where it is requested by a person other than the reporting issuer.* | We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals. |
| **38.** | *OBOs and NOBOs should not be treated in the same manner where it is possible for NOBOs to be treated more like registered shareholders. The Original Materials should be amended to reflect this principle. Issuers should be allowed to provide NOBOs with a form of proxy rather than a request for voting instructions using the STAC protocol for NOBO omnibus proxies.* | We are not adopting this suggestion at this time. We will consider the issue of whether NOBOs should be treated more like registered holders separately from the Proposals. |
| **39.** | *NI 54-101 should mandate that any party that has carriage of mailing (such as the transfer agents or Broadridge) file with the CSA and on SEDAR a confirmation that the mailing was completed in accordance with the requirements of NI 54-101.* | We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals. |
| **40.** | *Any party involved in the beneficial owner voting process should be entitled to rely upon the consent to electronic delivery of material obtained by another party.* | We are not adopting this suggestion at this time. We will consider this issue separately from the Proposals. |

## C. Comments on the proxy voting system generally

| # | Comment | Response |
|---|---|---|
| **41.** | *There needs to be a clear voting audit trail. Consideration should be given to requiring a regulatory or independent audit of meetings where the vote was determined by a narrow margin.* | We thank the commentators for their suggestions on areas where the proxy voting system requires regulatory attention. Although we are not proposing any specific regulatory initiatives as a result of these comments at this time, we continue to consider these comments separately from the Proposals, and what, if any, appropriate regulatory responses to take.<br><br>We support enhancing investor education on the proxy voting system and are considering how we as securities regulators can facilitate achieving this outcome. |
| **42.** | *Shareholders should have the right to confidentiality when voting.* | |
| **43.** | *There needs to be a charter of shareholder rights.* | |
| **44.** | *The regulators should send each beneficial owner a reminder form about casting votes.* | |
| **45.** | *Majority voting/individual director voting should be mandatory for reporting issuers.* | |
| **46.** | *Shareholders should have greater access to the proxy.* | |
| **47.** | *There should be policy guidance requiring the fair allocation of votes received in respect of all beneficial owner positions at a particular intermediary.* | |
| **48.** | *There should be a CSA proxy voting section on CSA websites similar to SEC proxy voting section/There should be an investor education campaign about the beneficial owner voting process.* | |

**SCHEDULE B**
**REVISED PROPOSED AMENDMENT INSTRUMENT TO**
**NI 54-101 AND BLACKLINE TO THE ORIGINAL MATERIALS**

**PROPOSED AMENDMENT INSTRUMENT TO**
**NATIONAL INSTRUMENT 54-101**
**COMMUNICATION WITH BENEFICIAL OWNERS**
**OF SECURITIES OF A REPORTING ISSUER**

***1. National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer is amended by this Instrument.***

***2. Section 1.1 of National Instrument 54-101 is amended by***

***(a) repealing the definition of "***legal proxy***";***

***(b) amending the definition of "***proxy-related materials***" to insert "***or beneficial owners***" between "***registered holders***" and "***of the securities***";***

***(c) adding the following definition after the definition of "***non-objecting beneficial owner list***":***

"notice-and-access" means

(a) in respect of registered holders of voting securities of a reporting issuer, the delivery procedures referred to in section 9.1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*;

(b) in respect of beneficial owners of securities of a reporting issuer, the delivery procedures referred to in section 2.7.1 of this Instrument;

***(d) adding the following definition after the definition of "***request for beneficial ownership information***":***

"SEC issuer" means an issuer that

(a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act; and

(b) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, as amended;

***(e) repealing the definition of "***request for voting instructions***";***

***(f) amending the definition of "***securityholder materials***" to insert "***or beneficial owners***" between "***registered holders***" and "***of the securities***";***

***(g) adding the following definition after the definition of "***special meeting***":***

"stratification", in relation to a reporting issuer using notice-and-access, means procedures whereby a paper copy of the information circular is included with either or both of the following:

(a) the documents required to be sent to registered holders under subsection 9.1(1) of National Instrument 51-102 *Continuous Disclosure Obligations*;

(b) the documents required to be sent to beneficial owners under subsection 2.7.1(1) of this Instrument;

***3. Subsection 2.2(2) is amended by striking out subparagraphs (g) and (h) and replacing them with the following:***

(g) the classes or series of securities that entitle the holder to vote at the meeting;

(h) whether the meeting is a special meeting;

(i) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification will be used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(j) whether the reporting issuer is sending proxy-related materials directly to NOBOs;

(k) whether the reporting issuer intends to pay for delivery to OBOs.

***4. Subsection 2.5(4) of National Instrument 54-101 is repealed and replaced with the following:***

(4) A reporting issuer that requests beneficial ownership information under this section must do so through a transfer agent.

(5) Despite subsection (4), a reporting issuer may request beneficial ownership information without using a transfer agent for the purpose of obtaining a NOBO list if the intermediary to whom the request is being made reasonably believes that the reporting issuer, or if the reporting issuer has made the request through another person or company, the person or company making the request, has the technological capacity to receive the NOBO list.

***5. The following is added after section 2.7 of National Instrument 54-101:***

**2.7.1 Notice-and-Access –** (1) A reporting issuer that is not an investment fund may send proxy-related materials to a beneficial owner of its securities using notice-and-access that complies with all of the following:

(a) the beneficial owner is sent the following:

(i) a notice containing all the following information, and no other information:

A. the date, time and location of the reporting issuer's meeting;

B. a factual description of each matter or group of related matters identified in the form of proxy to be voted on;

C. the website address other than the address for SEDAR, where the proxy-related materials are located;

D. a reminder to review the information circular before voting;

E. an explanation of how to obtain a paper copy of the information circular from the reporting issuer;

(ii) a document in plain language that explains notice-and-access and includes the following information:

A. why the reporting issuer is using notice-and-access;

B. if the reporting issuer is using stratification, which registered holders or beneficial owners are receiving paper copies of the information circular;

C. the date and time by which a request for a paper copy of the information circular should be received in order for the requester to receive the information circular in advance of any deadline for the submission of voting instructions and the date of the meeting;

D. an explanation of how the beneficial owner is to return voting instructions, including any deadline for return of such instructions;

E. the page numbers of the information circular where disclosure regarding each matter or group of related matters identified in the notice in clause (i)B can be found;

F. a toll-free telephone number the beneficial owner can call to ask questions about notice-and-access;

(b) using the direct or indirect procedures in section 2.9 or 2.12 as applicable, the beneficial owner is sent by prepaid mail, courier or the equivalent, the documents required by paragraph (a), and a Form 54-101F6 or Form 54-101F7, as applicable;

(c) at least 30 days before the date fixed for the meeting the reporting issuer files the notification required by subsection 2.2(1) of this Instrument;

(d) public electronic access to the information circular and the documents in paragraph (a) is provided on or before the day that the reporting issuer sends the documents in paragraph (a) to registered holders, in the following manner:

(i) the documents are filed on SEDAR;

(ii) the documents are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to which the documents relate, at a website address other than the address for SEDAR;

(e) a toll-free telephone number is provided for use by the beneficial owner to request a paper copy of the information circular at any time from the date that the reporting issuer sends the documents in paragraph (a) to the beneficial owner, up to and including the date of the meeting including any adjournment;

(f) if a request is received under paragraph (e) or by any other means, a paper copy of the information circular is sent free of charge to the person or company at the address specified in the request in the following manner:

(i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent;

(ii) in the case of a request received on or after the date of the meeting, and within one year of the information circular being filed, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent.

(2) A reporting issuer that sends proxy-related materials to a beneficial owner of its securities using notice-and-access must not include with the proxy-related material any document that relates to the particulars of any matter to be submitted to the meeting unless an information circular also is included, other than any one or more of the following documents:

(a) a document set out in paragraphs (1)(a) or (b);

(b) a document related to the approval of financial statements.

**2.7.2 Notice in advance of first use of notice-and-access –** A reporting issuer that uses notice-and-access to send proxy-related materials to a beneficial owner of its securities must do the following not more than 6 months and not less than 3 months before the expected date of the first meeting for which proxy-related materials will be sent by notice-and-access:

(a) post on a website that is not SEDAR a document in plain language that explains notice-and-access;

(b) issue a news release stating that the reporting issuer intends to use notice-and-access to deliver proxy-related materials and providing the website address where the document in paragraph (a) is posted.

**2.7.3 Restrictions on information gathering** – (1) A reporting issuer that receives a request under paragraph 2.7.1(1)(e) or by any other means must not do any of the following:

(a) request any information about the person or company making the request, other than the name and address to which the paper copy of the information circular is to be sent;

(b) disclose or use the name or address of the person or company making the request for any purpose other than sending the paper copy of the information circular.

(2) A reporting issuer that posts proxy-related materials pursuant to subparagraph 2.7.1(1)(d)(ii) must not collect information that can be used to identify a person or company who has accessed the website address where the proxy-related materials are located.

**2.7.4 Posting materials on non-SEDAR website –** (1) A reporting issuer that posts proxy-related materials in the manner referred to in subparagraph 2.7.1(1)(d)(ii) must also post on the website the following documents:

(a) any other disclosure material regarding the meeting that the reporting issuer has sent to registered holders or beneficial owners of its securities;

(b) any written communications the reporting issuer has made available to the public regarding the meeting, whether sent to registered holders or beneficial owners of its securities or not.

(2) Proxy-related materials that are posted under subparagraph 2.7.1(1)(d)(ii) must be posted in a manner and be in a format that permit an individual with a reasonable level of computer skill and knowledge to do all of the following conveniently:

(a) access, read and search the documents on the website;

(b) download and print the documents.

**2.7.5 Consent to other delivery methods** – For greater certainty, section 2.7.1 does not

(a) prevent a beneficial owner from consenting to a reporting issuer's or intermediary's use of other delivery methods to send proxy-related materials; or

(b) prevent a reporting issuer or intermediary from sending proxy-related materials using a delivery method to which a beneficial owner has previously consented.

**2.7.6 Instructions to receive paper copies** – (1) Despite section 2.7.1, an intermediary may obtain standing instructions from a beneficial owner that is a client of the intermediary that a paper copy of the information circular be sent to the beneficial owner in all cases where a reporting issuer uses notice-and-access.

(2) If an intermediary has obtained standing instructions from a beneficial owner under subsection (1), the intermediary must do all of the following:

(a) if the reporting issuer is sending proxy-related materials directly under section 2.9 of this Instrument, provide the reporting issuer with the names of those NOBOs who have provided standing instructions to receive a paper copy of the information circular in all cases where a reporting issuer uses notice-and-access, at the same time as the intermediary provides the reporting issuer with the NOBO list;

(b) if the intermediary is sending proxy-related materials to a beneficial owner on behalf of a reporting issuer using notice-and-access, request appropriate quantities of paper copies of the information circular from the reporting issuer for forwarding to beneficial owners who have provided standing instructions to be sent paper copies;

(c) provide a mechanism for the beneficial owner to revoke the beneficial owner's standing instructions.

***6. Section 2.9 of National Instrument 54-101 is repealed and replaced with the following:***

**2.9 Direct sending of proxy-related materials to NOBOs by reporting issuer –** (1) A reporting issuer that has stated in its request for beneficial ownership information sent in connection with a meeting that it will send proxy-related materials to, and seek voting instructions from, NOBOs must send the proxy-related materials for the meeting directly to the NOBOs on the NOBO lists received in response to the request at its own expense.

(2) A reporting issuer that sends by prepaid mail, courier or the equivalent, paper copies of proxy-related materials directly to a NOBO must send the proxy-related materials at least 21 days before the date fixed for the meeting.

(3) A reporting issuer that sends proxy-related materials directly to a NOBO using notice-and-access must send the documents required by paragraphs 2.7.1(1)(a) and (b) and any paper copies of information circulars required to comply with standing instructions under section 2.7.6 or requests under section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* at least 30 days before the date fixed for the meeting.

***7. Section 2.10 of National Instrument 54-101 is amended by inserting "***and despite subsection 2.9(1),***" after "***Except as required by securities legislation,***".***

***8. Section 2.12 of National Instrument 54-101 is repealed and replaced with the following:***

**2.12 Indirect sending of securityholder materials by reporting issuer –** (1) A reporting issuer sending securityholder materials indirectly to beneficial owners must send to each proximate intermediary that responded to the applicable request for beneficial ownership information the number of sets of those materials specified by that proximate intermediary for sending to beneficial owners.

(2) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner by having the proximate intermediary send the proxy-related materials by prepaid mail must send the proxy-related materials to the proximate intermediary

(a) at least 3 business days before the 21st day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent;

(b) at least 4 business days before the 21st day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail.

(3) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner using notice-and-access must send the documents required by paragraph 2.7.1(1)(a) and any paper copies of information circulars to be included with such documents to the proximate intermediary

(a) at least 3 business days before the 30th day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent;

(b) at least 4 business days before the 30th day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail.

(4) A reporting issuer that sends securityholder materials that are not proxy-related materials indirectly to beneficial owners must send the securityholder materials to the intermediary on the day specified in the request for beneficial ownership information.

(5) A reporting issuer must not send securityholder materials directly to a NOBO if a proximate intermediary in a foreign jurisdiction holds securities on behalf the NOBO and one or both of the following applies:

(a) the law of the foreign jurisdiction does not permit the reporting issuer to send securityholder materials directly to NOBOs;

(b) the proximate intermediary has stated in a response to a request for beneficial ownership information that the law in the foreign jurisdiction requires the proximate intermediary to deliver securityholder materials to beneficial owners.

***9. Section 2.16 of National Instrument 54-101 is repealed and replaced with the following:***

**2.16 Explanation of voting rights –** (1) If a reporting issuer sends proxy-related materials for a meeting to a beneficial owner of its securities, the materials must explain, in plain language, how the beneficial owner can exercise voting rights attached to the securities, including an explanation of how to attend and vote the securities directly at the meeting.

(2) Management of a reporting issuer must provide the following disclosure in the information circular:

(a) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification will be used the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(b) whether the reporting issuer is sending proxy-related materials directly to NOBOs;

(c) whether the reporting issuer intends to pay for delivery to OBOs, and if the reporting issuer does not intend to pay for delivery to OBOs, a statement that it is the OBO's responsibility to contact the OBO's intermediary to make any necessary arrangements to exercise voting rights attached to the OBO's securities.

***10. Section 2.17 of National Instrument 54-101 is repealed and replaced with the following:***

**2.17 Voting instruction form (Form 54-101F6)** – (1) A reporting issuer that sends proxy-related materials that solicit votes or voting instructions directly to a NOBO must provide a Form 54-101F6 in substitution for the form of proxy.

***11. Section 2.18 of National Instrument 54-101 is repealed and replaced with the following:***

**2.18 Appointing beneficial owner as proxy holder** – (1) A reporting issuer whose management holds a proxy in respect of securities beneficially owned by a NOBO must arrange, without expense to the NOBO, to appoint the NOBO or a nominee of the NOBO as a proxy holder in respect of those securities if the NOBO has instructed the reporting issuer to do so using either of the following methods:

(a) the NOBO submitted the completed Form 54-101F6 previously sent to the NOBO by the reporting issuer;

(b) the NOBO submitted any other document in writing that requests that the NOBO be appointed as a proxyholder.

(2) Unless the NOBO has instructed otherwise, if management appoints a NOBO or a nominee of the NOBO as a proxy holder under subsection (1), the NOBO or nominee of the NOBO as applicable also must be given authority to attend, vote and otherwise act for and on behalf of management of the reporting issuer in respect of all matters that may come before the applicable meeting and at any adjournment or continuance.

(3) A reporting issuer who appoints a NOBO as a proxy holder pursuant to subsection (1) must deposit the proxy within any time specified under corporate law for the deposit of proxies if the reporting issuer obtains the instructions under subsection (1) at least one business day before the termination of such time.

(4) If legislation requires an intermediary or depository to appoint the NOBO or nominee of the NOBO as proxy holder in respect of securities beneficially owned by the NOBO in accordance with any written voting instructions received from the NOBO, the intermediary may ask for, and the reporting issuer must provide, confirmation of both of the following:

(a) management of the reporting issuer will comply with subsections 2.18(1) and (2);

(b) management of the reporting issuer is acting on behalf of the intermediary or depository to the extent it appoints a NOBO or nominee of the NOBO as proxy holder in respect of the securities of the reporting issuer beneficially owned by the NOBO.

(5) A confirmation provided under subsection (4) must identify the specific meeting to which the confirmation applies, but is not required to specify each proxy appointment that management of the reporting issuer has made.

***12. Subsection 2.20(a) of National Instrument 54-101 is repealed and replaced with the following:***

(a) arranges to have proxy-related materials for the meeting sent in compliance with the applicable timing requirements in sections 2.9 and 2.12;

(a.1) if the reporting issuer uses notice-and-access, fixes the record date for notice to be at least 30 days before the date of the meeting and sends the notification of meeting and record dates under section 2.2 at least 30 days before the date of the meeting;

***13. Subsection 4.1(1) of National Instrument 54-101 is amended by replacing "***through the transfer agent of the reporting issuer that sent the request***" with "***through the transfer agent, or in the case of a NOBO list, a person or company described in subsection 2.5(5) that sent the request***";***

***14. Section 4.4 of National Instrument 54-101 is repealed and replaced with the following:***

**4.4 Voting instruction form (Form 54-101F7)** – An intermediary that forwards proxy-related materials to beneficial owners that solicit votes or voting instructions from securityholders must provide a Form 54-101F7 in substitution for the form of proxy.

***15. Section 4.5 of National Instrument 54-101 is repealed and replaced with the following:***

**4.5 Appointing beneficial owner as proxy holder** – (1) An intermediary who is the registered holder of, or holds a proxy in respect of, securities owned by a beneficial owner must arrange, at no expense to the beneficial owner, to appoint the beneficial owner or a nominee of the beneficial owner as a proxy holder if the beneficial owner has instructed the intermediary to do so using either of the following methods:

(a) the beneficial owner submitted the completed Form 54-101F7 previously sent to the beneficial owner by the intermediary;

(b) the beneficial owner submitted any other document in writing that requests that the beneficial owner be appointed as a proxy holder.

(2) Unless the beneficial owner has instructed otherwise, if an intermediary appoints a beneficial owner or a nominee of the beneficial owner as a proxy holder under subsection (1), the beneficial owner or nominee of the beneficial owner as applicable also must be given authority to attend, vote and otherwise act for and on behalf of the intermediary in respect of all matters that may come before the applicable meeting and at any adjournment or continuance.

(3) An intermediary who appoints a beneficial owner as proxy holder pursuant to subsection (1) must deposit the proxy within any time specified under corporate law for the deposit of proxies if the intermediary obtains the instructions under subsection (1) at least one business day before the termination of such time.

***16. The following is added after subsection 5.4(2) of National Instrument 54-101:***

(3) If legislation requires a depository to appoint a beneficial owner or nominee of the beneficial owner as proxy holder in respect of securities that are beneficially owned by a beneficial owner in accordance with any written voting instructions received from the beneficial owner, the depository may ask any participant described in subsection (1) for, and the participant must provide confirmation of all of the following:

(a) the participant will comply with subsections 4.5(1) and (2);

(b) the participant is acting on behalf of the depository to the extent it appoints a beneficial owner or nominee of a beneficial owner as proxy holder in respect of the securities of the reporting issuer beneficially owned by the beneficial owner;

(c) if the participant is required to execute an omnibus proxy under section 4.1, that the participant will obtain the confirmation set out in subsection 2.18(3).

(4) A confirmation provided under subsection (3) must identify the specific securityholder meeting to which the confirmation applies, but is not required to specify each proxy appointment that the participant has made.

***17. Subsection 6.2(6) of National Instrument 54-101 is repealed and replaced with the following:***

(6) A person or company, other than the reporting issuer to which the request relates, that sends materials indirectly to beneficial owners must comply with all of the following:

(a) the person or company must pay to the proximate intermediary a fee for sending the securityholder materials to the beneficial owners;

(b) the person or company must provide an undertaking to the proximate intermediary in the form of Form 54-101F10.

***18. Part 7 is repealed and replaced with the following:***

**PART 7 – USE OF NOBO LIST AND INDIRECT SENDING OF MATERIALS**

**7.1 Use of NOBO list** – (1) A reporting issuer may use a NOBO list or a report prepared under section 5.3 relating to the reporting issuer and obtained under this Instrument in connection with any matter relating to the affairs of the reporting issuer.

(2) A person or company that is not the reporting issuer must not use a NOBO list or a report prepared under section 5.3 relating to a reporting issuer and obtained under this Instrument in any manner other than the following:

(a) for sending securityholder materials directly to NOBOs in accordance with this Instrument;

(b) in respect of an effort to influence the voting of securityholders of the reporting issuer;

(c) in respect of an offer to acquire securities of the reporting issuer.

**7.2 Sending of Materials –** (1) A reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, in connection with any matter relating to the affairs of the reporting issuer.

(2) A person or company that is not the reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, only in connection with one or more of the following:

(a) an effort to influence the voting of securityholders of the reporting issuer;

(b) an offer to acquire securities of the reporting issuer.

***19. The following is added after section 9.1 of National Instrument 54-101:***

**9.1.1 Compliance with SEC Notice-and-access Rules –** (1) Section 2.7 does not apply to a reporting issuer that is an SEC issuer if it satisfies all of the following:

(a) the SEC issuer is subject to, and complies with requirements under Rule 14a-16 under the 1934 Act;

(b) the SEC issuer has arranged with each intermediary through whom the beneficial owner holds its interest in the reporting issuer's securities to have each such intermediary send the proxy-related materials to the beneficial owner by implementing the procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act;

(c) residents of Canada do not own, directly or indirectly, outstanding voting securities of the issuer carrying more than 50 per cent of the votes for the election of directors, and none of the following applies:

(i) the majority of the executive officers or directors of the issuer are residents of Canada;

(ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada;

(iii) the business of the issuer is administered principally in Canada.

(2) Part 4 of this Instrument does not apply to an intermediary with whom a reporting issuer has made arrangements under paragraph (1)(b) if the intermediary implements the procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act.

***20. Form 54-101F2 is amended as follows:***

***(a) in the following provisions, replacing "***National Policy 11-201 and, in Québec, Staff Notice 11-201***" with "***National Policy 11-201 *Electronic Delivery of Documents*"**:

***(i) Item 6.7;***

***(ii) Item 7.8;***

***(iii) Item 8.5;***

***(iv) Item 9.7;***

***(b) adding the following after Item 7.11:***

**7.12** State whether the reporting issuer is using notice-and-access, and any stratification criteria being used.

***(c) adding the following after Item 9.8:***

**9.9** State whether the reporting issuer is using notice-and-access, and any stratification criteria being used.

***21. Form 54-101F6 – Request for Voting Instructions Made by Reporting Issuer is amended by striking out the paragraph that begins "***Should you wish to attend the meeting and vote in person …***" and substituting the following:***

If you want to attend the meeting and vote in person, please write your name in the place provided for that purpose in this form. You can also write the name of someone else whom you wish to attend the meeting and vote on your behalf. Unless you instruct otherwise, the person whose name is written in the space provided will have full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if these matters are not set out in this form or the information circular. If you require help, please contact [the undersigned].

***22. Form 54-101F7 – Request for Voting Instructions Made by Intermediary is amended by striking out the paragraph that begins "***Should you wish to attend the meeting and vote in person …***" and replacing it with the following:***

If you want to attend the meeting and vote in person, please write your name in the place provided for that purpose in this form. You can also write the name of someone else whom you wish to attend the meeting and vote on your behalf. Unless you instruct otherwise, the person whose name is written in the space provided will have full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if these matters are not set out in this form or the information circular. If you require help, please contact [the undersigned].

***23. Form 54-101F8 – Legal Proxy is repealed.***

***24. Form 54-101F9 – Undertaking is amended by***

***(a) striking out paragraph 2 and substituting the following:***

**<Option #1: *use this alternative if the reporting issuer is providing the undertaking*>**

2. I undertake that the information set out on the NOBO list will be used only in connection with one or more matters relating to the affairs of the reporting issuer.

**<Option #2: *use this alternative if a person or company other than the reporting issuer is providing the undertaking*>**

2. I undertake that the information set out on the NOBO list will be used only for one or more of the following purposes:

(a) sending securityholder materials directly to NOBOs in accordance with National Instrument 54-101;

(b) an effort to influence the voting of securityholders of the reporting issuer;

(c) an offer to acquire securities of the reporting issuer.

***(b) striking out paragraph 4 and substituting the following:***

4. I am aware that it is a contravention of the law to use a NOBO list for purposes other than in connection with one or more of the following:

(a) sending securityholder materials directly to NOBOs in accordance with National Instrument 54-101;

(b) an effort to influence the voting of securityholders of the reporting issuer;

(c) an offer to acquire securities of the reporting issuer.

***25. The following is added after Form 54-101F9:***

**Form 54-101F10 – Undertaking**

*Note: Terms used in this Form have the meaning given to them in National Instrument 54-101.*

*The use of this Form is referenced in section 6.2 of National Instrument 54-101.*

I, ……
(Full Residence Address) …….
*(If this undertaking is made on behalf of a body corporate, set out the full legal name of the body corporate, position of person signing and address for service of the body corporate).*
SOLEMNLY DECLARE AND UNDERTAKE THAT:

1. I wish to send materials to beneficial owners of securities of [*insert name of the reporting issuer*] on whose behalf intermediaries hold securities, using the indirect sending procedures provided in National Instrument 54-101 (the NI 54-101 Procedures).

2. I undertake that I am using the NI 54-101 Procedures to send materials to beneficial owners only for the purpose of one or both of the following:

(a) an effort to influence the voting of securityholders of the reporting issuer;

(b) an offer to acquire securities of the reporting issuer.

3. I am aware that it is a contravention of the law to send materials using the NI 54-101 Procedures for purposes other than in connection with one or both of the following:

(a) an effort to influence the voting of securityholders of the reporting issuer;

(b) an offer to acquire securities of the reporting issuer.

…….Signature
…….Name of person signing
…….Date

***26.*** **This Instrument is effective on [*].**

**BLACKLINE OF REVISIONS TO**
**PROPOSED AMENDMENT INSTRUMENT TO**
**NATIONAL INSTRUMENT 54-101**
**COMMUNICATION WITH BENEFICIAL OWNERS**
**OF SECURITIES OF A REPORTING ISSUER**

***1. National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer is amended by this Instrument.***

***2. Section 1.1 of National Instrument 54-101 is amended by***

***(a) repealing the definition of "***legal proxy***";***

***(b) amending the definition of "***proxy-related materials***" to insert "***or beneficial owners***" between "***registered holders***" and "***of the securities***";***

~~***(b) repealing the definition of "***legal proxy***";***~~

***(c) adding the following definition after the definition of "***non-objecting beneficial owner list***":***

"notice-and-access" means

(a) in respect of registered holders of voting securities of a reporting issuer, the delivery procedures referred to in section 9.1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*;

(b) in respect of beneficial owners of securities of a reporting issuer, the delivery procedures referred to in section 2.7.1~~;~~ of this Instrument;"***;***

***(d) adding the following definition after the definition of "***request for beneficial ownership information***":***

"SEC issuer" means an issuer that

(a) has a class of securities registered under section 12 of the 1934 Act or is required to file reports under section 15(d) of the 1934 Act~~;~~; and

(b) is not registered or required to be registered as an investment company under the *Investment Company Act of 1940* of the United States of America, as amended;"***;***

***(e) repealing the definition of "***request for voting instructions***";***

***(f) amending the definition of "***securityholder materials***" to insert "***or beneficial owners***" between "***registered holders***" and "***of the securities***";***

***(g) adding the following definition after the definition of "***special meeting***":***

"stratification", in relation to a reporting issuer using notice-and-access, means procedures whereby a paper copy of the information circular is included with either or both of the following:

~~***(g) repealing the definition of***~~ ~~"send"~~***;***

(a) the documents required to be sent to registered holders under subsection 9.1(1) of National Instrument 51-102 *Continuous Disclosure Obligations*;

(b) the documents required to be sent to beneficial owners under subsection 2.7.1(1) of this Instrument;"***;***

***3. Subsection 2.2(2) is amended by striking out subparagraphs (g) and (h) and replacing them with the following:***

(g) the classes or series of securities that entitle the holder to vote at the meeting;

(h) whether the meeting is a special meeting;

(i) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification will be used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(j) whether the reporting issuer is sending proxy-related materials directly to NOBOs;

(k) whether the reporting issuer intends to pay for delivery to OBOs.

***4. Subsection 2.5(4) of National Instrument 54-101 is repealed and replaced with the following:***

(4) A reporting issuer that requests beneficial ownership information under this section must do so through ~~one of the following:~~a transfer agent.

~~(a) a transfer agent;~~

~~(b) another person or company if both of the following apply: (i) the person or company is in the business of providing services to assist persons or companies soliciting proxies;~~

~~(ii) the reporting issuer has reasonable grounds to believe that the person or company~~5) Despite subsection (4), a reporting issuer may request beneficial ownership information without using a transfer agent for the purpose of obtaining a NOBO list if the intermediary to whom the request is being made reasonably believes that the reporting issuer, or if the reporting issuer has made the request through another person or company, the person or company making the request, has the technological capacity to receive the ~~beneficial ownership information.~~ NOBO list.

***~~4. Section~~5. The following is added after section 2.7 of National Instrument 54-101 ~~is repealed and replaced with the following~~:***

**~~2.7 Sending of Proxy-Related Materials to Beneficial Owners –~~** ~~(1) A reporting issuer that is required by Canadian securities legislation to send proxy-related materials to the registered holders of any class or series of its securities must send the proxy-related materials to beneficial owners of the securities by doing one of the following:~~

~~(a) the reporting issuer sends the proxy-related materials directly under section 2.9 to NOBOs, and indirectly under section 2.12 to OBOs;~~
~~(b) the reporting issuer sends the proxy-related materials indirectly under section 2.12 to beneficial owners.~~

~~(2) A reporting issuer that sends proxy-related materials under subsection (1) to a beneficial owner of securities may do so using any one or a combination of the following methods:~~

~~(a) paper copies sent by prepaid mail, courier or the equivalent;~~

~~(b) notice-and-access, but only for a meeting that is not a special meeting;~~

~~(c) any delivery method to which the beneficial owner consents.~~

**2.7.1 Notice-and-Access –** (1) ~~For a meeting that is not a special meeting, a~~A reporting issuer that is not an investment fund may send proxy-related materials to a beneficial owner of its securities ~~by~~using notice-and-access that complies with all of the following:

(a) the beneficial owner is sent the following:

(i) a ~~document~~notice containing all ~~of~~ the following information, and no other information:

~~(i)~~A. the date, time and location of the reporting issuer's meeting;

~~(ii) a summary of the items~~B. a factual description of each matter or group of related matters identified in the form of proxy to be voted on;

~~(iii)~~ ~~an explanation of how to electronically access the information circular and other proxy-related materials, including a~~C. the website address other than the address for SEDAR, where the proxy-related materials are located;

~~(iv)~~D. a reminder to review the information circular before voting;

~~(v)~~E. an explanation of how to obtain a paper copy of the information circular from the reporting issuer;

(~~vi~~)ii) a document in plain language that explains notice-and-access and includes the following information:

A. why the reporting issuer is using notice-and-access;

B. if the reporting issuer is using stratification, which registered holders or beneficial owners are receiving paper copies of the information circular;

C. the date and time by which a request for a paper copy of the information circular should be received in order for the requester to receive the information circular in advance of any deadline for the submission of voting instructions and the date of the meeting;

D. an explanation of how the ~~NOBO is to execute and return Form 54-101F6 sent under paragraph (b)~~beneficial owner is to return voting instructions, including any deadline for ~~the return of the form;~~return of such instructions;

E. the page numbers of the information circular where disclosure regarding each matter or group of related matters identified in the notice in clause (i)B can be found;

F. a toll-free telephone number the beneficial owner can call to ask questions about notice-and-access;

~~(b) each NOBO is sent a Form 54-101F6, if the reporting issuer is sending proxy-related materials to, and seeking voting instructions from, NOBOs under section 2.9;~~

(c~~b~~) using the direct or indirect procedures in section 2.9 or 2.12 as applicable, the beneficial owner is sent by prepaid mail, courier or the equivalent, ~~paper copies of~~ the documents required by paragraph (a), and ~~if applicable, paragraph (b), or is sent these documents by any other method previously consented to by the beneficial owner~~a Form 54-101F6 or Form 54-101F7, as applicable;

~~(d) a news release is issued~~ c) at least 30 days before the date fixed for the meeting ~~containing the following:~~

~~(i) the information set out in paragraph (a); (ii) if~~ the reporting issuer ~~is using notice-and-access only in respect of some beneficial owners, an explanation of its decision;~~ files the notification required by subsection 2.2(1) of this Instrument;

(e~~d~~) public electronic access to the information circular and ~~other proxy-related materials~~the documents in paragraph (a) is provided on or before the ~~same~~ day ~~as~~that the reporting issuer sends the ~~document~~documents in paragraph (a) to ~~beneficial owners~~registered holders, in the following manner:

(i) the ~~proxy-related materials~~documents are filed on SEDAR;

(ii) the ~~proxy-related materials~~documents are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to

which the ~~materials~~documents relate, at a website address other than the address for SEDAR;

(~~f~~e) a toll-free telephone number is provided for use by the beneficial owner to request a paper copy of the information circular at any time from the date that the reporting issuer sends the ~~document~~documents in paragraph (a) to the beneficial owner, up to and including the date of the meeting including any adjournment;

(~~g~~f) if a request is received under paragraph (~~f~~e) or by any other means, a paper copy of the information circular is sent ~~by prepaid mail, courier or the equivalent~~free of charge to the person or company at the address specified in the request~~, free of charge to the person or company to whom the paper copy of the information circular is sent, no later than~~ in the following manner:

(i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent;

(ii) in the case of a request received on or after the date of the meeting, and within one year of the information circular being filed, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent.

(2) A reporting issuer that sends proxy-related materials to a beneficial owner of its securities using notice-and-access must not include with the proxy-related material any document that relates to the particulars of any matter to be submitted to the meeting unless an information circular also is included, other than any one or more of the following documents:

(a) a document set out in paragraphs (1)(a) or (b);

(b) a document related to the approval of financial statements.

**2.7.2 Notice in advance of first use of notice-and-access** – A reporting issuer that uses notice-and-access to send proxy-related materials to a beneficial owner of its securities must do the following not more than 6 months and not less than 3 months before the expected date of the first meeting for which proxy-related materials will be sent by notice-and-access:

(a) post on a website that is not SEDAR a document in plain language that explains notice-and-access;

(b) issue a news release stating that the reporting issuer intends to use notice-and-access to deliver proxy-related materials and providing the website address where the document in paragraph (a) is posted.

**2.7.3 Restrictions on information gathering** – (1) A reporting issuer that receives a request under paragraph 2.7.1(1)(~~f~~e) or by any other means must not do any of the following:

(a) ~~obtain~~request any information about the person or company making the request, other than the name and address to which the paper copy of the information circular is to be sent;

(b) disclose or use the name or address of the person or company making the request for any purpose other than sending the paper copy of the information circular.

(~~3~~2) A reporting issuer that posts proxy-related materials pursuant to subparagraph 2.7.1(1)(~~e~~d)(ii) must not ~~use any means that would enable the reporting issuer~~collect information that can be used to identify a person or company who has accessed the website address where the proxy-related materials are located.

(~~4~~**2.7.4 Posting materials on non-SEDAR website –** (1) A reporting issuer that posts proxy-related materials in the manner referred to in subparagraph 2.7.1(1)(~~e~~d)(ii) must also post on the website the following documents:

(a) any other disclosure material regarding the meeting that the reporting issuer has sent to registered holders or beneficial owners of its securities;

(b) any written communications the reporting issuer has made available to the public regarding the meeting, whether sent to registered holders or beneficial owners of its securities or not.

(52) Proxy-related materials that are posted under subparagraph 2.7.1(1)(ed)(ii) must be posted in a manner and be in a format that ~~permits a person or company~~permit an individual with a reasonable level of computer skill and knowledge to do all of the following conveniently:

(a) access, read and search the documents on the website;

(b) download and print the documents.

~~(6) An information circular posted under subparagraph (1)(e)(ii) must contain the same information as the information circular filed on SEDAR.~~

**2.7.5 Consent to other delivery methods** – For greater certainty, section 2.7.1 does not

~~(7) Despite anything in this section or the previous section, a beneficial owner may consent to the use of other delivery methods to send proxy-related materials. Nothing in this section shall be interpreted as restricting~~

a) prevent a beneficial owner from consenting to ~~the~~a reporting issuer's or intermediary's use of other delivery methods to send proxy-related materials~~.~~; or

~~**2.7.2 Compliance with SEC Rules** – Section 2.7 does not apply to a reporting issuer that is an SEC issuer if it complies with both of the following:~~

~~(a) the SEC issuer sends proxy-related materials to the beneficial owner using the procedures in Rule 14a-16 under the 1934 Act;~~

~~(b) the SEC issuer obtains confirmation from the intermediary that holds securities on behalf of the beneficial owner that the intermediary will implement the procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act.~~

~~***5. Section 2.8 is repealed and replaced with the following:***~~

~~**2.8 Other securityholder materials** – (1) A~~

(b) prevent a reporting issuer ~~may send securityholder materials other than~~or intermediary from sending proxy-related materials ~~to beneficial owners of its securities by doing one of the following:~~using a delivery method to which a beneficial owner has previously consented.

**2.7.6 Instructions to receive paper copies** – (1) Despite section 2.7.1, an intermediary may obtain standing instructions from a beneficial owner that is a client of the intermediary that a paper copy of the information circular be sent to the beneficial owner in all cases where a reporting issuer uses notice-and-access.

~~(a) the reporting issuer sends the materials directly under section 2.9 to NOBOs, and indirectly under section 2.12 to OBOs;~~

(2) If an intermediary has obtained standing instructions from a beneficial owner under subsection (1), the intermediary must do all of the following:

(b~~a~~) if the reporting issuer ~~sends the materials indirectly under section 2.12 to beneficial owners.~~is sending proxy-related materials directly under section 2.9 of this Instrument, provide the reporting issuer with the names of those NOBOs who have

provided standing instructions to receive a paper copy of the information circular in all cases where a reporting issuer uses notice-and-access, at the same time as the intermediary provides the reporting issuer with the NOBO list;

(b) if the intermediary is sending proxy-related materials to a beneficial owner on behalf of a reporting issuer using notice-and-access, request appropriate quantities of paper copies of the information circular from the reporting issuer for forwarding to beneficial owners who have provided standing instructions to be sent paper copies;

~~(2) A reporting issuer that sends securityholder materials under subsection (1) may send the securityholder materials using any of the methods in subsection 2.7(2).~~

(c) provide a mechanism for the beneficial owner to revoke the beneficial owner's standing instructions.

***6. Section 2.9 of National Instrument 54-101 is repealed and replaced with the following:***

**2.9 Direct sending of proxy-related materials to NOBOs by reporting issuer –** (1) A reporting issuer that has stated in its request for beneficial ownership information sent in connection with a meeting that it will send proxy-related materials to, and seek voting instructions from, NOBOs must send the proxy-related materials for the meeting directly to the NOBOs on the NOBO lists received in response to the request at its own expense.

(2) A reporting issuer that sends by prepaid mail, courier or the equivalent, paper copies of proxy-related materials directly to a NOBO must send the proxy-related materials at least 21 days before the date fixed for the meeting.

(3) A reporting issuer that sends proxy-related materials directly to a NOBO using notice-and-access must send the ~~material~~documents required by paragraphs 2.7.1(1)(a) and (b) and any paper copies of information circulars required to comply with standing instructions under section 2.7.6 or requests under section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* at least 30 days before the date fixed for the meeting~~.~~

~~(4) A reporting issuer that sends proxy-related materials directly to a NOBO using a delivery method that is not notice-and-access and to which the NOBO has consented under paragraph 2.7(2)(c) must send the proxy-related materials using that delivery method either:~~

~~(a) at least 21 days before the date fixed for the meeting, if the NOBO has not consented to a specific day or days for sending of the proxy-related materials; or~~

~~(b) on any day to which the NOBO has consented.~~

~~(5) Despite subsection (2), a reporting issuer that sends proxy-related materials directly to a NOBO using notice-and-access and also sends paper copies of proxy-related materials directly to other NOBOs under subsection (2) by prepaid mail, courier or the equivalent must send the paper copies of the proxy-related materials to those other beneficial owners on the same day as it sends the documents set out in paragraphs 2.7.1(1)(a) and (b) to the beneficial owner using notice-and-access~~.

***7. Section 2.10 of National Instrument 54-101 is amended by inserting "***and despite subsection 2.9(1),***" after "***Except as required by securities legislation,***".***

***8. Section 2.12 of National Instrument 54-101 is repealed and replaced with the following:***

**2.12 Indirect sending of securityholder materials by reporting issuer –** (1) A reporting issuer sending securityholder materials indirectly to beneficial owners must send to each proximate intermediary that responded to the applicable request for beneficial ownership information the number of sets of those materials specified by that proximate intermediary for sending to beneficial owners.

(2) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner by having the proximate intermediary send ~~paper copies of~~ the proxy-related materials by

prepaid mail~~, courier or the equivalent~~ must send the proxy-related materials to the proximate intermediary

(a) at least 3 business days before the 21st day before the date fixed for the meeting~~.~~, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent;

(b) at least 4 business days before the 21st day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail.

(3) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner using notice-and-access must ~~provide the information set out in paragraph 2.7.1(1)(a) to the intermediary in sufficient time for the intermediary to send a document containing that information to the beneficial owner at least 30 days before the date fixed for the meeting.~~ send the documents required by paragraph 2.7.1(1)(a) and any paper copies of information circulars to be included with such documents to the proximate intermediary.

~~(4) A reporting issuer that sends proxy-related materials indirectly to a beneficial owner using a delivery method that is not notice-and-access and to which a beneficial owner has consented under paragraph 2.7(2)(c) must make any necessary arrangements to enable the intermediary to send the proxy-related materials using that delivery method either:~~

(a) at least 3 business days before the 30th day before the date fixed for the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent;

(a~~b~~) at least ~~21~~4 business days before the 30th day before the date fixed for the meeting, ~~if the NOBO has not consented to a specific day or days for sending of the proxy-related materials; or~~

~~(b) on any day to which the beneficial owner has consented.~~

~~(5) Despite subsection (2), a reporting issuer that sends proxy-related materials directly or indirectly to a beneficial owner using notice-and-access, and also sends proxy-related materials indirectly to other beneficial owners by having the intermediary send paper copies of the proxy-related materials using prepaid mail, courier or the equivalent, must arrange for the intermediary to send the paper copies of the proxy-related materials to those other beneficial owners on the same day as the reporting issuer or intermediary, as applicable, sends the document containing the information set out in paragraph 2.7.1(1)(a) to the beneficial owner.~~in the case of proxy-related materials that are to be sent using any other type of prepaid mail.

(~~6~~4) A reporting issuer that sends securityholder materials that are not proxy-related materials indirectly to beneficial owners must send the securityholder materials to the intermediary on the day specified in the request for beneficial ownership information.

(~~7~~5) A reporting issuer must not send securityholder materials directly to a NOBO if a proximate intermediary in a foreign jurisdiction holds securities on behalf the NOBO and one or both of the following applies:

(a) the law of the foreign jurisdiction does not permit the reporting issuer to send securityholder materials directly to NOBOs;

(b) the proximate intermediary has stated in a response to a request for beneficial ownership information that the law in the foreign jurisdiction requires the proximate intermediary to deliver securityholder materials to beneficial owners.

***9. Section 2.16 of National Instrument 54-101 is repealed and replaced with the following:***

**2.16 Explanation of voting rights –** (1) If a reporting issuer sends proxy-related materials for a meeting to a beneficial owner of its securities, the materials must explain, in plain language, how the

beneficial owner can exercise voting rights attached to the securities, including an explanation of how to attend and vote the securities directly at the meeting.

(2) Management of a reporting issuer must provide the following disclosure in the information circular:

~~(a) if the reporting issuer is not paying for intermediaries to send proxy-related materials and Form 54-101F7 to OBOs through the indirect sending procedures in section 2.12, disclosure of the following:~~

(a) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification will be used the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(~~i~~b) whether the reporting issuer is ~~choosing not to pay for intermediaries to send~~sending proxy-related materials ~~and Form 54-101F7 to OBOs;~~ directly to NOBOs;

(~~ii~~) c) whether the reporting issuer intends to pay for delivery to OBOs, and if the reporting issuer does not intend to pay for delivery to OBOs, a statement that it is the OBO's responsibility to contact the OBO's intermediary to make any necessary arrangements to exercise voting rights attached to the OBO's securities~~;~~

~~(b) if the reporting issuer is using notice-and-access only in respect of some beneficial owners, an explanation of its decision~~.

~~(3) Despite subsection (2), management may omit the disclosure set out in paragraph (2)(b) if management has not determined at the time of preparing the information circular whether notice-and-access will be used only in respect of some beneficial owners.~~

***10. Section 2.17 of National Instrument 54-101 is repealed and replaced with the following:***

**2.17 Voting instruction form (Form 54-101F6)** – (1) A reporting issuer that sends proxy-related materials that solicit votes or voting instructions directly to a NOBO must provide a Form 54-101F6 in substitution for the form of proxy.

~~(2) A reporting issuer that sends a Form 54-101F6 to a NOBO under subsection (1) must maintain a record of the following:~~

~~(a) each Form 54-101F6 sent to the NOBO;~~

~~(b) the date and time of any voting instructions, including proxy appointment instructions, submitted to the reporting issuer.~~

***11. Section 2.18 of National Instrument 54-101 is repealed and replaced with the following:***

**2.18 Appointing beneficial owner as proxy holder** – (1) A reporting issuer whose management holds a proxy in respect of securities beneficially owned by a NOBO must arrange, without expense to the NOBO, to appoint the NOBO or a nominee of the NOBO as a proxy holder in respect of those securities if the NOBO has instructed the reporting issuer to do so using either of the following methods:

(a) the NOBO submitted the completed Form 54-101F6 previously sent to the NOBO by the reporting issuer;

(b) the NOBO submitted any other ~~documentation that is acceptable to the reporting issuer.~~document in writing that requests that the NOBO be appointed as a proxyholder.

(2 Unless the NOBO has instructed otherwise, if management appoints a NOBO or a nominee of the NOBO as a proxy holder under subsection (1), the NOBO or nominee of the NOBO as applicable also must be given authority to attend, vote and otherwise act for and on

behalf of management of the reporting issuer in respect of all matters that may come before the applicable meeting and at any adjournment or continuance.

(3) A reporting issuer who appoints a NOBO as a proxy holder pursuant to subsection (1) must deposit the proxy within any time specified under corporate law for the deposit of proxies if the reporting issuer obtains the instructions under subsection (1) at least one business day before the termination of such time.

(34) If legislation requires an intermediary or depository to appoint the NOBO or nominee of the NOBO as proxy holder in respect of securities beneficially owned by the NOBO in accordance with any written voting instructions received from the NOBO, the intermediary may ask for, and the reporting issuer must provide~~, in a form that is acceptable to the intermediary~~, confirmation of both of the following:

(a) management of the reporting issuer will comply with subsections 2.18(1) and (2);

(b) management of the reporting issuer is acting on behalf of the intermediary or depository to the extent it appoints a NOBO or nominee of the NOBO as proxy holder in respect of the securities of the reporting issuer beneficially owned by the NOBO.

(5) A confirmation provided under subsection (4) must identify the specific meeting to which the confirmation applies, but is not required to specify each proxy appointment that management of the reporting issuer has made.

***12. Subsection 2.20(a) of National Instrument 54-101 is repealed and replaced with the following:***

(a) arranges to have proxy-related materials for the meeting sent in compliance with the applicable timing requirements in sections 2.9 and 2.12;

(a.1) if the reporting issuer uses notice-and-access, fixes the record date for notice to be at least 30 days before the date of the meeting and sends the notification of meeting and record dates under section 2.2 at least 30 days before the date of the meeting;

***13. Subsection 4.1(1) of National Instrument 54-101 is amended by replacing "***through the transfer agent of the reporting issuer that sent the request***" with "***through the transfer agent ~~or~~, or in the case of a NOBO list, a person or company described in ~~paragraph~~subsection 2.5(4)~~(b~~5) that sent the request***";***

***14. ~~Subsection 4.2(2)of National Instrument 54-101 is repealed and replaced with the following:~~***

~~(2) A proximate intermediary shall send the following securityholder materials to beneficial owners or intermediaries holding securities of the relevant class or series that are its clients within the following time periods:~~

~~(a) in the case of paper copies of securityholder materials to be sent by prepaid mail, courier or the equivalent, or any other securityholder materials that are not proxy-related materials, within 3 business days after receipt;~~

~~(b) in the case of a document containing the information set out in paragraph 2.7.1(1)(a), at least 30 days before the date fixed for the meeting;~~

~~(c) in the case of proxy-related materials to be sent by a delivery method that is not notice-and-access to which the beneficial owner has consented under paragraph 2.7(2)(c), on any day to which the beneficial owner has consented for the sending of proxy-related materials, or if the beneficial owner has not consented to a specific day or days, at least 21 days before the date fixed for the meeting;~~

~~(d) despite paragraph (a), in the case of paper copies of proxy-related materials to be sent by prepaid mail, courier or the equivalent, on the same day as the reporting issuer or intermediary, as applicable, sends any document using notice-and-access containing the information set out in paragraph 2.7.1(1)(a) to a beneficial owner.~~

~~*15. Subsection 4.2(5) of National Instrument 54-101 is repealed, and the following is added after the repealed subsection 4.2(5):*~~

~~(6) An intermediary that sends securityholder materials to a beneficial owner under this section may do so through either of the following methods:~~

~~(a) paper copies sent by prepaid mail, courier or the equivalent;~~

~~(b) any delivery method to which the beneficial owner consents.~~

~~*16.*~~ *Section 4.4 of National Instrument 54-101 is repealed and replaced with the following:*

**4.4 Voting instruction form (Form 54-101F7)** – ~~(1)~~ An intermediary that forwards proxy-related materials to beneficial owners that solicit votes or voting instructions from securityholders must provide a Form 54-101F7 in substitution for the form of proxy.

~~(2) An intermediary that sends a Form 54-101F7 to a beneficial owner under subsection (1) must maintain a record of the following:~~

~~(a) each Form 54-101F7 sent to the beneficial owner;~~

~~(b) the date and time of any voting instructions, including proxy appointment instructions, submitted to the intermediary.~~

~~*17.*~~*15. Section 4.5 of National Instrument 54-101 is repealed and replaced with the following:*

**4.5 Appointing beneficial owner as proxy holder** – (1) An intermediary who is the registered holder of, or holds a proxy in respect of, securities owned by a beneficial owner must arrange, at no expense to the beneficial owner, to appoint the beneficial owner or a nominee of the beneficial owner as a proxy holder if the beneficial owner has instructed the intermediary to do so using either of the following methods:

(a) the beneficial owner submitted the completed Form 54-101F7 previously sent to the beneficial owner by the intermediary;

(b) the beneficial owner submitted any other ~~documentation that is acceptable to the intermediary.~~document in writing that requests that the beneficial owner be appointed as a proxy holder.

(2) Unless the beneficial owner has instructed otherwise, if an intermediary appoints a beneficial owner or a nominee of the beneficial owner as a proxy holder under subsection (1), the beneficial owner or nominee of the beneficial owner as applicable also must be given authority to attend, vote and otherwise act for and on behalf of the intermediary in respect of all matters that may come before the applicable meeting and at any adjournment or continuance.

(3) An intermediary who appoints a beneficial owner as proxy holder pursuant to subsection (1) must deposit the proxy within any time specified under corporate law for the deposit of proxies if the intermediary obtains the instructions under subsection (1) at least one business day before the termination of such time.

~~*18.*~~*16. The following is added after subsection 5.4(2) of National Instrument 54-101:*

(3) If legislation requires a depository to appoint a beneficial owner or nominee of the beneficial owner as proxy holder in respect of securities that are beneficially owned by a beneficial owner in accordance with any written voting instructions received from the beneficial owner, the depository may ask any participant described in subsection (1) for, and the participant must provide~~, in a form that is acceptable to the depository,~~ confirmation of all of the following:

(a) the participant will comply with subsections 4.5(1) and (2);

(b) the participant is acting on behalf of the depository to the extent it appoints a beneficial owner or nominee of a beneficial owner as proxy holder in respect of the securities of the reporting issuer beneficially owned by the beneficial owner;

(c) if the participant is required to execute an omnibus proxy under section 4.1, that the participant will obtain the confirmation set out in subsection 2.18(3).

(4) A confirmation provided under subsection (3) must identify the specific securityholder meeting to which the confirmation applies, but is not required to specify each proxy appointment that the participant has made.

***~~19.~~17. Subsection 6.2(6) of National Instrument 54-101 is repealed and replaced with the following:***

(6) A person or company, other than the reporting issuer to which the request relates, that sends materials indirectly to beneficial owners must comply with all of the following:

(a) the person or company must pay to the proximate intermediary a fee for sending the securityholder materials to the beneficial owners;

(b) the person or company must provide an undertaking to the proximate intermediary in the form of Form 54-101F10.

***~~20.~~18. Part 7 is repealed and replaced with the following:***

**PART 7 – USE OF NOBO LIST AND INDIRECT SENDING OF MATERIALS**

**7.1 Use of NOBO list** – (1) A reporting issuer may use a NOBO list or a report prepared under section 5.3 relating to the reporting issuer and obtained under this Instrument in connection with any matter relating to the affairs of the reporting issuer.

(2) A person or company that is not the reporting issuer must not use a NOBO list or a report prepared under section 5.3 relating to a reporting issuer and obtained under this Instrument in any manner other than the following:

(a) for sending securityholder materials directly to NOBOs in accordance with this Instrument;

(b) in respect of an effort to influence the voting of securityholders of the reporting issuer;

(c) in respect of an offer to acquire securities of the reporting issuer.

**7.2 Sending of Materials –** (1) A reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, in connection with any matter relating to the affairs of the reporting issuer.

(2) A person or company that is not the reporting issuer may send securityholder materials indirectly to beneficial owners of securities of the reporting issuer using the procedures in section 2.12, or directly to NOBOs of the reporting issuer using a NOBO list, only in connection with one or more of the following:

(a) an effort to influence the voting of securityholders of the reporting issuer;

(b) an offer to acquire securities of the reporting issuer.

***19. The following is added after section 9.1 of National Instrument 54-101:***

**9.1.1 Compliance with SEC Notice-and-access Rules –** (1) Section 2.7 does not apply to a reporting issuer that is an SEC issuer if it satisfies all of the following:

(a) the SEC issuer is subject to, and complies with requirements under Rule 14a-16 under the 1934 Act;

(b) the SEC issuer has arranged with each intermediary through whom the beneficial owner holds its interest in the reporting issuer's securities to have each such intermediary send the proxy-related materials to the beneficial owner by implementing the procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act;

(c) residents of Canada do not own, directly or indirectly, outstanding voting securities of the issuer carrying more than 50 per cent of the votes for the election of directors, and none of the following applies:

(i) the majority of the executive officers or directors of the issuer are residents of Canada;

(ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada;

(iii) the business of the issuer is administered principally in Canada.

(2) Part 4 of this Instrument does not apply to an intermediary with whom a reporting issuer has made arrangements under paragraph (1)(b) if the intermediary implements the procedures under Rule 14b-1 or Rule 14b-2 of the 1934 Act that relate to the procedures in Rule 14a-16 under the 1934 Act.

***20. Form 54-101F2 is amended as follows:***

***(a) in the following provisions, replacing "***National Policy 11-201 and, in Québec, Staff Notice 11-201***" with "***National Policy 11-201 *Electronic Delivery of Documents*"**:*

***(i) Item 6.7;***

***(ii) Item 7.8;***

***(iii) Item 8.5;***

***(iv) Item 9.7;***

***(b) adding the following after Item 7.11:***

**7.12** State whether the reporting issuer is using notice-and-access, and any stratification criteria being used.

***(c) adding the following after Item 9.8:***

**9.9** State whether the reporting issuer is using notice-and-access, and any stratification criteria being used.

***21. Form 54-101F6 – Request for Voting Instructions Made by Reporting Issuer is amended by striking out the paragraph that begins "***Should you wish to attend the meeting and vote in person …***" and substituting the following:***

If you want to attend the meeting and vote in person, please write your name in the place provided for that purpose in ~~the voting instruction form (Form 54-101F6) provided to you~~this form. You can also write the name of someone else whom you wish to attend the meeting and vote on your behalf. Unless you instruct otherwise, the person whose name is written in the space provided will have full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if these matters are not set out in this form or the information circular. If you require help, please contact [the undersigned].

***22. Form 54-101F7 – Request for Voting Instructions Made by Intermediary is amended by ~~deleting~~striking out the paragraph that begins "***Should you wish to attend the meeting and vote in person …***" and replacing it with the following:***

If you want to attend the meeting and vote in person, please write your name in the place provided for that purpose in ~~the voting instruction form (Form 54-101F7) provided to you~~this form. You can also write the name of someone else whom you wish to attend the meeting and vote on your behalf. Unless you instruct otherwise, the person whose name is written in the space provided will have full authority to present matters to the meeting and vote on all matters that are presented at the meeting, even if these matters are not set out in this form or the information circular. If you require help, please contact [the undersigned].

***23. Form 54-101F8 – Legal Proxy is repealed.***

***24. Form 54-101F9 – Undertaking is amended by***

***(a) striking out paragraph 2 and substituting the following:***

**<Option #1: *use this alternative if the reporting issuer is providing the undertaking*>**

2. I undertake that the information set out on the NOBO list will be used only in connection with one or more matters relating to the affairs of the reporting issuer.

**<Option #2: *use this alternative if a person or company other than the reporting issuer is providing the undertaking*>**

2. I undertake that the information set out on the NOBO list will be used only for one or more of the following purposes:

(a) sending securityholder materials directly to NOBOs in accordance with National Instrument 54-101;

(b) an effort to influence the voting of securityholders of the reporting issuer;

(c) an offer to acquire securities of the reporting issuer.

***(b) striking out paragraph 4 and substituting the following:***

4. I am aware that it is a contravention of the law to use a NOBO list for purposes other than in connection with one or more of the following:

(a) sending securityholder materials directly to NOBOs in accordance with National Instrument 54-101;

(b) an effort to influence the voting of securityholders of the reporting issuer;

(c) an offer to acquire securities of the reporting issuer.

***25. The following is added after Form 54-101F9:***

**Form 54-101F10 – Undertaking**

*Note: Terms used in this Form have the meaning given to them in National Instrument 54-101.*

*The use of this Form is referenced in section 6.2 of National Instrument 54-101.*

I, ……
(Full Residence Address) …….
*(If this undertaking is made on behalf of a body corporate, set out the full legal name of the body corporate, position of person signing and address for service of the body corporate).*
SOLEMNLY DECLARE AND UNDERTAKE THAT:

1. I wish to send materials to beneficial owners of securities of [*insert name of the reporting issuer*] on whose behalf intermediaries hold securities, using the indirect sending procedures provided in National Instrument 54-101 (the NI 54-101 Procedures).

2. I undertake that I am using the NI 54-101 Procedures to send materials to beneficial owners only ~~in connection with~~for the purpose of one or both of the following:

(a) an effort to influence the voting of securityholders of the reporting issuer;

(b) an offer to acquire securities of the reporting issuer.

3. I am aware that it is a contravention of the law to send materials using the NI 54-101 Procedures for purposes other than in connection with one or both of the following:

(a) an effort to influence the voting of securityholders of the reporting issuer;

(b) an offer to acquire securities of the reporting issuer.

…….Signature
…….Name of person signing
…….Date

***26.*** **This Instrument is effective on [*].**

**SCHEDULE C**
**REVISED PROPOSED CHANGES TO 54-101CP**

**The following are proposed changes to Companion Policy 54-101CP to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer.***

**COMPANION POLICY 54-101CP**
**TO NATIONAL INSTRUMENT 54-101**
**COMMUNICATION WITH BENEFICIAL OWNERS**
**OF SECURITIES OF A REPORTING ISSUER**

**TABLE OF CONTENTS**

**COMPANION POLICY 54-101CP**
**TO NATIONAL INSTRUMENT 54-101**
**COMMUNICATION WITH BENEFICIAL OWNERS**
**OF SECURITIES OF A REPORTING ISSUER**

## PART 1 BACKGROUND

### 1.1 History

(1) Obligations imposed on reporting issuers under corporate law and securities legislation to communicate with securityholders are typically cast as obligations in respect of registered holders and not in respect of beneficial owners. For purposes of market efficiency, securities are ~~increasingly not~~generally no longer registered in the names of the beneficial owners but rather in the names of depositories, or their nominees, who hold on behalf of intermediaries, such as dealers, trust companies or banks, who, in turn, hold on behalf of the beneficial owners. Securities may also be registered directly in the names of intermediaries who hold on behalf of the beneficial owners.

(2) Corporate law and securities legislation require reporting issuers to send to their registered holders information and materials that enable such holders to exercise their right to vote. To address concerns that beneficial owners who hold their securities through intermediaries or their nominees may not receive the information and materials, in 1987, the CSA approved National Policy Statement No. 41 ("NP41"), which has since been replaced by National Instrument 54-101 (the "Instrument").

(3) The purpose of this Policy is to state the views of the Canadian securities regulatory authorities on various matters relating to the Instrument in order to provide guidance and interpretation to market participants in the practical application of the Instrument.

**1.2 Fundamental Principles** ~~—~~ The following fundamental principles have guided the preparation of the Instrument:

(a) all securityholders of a reporting issuer, whether registered holders or beneficial owners, should have the opportunity to be treated alike as far as is practicable;

(b) efficiency should be encouraged; and

(c) the obligations of each party in the securityholder communication process should be equitable and clearly defined.

## PART 2 GENERAL

### 2.1 Application of Instrument

(1) The securityholder communication procedures ~~contemplated by~~in the Instrument are ~~applicable~~relevant to all securityholder materials sent by a reporting issuer to ~~holders~~beneficial owners of its securities ~~of the reporting issuer~~ under Canadian securities legislation ~~including~~. Securityholder materials include, but are not limited to, proxy-related materials. Securityholder materials include :

(a) materials required by securities legislation or applicable corporate law to be sent to registered holders ~~of securities~~and beneficial owners of a reporting issuer's securities, such as interim financial reports or annual financial statements ~~and~~;

(b) materials required by securities legislation or applicable corporate law to be sent only to registered holders of a reporting issuer's securities, such as issuer bid and directors circulars~~. Securityholder~~, and dissident proxy-related materials ~~can also include~~ ;

(c) materials sent to registered holders or beneficial owners of a reporting issuer's securities absent any legal requirement to do so~~; an example of these types of materials would be corporate communications containing product information~~.

(2) As provided in section 2.7 of the Instrument, compliance with the procedures set out in the Instrument is mandatory for reporting issuers when sending proxy-related materials to beneficial owners, and, under section 2.8 of the Instrument, is optional for the sending of other materials. Once a reporting issuer, or another person or company pursuant to Part 6 of the Instrument, chooses to use the communications procedures

specified in the Instrument for a reporting issuer, depositories, intermediaries and other persons or companies must comply with their corresponding obligations under the Instrument.

**2.2 Application to Foreign Securityholders and U.S. Issuers**

(1) As provided in subsection 2.12(~~3~~5) of the Instrument, a reporting issuer that is precluded from sending securityholder materials directly to NOBOs because of conflicting legal requirements in the United States or elsewhere outside of Canada shall send the materials indirectly, i.e., by forwarding the materials to NOBOs through proximate intermediaries for those securities.

(2) National Instrument 71-101 *The Multijurisdictional Disclosure System* provides, in Part 18, that a "U.S. issuer", as defined in that Instrument, is considered to satisfy the requirements of National Instrument 54-101, other than in respect of fees, if the issuer complies with the requirements of Rule 14a-13 under the 1934 Act for any Canadian clearing agency and any intermediary whose last address as shown on the books of the issuer is in the local jurisdiction. Those requirements are designed to achieve the same purpose as the requirements of the Instrument.

(3) A Canadian reporting issuer may be exempt from complying with U.S. requirements under a reciprocal provision in the U.S. Multijurisdictional Disclosure regime.

~~**2.3 Interim Financial Statements** - Interim financial statements sent to beneficial owners in accordance with National Instrument 54-102 *Interim Financial Statement and Report Exemption* are "securityholder materials" under the Instrument. However, financial statements sent under National Instrument 54-102 need not be sent using the mechanisms of National Instrument 54-101 as the reporting issuer will send them directly to persons on a supplemental list.~~

**2.3** [Deleted]

**2.4 "Client" and "Intermediary" to be Distinguished From "Beneficial Owner"**

(1) Section 1.1 of the Instrument distinguishes between "client" and "beneficial owner". The two definitions recognize that, for many reporting issuers, there may be layers of intermediaries between the registered holder of a security and the ultimate beneficial owner. For example, a dealer could hold a security on behalf of another dealer that in turn holds the security for the beneficial owner.

(2) In the Instrument, "beneficial owner" refers to a person or company that, ultimately, has the right to vote, or exercise control or direction over, the securities that are held through intermediaries and that therefore originates the instructions that are contained in a client response form, or that would have the authority to originate those instructions. If an intermediary that holds securities has discretionary authority over the securities, and consequently has authority to provide instructions in a client response form, it will be the beneficial owner of those securities for purposes of the Instrument and would not also be an "intermediary" with respect to those securities.

(3) The term "client" refers to the person or company for whom an intermediary directly holds securities, regardless of whether the client is a beneficial owner. For example, if a dealer holds securities on behalf of a bank that in turn holds the securities on behalf of the beneficial owner, the bank is a client of the dealer, and the beneficial owner is a client of the bank. The beneficial owner is not a client of the dealer. Section 1.2 of the Instrument recognizes that, under the Instrument, an intermediary may "hold" securities for a client, even if another person or company is shown on the books or records of the reporting issuer or the records of another intermediary or depository as the holder of the securities.

**2.5 Definition of "Corporate Law"** – Section 1.1 of the Instrument defines "corporate law" as any legislation, constating instrument or agreement that governs the affairs of a reporting issuer. The term "corporate law" therefore encompasses Canadian and foreign laws, a declaration or deed of trust in the case of a trust, and the partnership agreement in the case of a partnership.

**2.6 Fees** – Section 1.4 provides that fees payable under the Instrument, unless prescribed by the regulator or securities regulatory authority, shall be a reasonable amount. Section 2.13 provides that a reporting issuer shall pay a fee to a proximate intermediary for furnishing the information requested in a request for beneficial ownership information (which would be used by reporting issuer to request a NOBO list) made by the reporting issuer. Paragraph 2.14(1)(a) provides that a reporting issuer that sends securityholder materials indirectly to NOBOs through a proximate intermediary shall pay to the proximate intermediary, upon receipt by the reporting issuer of a certificate of sending to NOBOs in accordance with the instructions specified by the reporting issuer and the request for beneficial ownership information,

a fee for sending the securityholder materials to the NOBOs. In determining what is a reasonable amount the Canadian securities regulatory authorities expect that market participants will be guided by fees previously prescribed by Canadian securities regulatory authorities and by the fees payable for comparable services in other jurisdictions such as the United States, as well as by technological developments. In the case of fees for sending securityholder materials to NOBOs, referred to in paragraph 2.14(1)(a), the CSA would regard as currently reasonable an amount not exceeding $1 (being the amount previously specified in NP41).

**2.7 Agent** ~~–~~ ~~A~~ depository, intermediary ~~or reporting issuer that uses an agent to comply with the requirements of the Instrument is reminded that it~~, reporting issuer or any other person or company subject to obligations under the Instrument's securityholder communication procedures may use a service provider as its agent to fulfil its obligations. A person or company that uses an agent remains fully responsible for ~~such compliance.~~fulfilling its obligations under the Instrument, and for the conduct of the agent in this regard.

A person or company may fulfil its obligations relating to another party through an agent of that other party. For example, under section 2.12 of the Instrument, a reporting issuer fulfills its obligation to send securityholder materials to a proximate intermediary if it provides the materials to a person or company designated by that proximate intermediary.

## PART 3 REPORTING ISSUERS

### 3.1 Timing for Notice of Meeting and Record Dates and Intermediary Searches

(1) ~~Subject to section 2.20, section~~Section 2.2 of the Instrument requires that, 25 days before the record date for notice of a meeting, a reporting issuer send to the entities named in that section a notification of meeting and record dates~~, and section~~ that includes certain basic information about the meeting. Section 2.5 of the Instrument requires that 20 days before the record date for notice, a reporting issuer send a request for beneficial ownership information to proximate intermediaries. Section 2.20 allows these timing requirements to be abridged so long as the reporting issuer arranges to have the proxy-related materials for the meeting sent in compliance with the applicable timing requirements in sections 2.9 and 2.12, and upon filing of an officer's certificate containing the information specified in section 2.20. Where the reporting issuer uses notice-and-access, the reporting issuer also must fix the record date for notice to be at least 30 days before the date of the meeting, and send the notification of meeting and record dates at least 30 days before the meeting.

Nevertheless, reporting issuers should commence the notice and searches referred to in sections 2.2, 2.3 and 2.5 at an early date and in sufficient time to allow the completion of all steps and actions required before the sending of materials, including allowing for the response time permitted for intermediaries in section 4.1 and depositories in section 5.3, so that the materials may be sent within the times contemplated by sections 2.9 and 2.12 of the Instrument.

(2) The time frames stipulated by sections 2.9 and 2.12 of the Instrument are minimum requirements. For a meeting that will deal with contentious matters, the CSA expect that good corporate practice will often require that materials be sent earlier than the minimum required dates to ensure that securityholders have a full opportunity to understand and react to the matters raised.

(3) It remains the reporting issuer's responsibility when planning a meeting timetable to factor in all timing considerations, including deadlines external to the Instrument. For example, reporting issuers that have obligations under corporate law to advertise in advance of a record date for notice, or satisfy other publication obligations, would need to comply with those obligations. Reporting issuers that intend to satisfy their advance publication obligation by relying upon publication by CDS of meeting and record dates under subsection 5.2(2) of the Instrument would need to factor in the timing of publication by CDS and the advance notice required by CDS, as described in section 3.4 of this Policy, in order to permit inclusion of meeting and record date information in the publication. Reporting issuers will also need to factor in the time needed to produce and assemble the relevant securityholder materials after quantities have been determined.

(4) Proximate intermediaries are required under section 4.1 of the Instrument to furnish the information requested in a request for beneficial ownership information, in certain circumstances, within three business days of receipt. It should be noted that this timing refers to receipt of the request by the proximate intermediary, which may not be the same date as the request was sent by the reporting issuer. The time necessary for a request for beneficial ownership information to be received by a proximate intermediary should be factored into a reporting issuer's planning.

### 3.2 Adjournment or Change in Meeting

(1) Under section 2.15, a reporting issuer that sends a notice of adjournment or other change for a meeting to registered holders of its securities shall concurrently send the notice, including any change in the beneficial ownership determination date, to the persons and companies listed in section 2.15. Issuers are reminded of a number of other potential implications associated with an adjournment or other change, including those set out below.

(2) If additional proxy-related materials are sent in connection with the meeting after proxy-related materials have previously been sent, a new intermediary search may be required if the beneficial ownership determination date for the meeting is changed.

(3) New intermediary searches may have to be conducted if the nature of the business to be transacted at the meeting is materially changed. If the nature of the business is changed to add business that is not routine business, it may be necessary to conduct new intermediary searches in order to ensure that beneficial owners that had elected not to receive proxy-related materials for meetings at which only routine business was to be conducted receive proxy-related materials for the meeting.

(4) If an adjournment or other change to the business of the meeting requires that new proxy-related materials be sent to securityholders, the meeting date or the date of the adjourned meeting may have to be delayed to satisfy the time periods specified in the Instrument, unless an exemption from the time periods of the Instrument is obtained. If the change in the business of the meeting is significant, such as a change from only routine business to special business, Canadian securities regulatory authorities will not generally grant exemptions from timing requirements for sending proxy-related materials in the absence of exceptional circumstances.

### 3.3 Request for Beneficial Ownership Information

(1) A request for beneficial ownership information made under subsection 2.5(2) of the National Instrument may be for any class or series of securities and is not restricted to only those securities carrying the right to receive notice of, or to vote at, a meeting, as is the case with a request under subsection 2.5(1). A request under subsection 2.5(2) need not necessarily be addressed to all proximate intermediaries holding the class or series of securities.

(2) If it is able to do so, a proximate intermediary is required to respond to a request for a NOBO list by providing the NOBO list in electronic format. ~~All requests~~Subsection 2.5(4) provides that a request for beneficial ownership information ~~including NOBO lists are required to~~must be made through a transfer agent. ~~A reporting issuer that wishes to receive a NOBO list in non-electronic format may make arrangements with its transfer agent to have the electronic format received by the transfer agent converted to a paper copy~~However, where only a NOBO list is being requested, the request may be made by the reporting issuer (or another person or company retained by the reporting issuer); provided the relevant proximate intermediary reasonably believes that the reporting issuer (or the person or company retained by the reporting issuer) has the technological capacity to receive the NOBO list.

**3.4 Depository's Index of Meetings** – CDS advises that the index referred to in section 5.2 of the Instrument is currently published in the Monday edition of *The Globe and Mail Report on Business* and in the Tuesday edition of *La Presse*. CDS advises that notices of meetings received by CDS by noon on Wednesday are usually published in *The Globe and Mail* on the following Monday and in *La Presse* on the following Tuesday. A reporting issuer should contact CDS for current forms and fee schedules of CDS.

#### 3.4.1 Explanation of Voting Rights

(1) Subsection 2.16(1) of the Instrument requires a reporting issuer's proxy-related materials to contain a plain language explanation of how the beneficial owner can exercise the voting rights attached to the securities.

(2) Subsection 2.16(2) of the Instrument requires management of a reporting issuer to provide in the information circular disclosure about the following:

(a) whether the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification is used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(b) whether the reporting issuer is sending proxy-related materials directly to NOBOs;

(c) whether the reporting issuer intends to pay for delivery to OBOs. If the reporting issuer does not intend to pay for such delivery, the information circular must disclose this fact.

This disclosure is intended to explain to beneficial owners why they may receive different proxy-related materials than other beneficial owners and why they may not receive proxy-related materials even if they have requested them. Item 4.3 of Form 51-102F5 Information Circular also requires this disclosure.

We also encourage reporting issuers to disclose whether they are sending proxy-related materials to beneficial owners who have declined to receive them and explain their decision.

(3) If a reporting issuer has chosen not to pay for proximate intermediaries to deliver proxy-related materials and Form 54-101F7 to OBOs, it must still provide to the proximate intermediary the number of sets of proxy-related materials that the proximate intermediary requested for forwarding to OBOs.

**3.5 NOBO Voting Instructions** –

(1) Voting instructions that the reporting issuer requests directly from NOBOs will be returned directly to the reporting issuer. Management of the reporting issuer will then vote the securities beneficially owned by NOBOs ~~in accordance with~~according to the instructions received from the NOBOs to the extent that management has the corresponding proxy. ~~That proxy is given to management by the~~The proximate intermediary that provides the NOBO list under subsection 4.1(1) of the Instrument gives management that proxy.

We expect reporting issuers that choose to solicit voting instructions directly from NOBOs to have appropriate procedures for NOBO voting. This includes doing the following in a timely manner:

(a) responding to inquiries from NOBOs or intermediaries with NOBO clients about the voting process;

(b) appointing a NOBO or nominee of the NOBO as a proxyholder in respect of securities beneficially owned by the NOBO;

(c) generating a new Form 54-101F6 if a NOBO requests one. For example, a NOBO may have misplaced a Form 54-101F6 that he or she had received; or may now wish to provide voting instructions although he or she had previously indicated on his or her client response form that he or she did not wish to receive proxy-related materials.

We expect reporting issuers and intermediaries to work together to address any issues arising from the NOBO voting process.

**3.6 Appointing NOBO as Proxy Holder** – Section 2.18 of the Instrument requires reporting issuers who request voting instructions from NOBOs to:

- arrange to appoint the NOBO as proxy holder, if he or she so instructs, at no expense to the NOBO; and
- deposit the proxy within any time specified under corporate law for the deposit of proxies (a "proxy cut-off") if the reporting issuer obtains the instructions at least one business day before the proxy cut-off. We expect reporting issuers to make best efforts to deposit the proxy even if the instructions are obtained less than one business day before the proxy cut-off.

However, subject to these basic obligations, reporting issuers have flexibility as to the specific mechanism used to appoint the beneficial owner as proxy holder.

## PART 4 INTERMEDIARIES

**4.1 Client Response Form** – By completing a client response form as provided in Part 3 of the Instrument, a beneficial owner gives notice of its choices concerning the receipt of materials and the disclosure of ownership information concerning it. Pursuant to section 3.4 of the Instrument, a beneficial owner may, by notice to the intermediary through which it holds, change any prior instructions given in a client response form. Proximate intermediaries should alert their clients to the costs and other consequences of the options in the client response form.

**4.2 Separate Accounts** – A client that wishes to make different choices concerning receipt of securityholder materials or disclosure of ownership information with respect to some of the securities beneficially owned by it should hold those securities in separate accounts.

**4.3 Reconciliation of Positions**

(1) The records of an intermediary must show which of its clients are NOBOs, OBOs or other intermediaries, and specify the holdings of each of those clients.

(2) In order that the Instrument work properly, it is important that the records of an intermediary be accurate. Its records must reconcile accurately with the records of the person or company through whom the intermediary itself holds the securities, which could either be another intermediary or a depository, or the security register of the relevant issuer, if the intermediary is a registered securityholder. This reconciliation must include securities held both directly and through nominees.

(3) A proximate intermediary should provide accurate responses to requests for beneficial ownership information. Information about the holdings of NOBOs, when added to the holdings of OBOs, the holdings of other intermediaries holding through the proximate intermediary and the holdings that the proximate intermediary holds as principal, must not exceed the total security holdings of the proximate intermediary, including its nominees, as shown on the register of the issuer or in the records of the depository.

(4) It is important as well that the total number of votes cast at a meeting by an intermediary or persons or companies holding through an intermediary not exceed the number of votes for which the intermediary itself is a proxyholder.

**4.4 Identification of Intermediary**

(1) A NOBO list with FINS numbers will only be provided where the list is sought by a reporting issuer in conjunction with a meeting of its securityholders in circumstances in which the issuer is sending proxy-related materials under paragraph 4.1(1)(c) of the Instrument. The FINS number should not be required in circumstances where it is not necessary to reconcile voting instructions and/or proxies.

(2) Identification of the intermediary and the holdings specified in the corresponding NOBO list on requests for voting instructions as required in Form 54-101F6 is necessary for the reporting issuer to be able to reconcile voting instructions received from a NOBO to the corresponding position registered in the name of the intermediary or its nominee or in respect of which the intermediary holds a proxy. In addition, should a NOBO wish to change its voting instructions, before or at a meeting of securityholders, knowledge of the corresponding intermediary and the NOBO's holdings is necessary.

**4.5 Changes to Intermediary Master List** – It is the obligation of intermediaries under section 3.1 of the Instrument to notify each depository of any changes in the information required to be provided under that section within five business days after the change. The five business days is a maximum requirement and it is expected that intermediaries will provide notice of such changes as soon as possible and, if possible in advance, in order that their clients not be prejudiced.

**4.6 Incomplete or Late Deliveries** – If sets of securityholder materials of a reporting issuer are incomplete or received after the prescribed time limits, the intermediary should advise the reporting issuer and request instructions.

**4.7 Other Obligations of Intermediaries** – The Instrument addresses the obligations of intermediaries in connection with the forwarding of securityholder materials. It is noted that intermediaries will have other obligations to the beneficial owners holding through them that arise from the nature of the relationship between the intermediary and the beneficial owners. These obligations will likely include advising the beneficial owners of the commencement of take-over bids, issuer bids, rights offerings and other events, and advising as to how the beneficial owners can obtain the relevant materials.

**4.8 Appointing Beneficial Owner as Proxy Holder** – Section 4.5 of the Instrument requires intermediaries to:

- arrange to appoint the beneficial owner as proxy holder, if he or she so instructs, at no expense to the beneficial owner; and

- deposit the proxy within any proxy cut-off if the intermediary obtains the instructions at least one business day before the proxy cut-off. We encourage intermediaries to make best efforts to deposit the proxy even if the instructions are obtained less than one business day before the proxy cut-off.

However, subject to these basic obligations, intermediaries have flexibility as to the specific mechanism used to appoint the beneficial owner as proxy holder. One mechanism in current use and permitted under section 4.5 of the Instrument is the "appointee system". Under the appointee system, a beneficial owner who wishes to be appointed as proxy

holder for the intermediary in respect of securities that he or she beneficially owns can print his or her name or the name of his or her appointee in a space provided on the voting instruction form. The name of the beneficial owner or her appointee is then recorded on a cumulative proxy, which is provided to the proxy tabulator or meeting scrutineer. When the beneficial owner or his or her appointee arrives at the meeting, the scrutineer has all the necessary proxies and information at hand to enable the beneficial owner or other appointees to vote at the meeting.

## PART 5 ~~MEANS OF SENDING~~ – MEANS OF SENDING

### 5.1 General

~~**5.1 General** - All parties should use the most efficient means of sending information or securityholder material, including, if practicable, sending materials in bulk.~~

The following tables illustrate the options available for sending proxy-related materials to beneficial owners.

**Table A: Direct Sending to NOBOs**

| Delivery Method | Documents Sent | Beneficial Owner Consent Required? |
|---|---|---|
| Prepaid mail, courier or the equivalent | Reporting issuer sends paper copies of notice of meeting, management information circular, and Form 54-101F6 | No |
| Notice-and-access | Reporting issuer files management information circular on SEDAR and posts on non-SEDAR website. Reporting issuer sends paper copies of documents required by para. 2.7.1(1)(a) and Form 54-101F6. Reporting issuer will include paper copy of management information circular in compliance with any standing instructions under s. 2.7.6 or annual request forms under National Instrument 51-102 *Continuous Disclosure Obligations*. Reporting issuer is responsible for providing paper copy of information circular on request. | No |
| Other delivery method | Reporting issuer sends notice of meeting, management information circular and Form 54-101F6 using delivery method that is not (i) prepaid mail, courier or the equivalent, or (ii) notice-and-access, e.g., e-mail with embedded links. | Yes. |

~~**5.2 Materials in Bulk for**~~**Table B: Indirect Sending to Beneficial Owners** ~~- Securityholder materials sent to intermediaries for sending to beneficial owners by mail should be in uncollated bulk form. All materials forming part of a set to be delivered to securityholders should be delivered together. The intermediary will collate the materials; if the materials are proxy-related materials the intermediary will substitute for any issuer proxy contained in the materials a request for voting instructions for matters to which the proxy-related materials relate.~~

| Delivery Method | Documents Sent | Beneficial Owner Consent Required? |
|---|---|---|
| Prepaid mail, courier or the equivalent | Reporting issuer sends paper copies of notice of meeting, management information circular to proximate intermediary. Proximate intermediary sends paper copies of materials and Form 54-101F7 using prepaid mail, courier or the equivalent. | No |
| Notice-and-access | Reporting issuer files management information circular on SEDAR and posts on non-SEDAR website. Reporting issuer sends paper copies of documents required by para. 2.7.1(1)(a) to proximate intermediary for sending to beneficial | No |

| | | |
|---|---|---|
| | owners. Reporting issuer also sends appropriate numbers of paper copies of management information circular to comply with any standing instructions under s. 2.7.6 or annual request forms under National Instrument 51-102 *Continuous Disclosure Obligations*. Proximate intermediary sends paper copies of the above documents and Form 54-101F7 using prepaid mail, courier or the equivalent. Reporting issuer is responsible for providing paper copy of information circular on request. | |
| Other delivery method | Proximate intermediary sends notice of meeting, management information circular and Form 54-101F7 using delivery method that is not (i) prepaid mail, courier or the equivalent, or (ii) notice-and-access, e.g., email with embedded links. | Yes. |

~~**5.3 Number of Sets of Materials**~~ **5.2 Securityholder Materials Sent to Intermediaries** – Reporting issuers and other persons or companies should make arrangements with proximate intermediaries to send securityholder materials to beneficial owners in a timely manner. A proximate intermediary should not request sets of securityholder materials for NOBOs if the reporting issuer will be sending the materials directly to those NOBOs.

**5.3 Prepaid Mail, Courier or the Equivalent** – Paper copies of proxy-related materials must be sent using prepaid mail, courier or an equivalent delivery method. We consider "first class mail" to be the equivalent of Canada Post Lettermail. An equivalent delivery method is any delivery method where the beneficial owner receives paper copies in a similar time frame as prepaid mail or courier. For example, a reporting issuer that sponsors an employee share purchase plan could arrange for the proximate intermediary to deliver proxy-related materials to beneficial owner employees through the reporting issuer's internal mail system.

**5.4 Notice-and-Access**

(1) The Instrument permits a reporting issuer to use notice-and-access to send proxy-related materials to beneficial owners. Notice-and-access cannot be used for sending proxy-related materials relating to meetings of investment fund reporting issuers. However, it can be used for all other types of meetings.

Prior to using notice-and-access for the first time, a reporting issuer must provide advance notice as specified in subsection 2.7.2 of the Instrument. We also encourage issuers to consider what additional methods of advance notice are appropriate. For example, an issuer could consider a special purpose mailing to its retail beneficial owners in advance of the first meeting for which notice-and-access is used.

We expect reporting issuers to evaluate the potential impact of using notice-and-access on beneficial owners of their voting securities when deciding whether to use notice-and-access. Factors that reporting issuers should take into account include:

- the nature of the meeting business (including whether it is expected to be contentious); and
- whether notice-and-access resulted in material declines in shareholder voting rates in prior meetings where notice-and-access was used.

(2) Notice-and-access can be used by reporting issuers to send proxy-related materials directly to NOBOs under section 2.9 of the Instrument or indirectly under section 2.12 of the Instrument.

*Direct sending to NOBOs:*

The reporting issuer must send the documents required by paragraph 2.7.1(1)(a), any paper copies of information circulars required to comply with standing instructions or annual request form instructions, and Form 54-101F6 to NOBOs at least 30 days before the meeting (subsection 2.9(3) of the Instrument).

*Indirect sending to beneficial owners:*

The reporting issuer must send the documents required by paragraph 2.7.1(1)(a) and any paper copies of information circulars required to comply with standing instructions or annual request form instructions within the relevant timelines set out in subsection 2.12(3).

The proximate intermediary must prepare a Form 54-101F7 and forward it and the notice document (section 4.4 of the Instrument). The notice can be combined with the Form 54-101F7 in a single document.

(3) Subparagraph 2.7.1(1)(a)(i) of the Instrument requires the beneficial owner to be sent a notice containing required information about the meeting. With respect to matters to be voted on at the meeting, the notice must only contain a factual description of each matter or group of related matters identified in the form of proxy. We expect that reporting issuers who use notice-and-access will state each matter or group of related matters in the proxy in a reasonably clear and user-friendly manner. For example, it would not be appropriate to identify the matter to be voted on solely by referring to disclosure contained in the information circular, e.g., "To vote For or Against the resolution in Schedule A of management's information circular".

Subparagraph 2.7.1(1)(a)(ii) of the Instrument requires the beneficial owner be sent a plain language document that explains notice-and-access. This document can also be used to explain other aspects of the proxy voting process to beneficial owners. However, this document should not contain any substantive discussion of the matters to be considered at the meeting.

(4) Paragraph 2.7.1(1)(b) of the Instrument requires the beneficial owner to be sent as part of the notice package the appropriate voting instruction form, i.e., a Form 54-101F6 where the reporting issuer is sending proxy-related materials and soliciting voting instructions from NOBOs, and a Form 54-101F7 where an intermediary is doing so.

(5) Paragraph 2.7.1(1)(c) of the Instrument requires the reporting issuer to file the notification of meeting and record dates required by subsection 2.2(1) at least 30 days before the date fixed for the meeting. This is intended to broadly communicate to the reporting issuer's beneficial owners that the reporting issuer is using notice-and-access.

(6) Paragraph 2.7.1(1)(d) of the Instrument requires the information circular and other proxy-related materials to be filed on SEDAR and posted on a website other than SEDAR. The non-SEDAR website can be the reporting issuer's website or the website of a service provider.

(7) Paragraph 2.7.1(1)(e) of the Instrument requires the reporting issuer to establish a toll-free telephone number for the beneficial owner to request a paper copy of the information circular. A reporting issuer may choose to, but is not required to, provide additional methods for requesting a paper copy of the information circular. If a reporting issuer does so, it must still comply with the fulfillment timelines in paragraph 2.7.1(1)(f) of the Instrument and the restrictions on use of information obtained in connection with the request.

(8) Section 2.7.3 of the Instrument is intended to restrict intentional information gathering about beneficial owners by reporting issuers who receive requests for paper copies of information circulars or via the website other than SEDAR.

(9) Section 2.7.4 of the Instrument is intended to allow beneficial owners to access the posted proxy-related materials in a user-friendly manner. For example, requiring the beneficial owner to navigate through several web pages to access the proxy-related materials would not be user-friendly. Providing the beneficial owner with the specific URL where the documents are posted would be more user-friendly. We encourage reporting issuers and their service providers to develop best practices in this regard.

~~**5.4 Electronic Communication**~~

(10) Where a reporting issuer uses notice-and-access, it generally must send the same basic notice package to all beneficial owners. However, the following are exceptions to this general principle:

~~(1) It is expected that most communication for the purposes of the Instrument between or among depositories, reporting issuers and intermediaries will, as far as practicable, be by electronic means, including fax, electronic mail or data transfer. The Instrument is intended by the CSA to promote and facilitate the use of electronic communication, within the limits imposed by corporate law and securities legislation.~~

- Section 2.7.5 of the Instrument provides that where a reporting issuer uses notice-and-access, a beneficial owner still can be sent proxy-related materials using an alternate method to which the shareholder has previously consented. For example, service providers acting on behalf of reporting issuers or intermediaries may have previously obtained (and continue to obtain) consents from shareholders for proxy-related materials to be sent by email. This delivery method would still be available.

- Section 2.7.6 of the Instrument permits an intermediary to obtain standing instructions from a beneficial owner client to be sent a paper copy of the information circular in all cases where a reporting issuer uses notice-and-access. Where such standing instructions have been obtained, the notice package for the beneficial owner will contain a paper copy of the information circular.

- Subsection 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* establishes an annual request form mechanism for shareholders to request copies of a reporting issuer's annual financial statements and annual MD&A for the following year. A request for annual financial statements and annual MD&A will also constitute a request that the notice package for the beneficial owner contain a paper copy of the information circular.

The addition of a paper information circular to the notice package sent to some beneficial owners is referred to as "stratification", and is a term defined in section 1.1 of the Instrument.

~~(2) The Instrument does not require manual signatures to the forms referred to in the Instrument. While manual signatures are permitted and may be included, the CSA are of the view that if the Instrument is to promote and facilitate the use of electronic communication, the obligation to include manual signatures would impede the promotion of this technology. Accordingly, the Instrument does not require authentication by manual signature, and persons or companies should satisfy themselves as to the authenticity of instructions or other communications received in electronic form.~~We do not mandate the use of stratification, other than to the extent it is necessary to comply with standing instructions or annual requests for paper copies of information circulars that reporting issuers or intermediaries have chosen to obtain from registered holders or beneficial owners. We expect that any additional stratification criteria will develop and evolve through market demand and practice. However, we expect that a reporting issuer that uses stratification for purposes other than complying with shareholder instructions does so in order to enhance effective communication, and not to disenfranchise shareholders. We require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which shareholders will receive a copy of the information circular.

One example of how stratification could enhance communication is where a reporting issuer wishes to send proxy-related materials to all its beneficial owners, including those who have declined to receive materials ("declining beneficial owners"). These declining beneficial owners could be sent a notice package only, while the reporting issuer would send other beneficial owners who wished to receive all materials the notice package and the information circular. All beneficial owners thus would receive the documentation necessary to vote, but those declining to receive materials would not receive a paper copy of the information circular unless they requested it.

~~(3) In Quebec, Staff Notice 11-201, and, in the rest of Canada,~~ **~~5.5~~ Consent to Electronic Delivery** – National Policy 11-201 *Electronic Delivery of Documents* ~~by Electronic Means (the "~~("NP 11-201 ~~Documents~~") ~~discuss~~discusses the sending of materials by electronic means. The guidelines set out in ~~the~~NP 11-~~201 Documents,~~201, particularly the suggestion that consent be obtained to an electronic transmission of a document, are applicable to documents sent under the Instrument. ~~Under the 11-201 Documents, securityholder materials could be sent to beneficial owners by electronic means in satisfaction of the requirements of the Instrument if the beneficial owner has consented to receive them in that form.~~

~~(4) Section 3.2 of the Instrument requires intermediaries that hold securities on behalf of a client in an account to obtain the electronic mail address of the client, if available, and to enquire whether the client wishes to consent to electronic delivery of documents by the intermediary to the client. The client's electronic mail address and whether they have consented to electronic delivery by the intermediary forms part of the "ownership information" associated with a beneficial owner that will be contained in NOBO lists. The electronic form of NOBO list has a field for this information. Because the consent identified in the NOBO list relates to electronic delivery by the intermediary only, the reporting issuer cannot rely on the consent for its electronic delivery. However, the field in the NOBO~~

~~list for this consent may be of interest to a reporting issuer. It may assist the reporting issuer in ascertaining whether the intermediary will forward electronically the securityholder materials that the reporting issuer elects to send indirectly through the intermediary. It may also assist the reporting issuer to determine the feasibility of sending materials directly to NOBOs and whether to use electronic delivery itself. Where the reporting issuer chooses to obtain consent for the purposes of satisfying the provisions of the 11-201 Documents, the Canadian securities regulatory authorities anticipate that the reporting issuer will use the electronic mail address contained in the NOBO list.~~

~~5.5~~5.6 **Multiple Deliveries to One Person or Company** ~~- It is noted that sometimes a~~– A single investor ~~holds~~may hold securities of the same class in two or more accounts with the same address. ~~The Canadian securities regulatory authorities note that the delivery of~~Delivering a single set of securityholder materials to that person or company would satisfy the delivery requirements under the Instrument. ~~The sending of a single document in those circumstances is encouraged in order to~~We encourage this practice as a way to help reduce the costs of securityholder communications.

## PART 6 USE OF NOBO LIST

6.1 ~~**Use of NOBO List** - Market participants are reminded that the trafficking of a NOBO list,~~**Permitted Uses**

(1) A person or company that is not a reporting issuer may only use the NOBO list and the procedures in sections 2.9 or 2.12 of the Instrument in connection with an effort to influence voting or an offer to acquire securities of a reporting issuer. In our view, a person or company may obtain the NOBO list if the person or company, acting reasonably and in good faith, intends to use the NOBO list to determine whether to begin an effort to influence securityholder voting or an offer to acquire securities of the reporting issuer.

(2) Using a NOBO list contrary to Part 7 of the Instrument~~,~~ will constitute a breach of the Instrument and securities legislation~~, and that the penalty~~. Penalty provisions of securities legislation may be applied.

## PART 7 EXEMPTIONS

7.1 **Materials Sent in Less Than ~~21~~the Required Number of Days Before Meeting** - In ~~the absence of extraordinary circumstances, the Canadian securities regulatory authorities will generally not consider shortening the 21-day period for the sending of proxy-related materials to beneficial owners of securities referred to~~general, exemptive relief to shorten the relevant periods in sections 2.9 and 2.12 of the Instrument~~.~~ will not be granted, except in extraordinary circumstances.

7.2 **Delay of Audited Annual Financial Statements or Annual Report** - Section 9.1 of the Instrument recognizes that corporate law or securities legislation may permit a reporting issuer to send its audited annual financial statements or annual report to registered holders of its securities later than other proxy-related materials. The Instrument provides that the time periods applicable to sending proxy-related materials prescribed in the Instrument do not apply to the sending of proxy-related materials that are annual financial statements or an annual report if the statements or report are sent by the reporting issuer to beneficial owners of the securities within the time limitations established in applicable corporate law and securities legislation for the sending of the statements or report to registered holders of the securities. Reporting issuers are nonetheless encouraged to send their audited annual financial statements or annual report at the same time as other proxy-related materials.

7.3 ~~**Additional Costs If Time Limitations Shortened** - Section 4.2 of the Instrument allows a proximate intermediary three business days to prepare the securityholder materials for forwarding to beneficial owners after its receipt of the materials from the reporting issuer (four business days if the material is to be sent by mail other than first-class mail). Reporting issuers making arrangements with intermediaries to~~**for Expedited Processing** – Where reporting issuers wish to have intermediaries comply with the procedures in the Instrument within shorter time limits ~~may wish to~~than provided in the Instrument, they should provide for recovery by the intermediary of reasonable costs ~~attributable to the shorter time limits that it would not otherwise incur (for example,~~incurred in expedited processing of securityholder materials in order to ensure forwarding of the materials to beneficial owners. Examples of such costs include courier, long distance telephone and overtime costs~~) to ensure forwarding of the materials to OBOs~~.

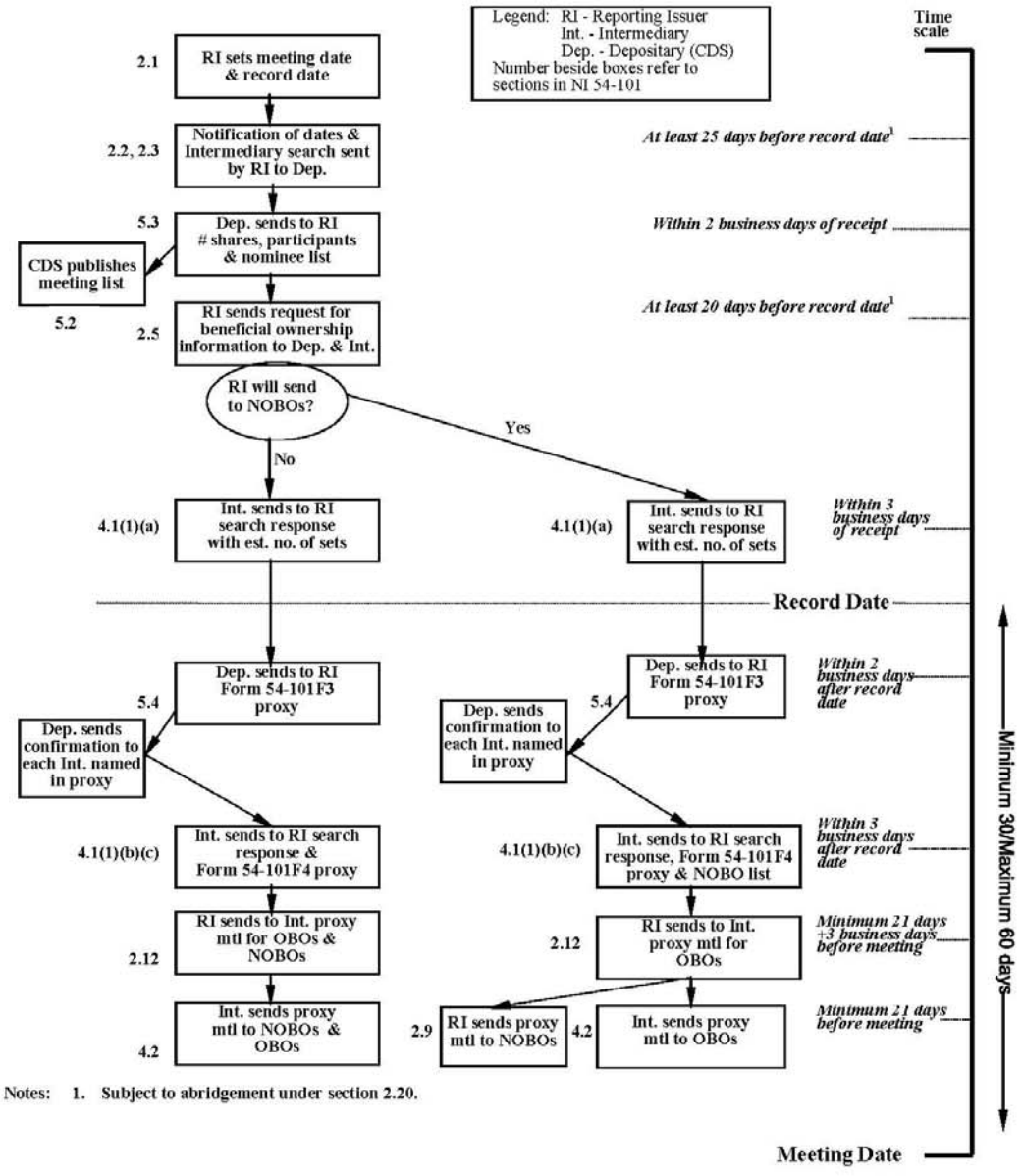
7.4 **Applications** ~~- Applicants should be aware that major~~ – Major exemptions from the requirements of the Instrument will ~~probably~~likely be granted infrequently. ~~Exemptions to the predecessor policy statement to the Instrument that were granted typically involved reporting issuers that were incorporated or organized outside of Canada, that had only an insignificant connection to Canada in terms of the percentage of its securityholders that were resident in Canada and the percentage of its securities that were held by those securityholders, and in circumstances in which the reporting issuer was also subject to requirements imposed by securities or corporate legislation outside of Canada that served to ensure that beneficial owners would receive a comparable level of communication from the issuer~~We encourage

applicants to discuss requests for exemptive relief on a pre-file basis with the relevant Canadian securities regulatory authorities.

## PART 8 APPENDIX A

**8.1** **Appendix A** - This Companion Policy contains, as Appendix A, a flow chart outlining the processes prescribed by the Instrument for the sending of proxy-related materials by prepaid mail.

## Appendix A
## Proxy Solicitation under NI 54-101




Notes: 1. Subject to abridgement under section 2.20.

**SCHEDULE D**
**REVISED PROPOSED AMENDMENT INSTRUMENT TO NI 51-102 AND BLACKLINE TO THE ORIGINAL MATERIALS**

**PROPOSED AMENDMENT INSTRUMENT TO**
**NATIONAL INSTRUMENT 51-102**
**CONTINUOUS DISCLOSURE OBLIGATIONS**

***1. This Instrument amends National Instrument 51-102 Continuous Disclosure Obligations.***

***2. Section 1.1 of National Instrument 51-102 is amended by***

***(a) adding the following definition after "***common share***":***

"corporate law" has the same meaning as in section 1.1 of NI 54-101;

***(b) adding the following definition after "***non-voting security***":***

"notice-and-access" has the same meaning as in section 1.1 of NI 54-101;

***(c) adding the following definition after "***proxy***":***

"proxy-related materials" means securityholder materials relating to a meeting that the reporting issuer is required under corporate law or securities legislation to send to the registered holders of the securities;

***(d) adding the following definitions after "***solicit***":***

"special meeting" has the same meaning as in section 1.1 of NI 54-101;

"special resolution" has the same meaning as in section 1.1 of NI 54-101;

"stratification" has the same meaning as in section 1.1 of NI 54-101;

***3. Subsection 4.6 of National Instrument 51-102 is amended by***

***(a) repealing and replacing subsection (1) with the following:***

**4.6 Delivery of Financial Statements** – (1) Subject to subsection (2), a reporting issuer must send an annual request form to the registered holders and beneficial owners of its securities, other than debt instruments, that the registered holders and beneficial owners may use to request one or both of the following:

(a) a copy of the reporting issuer's annual financial statements and MD&A for the annual financial statements and, where the reporting issuer uses notice-and-access to send proxy-related materials, a paper copy of the information circular;

(b) a copy of the reporting issuer's interim financial reports and MD&A for the interim financial reports.

***(b) inserting "***using the request form in subsection (1)***" after "***requests the reporting issuer's annual financial statements or interim financial reports***" in subsection (3);***

***(c) replacing "***two years***" in subsection (4) with "***one year***".***

***4. The following is added after section 9.1 of National Instrument 51-102 Continuous Disclosure Obligations:***

**9.1.1 Notice-and-Access –** (1) A person or company soliciting proxies may send proxy-related materials to a registered holder of voting securities by notice-and-access that complies with all of the following:

(a) the registered holder of voting securities is sent the following:

(i) a notice containing all of the following information, and no other information:

A. the date, time and location of the reporting issuer's meeting;

B. a factual description of each matter or group of related matters identified in the form of proxy to be voted on;

C. the website address other than the address for SEDAR, where the proxy-related materials are located;

D. a reminder to review the information circular before voting;

E. an explanation of how to obtain a paper copy of the information circular from the person or company;

(ii) a document in plain language that explains notice-and-access and includes the following information:

A. why the person or company is using notice-and-access;

B. if the person or company is using stratification, which registered holders or beneficial owners are receiving paper copies of the information circular;

C. the date and time by which a request for a paper copy of the information circular should be received in order for the requester to receive the paper copy in advance of any deadline for the submission of the proxy and the date of the meeting;

D. an explanation of how the registered holder is to return the proxy, including any deadline for return of the proxy;

E. the page numbers of the information circular where disclosure regarding each matter or group of related matters identified in the notice in clause (i)(B) can be found;

F. a toll-free telephone number the registered holder can call to ask questions about notice-and-access;

(b) the registered holder of voting securities is sent a form of proxy for use at the meeting;

(c) the registered holder of voting securities is sent by prepaid mail, courier or the equivalent, paper copies of the documents required by paragraphs (a) and (b), and in the case of a solicitation by or on behalf of management of the reporting issuer the documents are sent at least 30 days before the date fixed for the meeting;

(d) in the case of a solicitation by or on behalf of management of the reporting issuer, at least 30 days before the date fixed for the meeting the reporting issuer files the notification required by subsection 2.2(1) of NI 54-101;

(e) public electronic access to the information circular, form of proxy and the documents in paragraph (a) is provided on or before the day that the person or company soliciting proxies sends the documents in paragraphs (a), in the following manner:

(i) the documents are filed on SEDAR as required by section 9.3;

(ii) the documents are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to which the documents relate, at a website address other than the address for SEDAR;

(f) a toll-free telephone number is provided for use by the registered holder of voting securities to request a paper copy of the information circular at any time from the date that the person or company soliciting proxies sends the documents in paragraph (a) to the registered holder, up to and including the date of the meeting including any adjournment;

(g) if a request is received under paragraph (f) or by any other means, a paper copy of the information circular is sent free of charge to the person or company at the address specified in the request in the following manner:

(i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent;

(ii) in the case of a request received on or after the date of the meeting, and within one year of the information circular being filed, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent.

(2) A person or company that sends proxy-related materials to a registered holder of voting securities using notice-and-access must not include with the proxy-related material any documents other than the documents set out in paragraphs (1)(a) or (b) unless an information circular also is included.

**9.1.2 Notice in advance of first use of notice-and-access** – Management of a reporting issuer that uses notice-and-access to send proxy-related material to a registered holder of voting securities must do the following not more than six months and not less than three months before the expected date of the first meeting for which proxy-related materials will be sent by notice-and-access:

(a) post on a website that is not SEDAR a document in plain language that explains notice-and-access;

(b) issue a news release stating that the reporting issuer intends to use notice-and-access to deliver proxy-related materials and providing the website address where the document in paragraph (a) is posted.

**9.1.3 Posting materials on non-SEDAR website** – (1) A person or company that posts proxy-related materials in the manner referred to in subparagraph 9.1.1(1)(e)(ii) must also post on the website the following documents:

(a) any other disclosure material regarding the meeting that the person or company has sent to registered holders or beneficial owners of voting securities;

(b) any written communications the person or company soliciting proxies has made available to the public regarding the meeting, whether sent to registered holders or beneficial owners of voting securities or not.

(2) Proxy-related materials that are posted under subparagraph 9.1.1(1)(e)(ii) must be posted in a manner and be in a format that permits an individual with a reasonable level of computer skill and knowledge to do all of the following conveniently:

(a) access, read and search the documents on the website;

(b) download and print the documents.

**9.1.4 Consent to other delivery methods** – Nothing in section 9.1.1 shall be interpreted as

(a) restricting a registered holder of voting securities from consenting to a reporting issuer's use of other delivery methods to send proxy-related materials;

(b) terminating or a modifying a consent that a registered holder of voting securities previously gave to reporting issuer regarding a reporting issuer's use of other delivery methods to send proxy-related materials; or

(c) preventing a reporting issuer from sending proxy-related materials using a delivery method to which a registered holder has previously consented.

**9.1.5 Instructions to receive paper copies** – (1) Despite section 9.1.1, a reporting issuer may obtain standing instructions from a registered holder of voting securities that a paper copy of the information circular be sent to the registered holder in all cases where the reporting issuer uses notice-and-access.

(2) Where a reporting issuer has obtained standing instructions from registered holder under subsection (1), the reporting issuer must do all of the following:

(a) include any paper copies of information circulars required to comply with standing instructions obtained under subsection (1) with the documents required by paragraphs 9.1.1(1)(a) and (b);

(b) provide a mechanism for the registered holder to revoke the registered holder's standing instructions.

(3) Where a reporting issuer has received a request for a paper copy of the information circular from a registered holder under paragraph 4.6(1)(a), the reporting issuer must include a paper copy of the information circular with the documents required by paragraphs 9.1.1(1)(a) and (b).

**9.1.6 Compliance with SEC Rules –** Section 9.1 does not apply to a reporting issuer that is an SEC issuer if it satisfies both of the following:

(a) the SEC issuer is subject to, and complies with requirements under Rule 14a-16 under the 1934 Act;

(b) residents of Canada do not own, directly or indirectly, outstanding voting securities carrying more than 50 per cent of the votes for the election of directors, and none of the following is true:

(i) the majority of the executive officers or directors of the issuer are residents of Canada;

(ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada;

(iii) the business of the issuer is administered principally in Canada.

***5. Form 51-102F5 – Information Circular is amended by adding the following after item 4.2:***

*4.3* The information circular must state the following information if applicable:

(a) that the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification is being used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(b) that the reporting issuer is sending proxy-related materials directly to non-objecting beneficial owners under NI 54-101;

(c) that management of the reporting issuer has decided not to pay for intermediaries to forward to objecting beneficial owners under NI 54-101 the proxy-related materials and Form 54-101F7 – Request for Voting Instructions Made by Intermediary, and that it is the responsibility of objecting beneficial owners to contact their intermediaries to make any necessary arrangements to exercise voting rights attached to securities they beneficially own.

***6.* This Instrument is effective on [*].**

**BLACKLINE OF REVISIONS TO**
**PROPOSED AMENDMENT INSTRUMENT TO**
**NATIONAL INSTRUMENT 51-102**
**CONTINUOUS DISCLOSURE OBLIGATIONS**

***1. This Instrument amends National Instrument 51-102 Continuous Disclosure Obligations.***

***2. Section 1.1 of National Instrument 51-102 is amended by***

***(a) adding the following definition after "***common share***":***

"corporate law" has the same meaning as in section 1.1 of NI 54-101;

***(b) adding the following definition after "***non-voting security***":***

"notice-and-access" ~~means the delivery procedures referred to~~has the same meaning as in section ~~9.1.1;~~1.1 of NI 54-101;

***(~~b~~c) adding the following definition after "***proxy***":***

"proxy-related materials" means securityholder materials relating to a meeting that the reporting issuer is required ~~by the laws under which the reporting issuer is organized, incorporated or continued, or by~~under corporate law or securities legislation~~,~~ to send to the registered holders of the securities~~.~~;

***(~~c~~d) adding the following definitions after "***solicit***":***

"special meeting" ~~means a meeting at which a special resolution is being submitted to the securityholders of a reporting issuer~~has the same meaning as in section 1.1 of NI 54-101;

~~"special resolution" for a meeting,~~

"special resolution" has the same meaning as in section 1.1 of NI 54-101;

~~(a) has the same meaning given to the term "special resolution" under the laws under which the reporting issuer is incorporated, organized or continued; or~~

~~(b) if no such term exists under the laws under which the reporting issuer is incorporated, organized or continued, means a resolution that is required to be passed by at least two thirds of the votes cast;~~

"stratification" has the same meaning as in section 1.1 of NI 54-101;

***~~The following is added after subsection 9.1(2)~~Subsection 4.6 of National Instrument 51-102 is amended by***

***(a) repealing and replacing subsection (1) with the following:***

**4.6 Delivery of Financial Statements** – (1) Subject to subsection (2), a reporting issuer must send an annual request form to the registered holders and beneficial owners of its securities, other than debt instruments, that the registered holders and beneficial owners may use to request one or both of the following:

(a) a copy of the reporting issuer's annual financial statements and MD&A for the annual financial statements and, where the reporting issuer uses notice-and-access to send proxy-related materials, a paper copy of the information circular;

(b) a copy of the reporting issuer's interim financial reports and MD&A for the interim financial reports.

***(b) inserting "***using the request form in subsection (1)***" after "***requests the reporting issuer's annual financial statements or interim financial reports***" in subsection (3);***

~~(3) A person or company soliciting proxies may send proxy-related materials using any one or a combination of the following methods:~~

***(c) replacing "***two years***" in subsection (4) with "***one year***".***

~~(a) paper copies sent by prepaid mail, courier or the equivalent;~~

~~(b) notice-and-access, but only for a meeting that is not a special meeting;~~

~~(c) any delivery method to which the registered holder of voting securities consents.~~

***4. The following is added after section 9.1 of National Instrument 51-102 Continuous Disclosure Obligations:***

**9.1.1 Notice-and-Access –** (1) ~~For a meeting that is not a special meeting, a~~A person or company soliciting proxies may send proxy-related materials to a registered holder of voting securities by notice-and-access that complies with all of the following:

(a) the registered holder of voting securities is sent the following:

(i) a ~~document~~notice containing all of the following information, and no other information:

~~(i)~~A. the date, time and location of the reporting issuer's meeting;

~~(ii) a summary of the items~~B. a factual description of each matter or group of related matters identified in the form of proxy to be voted on;

~~(iii) an explanation of how to electronically access the information circular and other proxy-related materials, including a~~C. the website address other than the address for SEDAR, where the proxy-related materials are located;

~~(iv)~~D. a reminder to review the information circular before voting;

~~(v)~~E. an explanation of how to obtain a paper copy of the information circular from the person or company;

(~~vi~~)ii) a document in plain language that explains notice-and-access and includes the following information:

A. why the person or company is using notice-and-access;

B. if the person or company is using stratification, which registered holders or beneficial owners are receiving paper copies of the information circular;

C. the date and time by which a request for a paper copy of the information circular should be received in order for the requester to receive the paper copy in advance of any deadline for the submission of the proxy and the date of the meeting;

D. an explanation of how the registered holder is to ~~execute and return the form of proxy sent under paragraph (b)~~return the proxy, including any deadline for return of ~~proxies~~the proxy;

E. the page numbers of the information circular where disclosure regarding each matter or group of related matters identified in the notice in clause (i)(B) can be found;

F. a toll-free telephone number the registered holder can call to ask questions about notice-and-access;

(b) the registered holder of voting securities is sent a form of proxy for use at the meeting;

(c) the registered holder of voting securities is sent by prepaid mail, courier or the equivalent, paper copies of the documents required by paragraphs (a) and (b), ~~or is sent the documents by any other method previously consented to by the registered holder,~~ and in the case of a solicitation by or on behalf of management of the reporting issuer the documents are sent at least 30 days before the date fixed for the meeting;

(d) in the case of a solicitation by or on behalf of management of the reporting issuer, ~~a news release is issued~~ at least 30 days before the date fixed for the meeting ~~containing the following:~~

~~(i) the information set out in paragraph (a);(ii) if management of~~ the reporting issuer ~~is using notice-and-access only in respect of some registered holders, an explanation of its decision;~~files the notification required by subsection 2.2(1) of NI 54-101;

(e) public electronic access to the information circular, form of proxy and ~~other proxy-related materials~~the documents in paragraph (a) is provided on or before the ~~same~~ day ~~as~~that the person or company soliciting proxies sends the documents in paragraphs (a) ~~and (b)~~, in the following manner:

(i) the ~~proxy-related materials~~documents are filed on SEDAR as required by section 9.3;

(ii) the ~~proxy-related materials~~documents are posted, for a period ending no earlier than the date of the first annual meeting following the meeting to which the ~~material relates~~documents relate, at a website address other than the address for SEDAR;

(f) a toll-free telephone number is provided for use by the registered holder of voting securities to request a paper copy of the information circular at any time from the date that the person or company soliciting proxies sends the documents in ~~paragraphs~~paragraph (a~~) and (b~~) to the registered holder, up to and including the date of the meeting including any adjournment;

(g) if a request is received under paragraph (f) or by any other means, a paper copy of the information circular is sent ~~by prepaid mail, courier or the equivalent~~free of charge to the person or company at the address specified in the request~~, free of charge to the person or company to whom the paper copy of the information circular is sent, no later than~~ in the following manner:

(i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent;

(ii) in the case of a request received on or after the date of the meeting, and within one year of the information circular being filed, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent.

(2) A person or company that sends proxy-related materials to a registered holder of voting securities using notice-and-access must not include with the proxy-related material any documents other than the documents set out in paragraphs (1)(a) or (b) unless an information circular also is included.

**9.1.2 Notice in advance of first use of notice-and-access** – Management of a reporting issuer that uses notice-and-access to send proxy-related material to a registered holder of voting securities must do the following not more than six months and not less than three months before the expected date of the first meeting for which proxy-related materials will be sent by notice-and-access:

(a) post on a website that is not SEDAR a document in plain language that explains notice-and-access;

(2) A person or company soliciting proxiesb) issue a news release stating that the reporting issuer intends to use notice-and-access to deliver proxy-related materials and providing the website address where the document in paragraph (a) is posted.

**9.1.3 Posting materials on non-SEDAR website** – (1) A person or company that posts proxy-related materials in the manner referred to in subparagraph 9.1.1(1)(e)(ii) must also post on the website the following documents:

(a) any other disclosure material regarding the meeting that the person or company has sent to registered holders or beneficial owners of voting securities;

(b) any written communications the person or company soliciting proxies has made available to the public regarding the meeting, whether sent to registered holders or beneficial owners of voting securities or not.

(32) Proxy-related materials that are posted under subparagraph 9.1.1(1)(e)(ii) must be posted in a manner and be in a format that permits a person or companyan individual with a reasonable level of computer skill and knowledge to do all of the following conveniently:

(a) access, read and search the documents on the website;

(b) download and print the documents.

(4) An information circular posted under subparagraph (1)(e)(ii) must contain the same information as the information circular filed on SEDAR.

(5) Management of a reporting issuer that sends an information circular and form of proxy to a registered holder of voting securities using notice-and-access and sends paper copies of the information circular and form of proxy to other registered holders of voting securities by prepaid mail, courier or the equivalent must send the paper copies to those other registered holders on the same day as they send the proxy-related materials under paragraph (1)(c).

(6) Despite anything in this section or the previous section, a registered holder of voting securities may consent to the use of**9.1.4 Consent to other delivery methods** to send proxy-related materials.– Nothing in this section 9.1.1 shall be interpreted as

(a) restricting a registered holder of voting securities from consenting to use by a person or company soliciting proxiesa reporting issuer's use of other delivery methods to send proxy-related materials.;

(b) terminating or a modifying a consent that a registered holder of voting securities previously gave to reporting issuer regarding a reporting issuer's use of other delivery methods to send proxy-related materials; or

(c) preventing a reporting issuer from sending proxy-related materials using a delivery method to which a registered holder has previously consented.

**9.1.5 Instructions to receive paper copies** – (1) Despite section 9.1.1, a reporting issuer may obtain standing instructions from a registered holder of voting securities that a paper copy of the information circular be sent to the registered holder in all cases where the reporting issuer uses notice-and-access.

(2) Where a reporting issuer has obtained standing instructions from registered holder under subsection (1), the reporting issuer must do all of the following:

(a) include any paper copies of information circulars required to comply with standing instructions obtained under subsection (1) with the documents required by paragraphs 9.1.1(1)(a) and (b);

(b) provide a mechanism for the registered holder to revoke the registered holder's standing instructions.

(3) Where a reporting issuer has received a request for a paper copy of the information circular from a registered holder under paragraph 4.6(1)(a), the reporting issuer must include a paper copy of the information circular with the documents required by paragraphs 9.1.1(1)(a) and (b).

~~9.1.2~~9.1.6 **Compliance with SEC Rules –** Section 9.1 does not apply to a reporting issuer that is an SEC issuer if it ~~uses the procedures in~~satisfies both of the following:

(a) the SEC issuer is subject to, and complies with requirements under Rule 14a-16 under the 1934 Act ~~to deliver proxy-related materials to a registered holder of voting securities~~;

(b) residents of Canada do not own, directly or indirectly, outstanding voting securities carrying more than 50 per cent of the votes for the election of directors, and none of the following is true:

(i) the majority of the executive officers or directors of the issuer are residents of Canada;

(ii) more than 50 per cent of the consolidated assets of the issuer are located in Canada;

(iii) the business of the issuer is administered principally in Canada.

***5. Form 51-102F5 – Information Circular is amended by adding the following after item 4.2:***

*4.3* ~~I~~fThe information circular must state the following information if applicable:

(a) that the reporting issuer is sending proxy-related materials to registered holders or beneficial owners using notice-and-access, and if stratification is being used, the types of registered holders or beneficial owners who will receive paper copies of the information circular;

(b) that the reporting issuer is sending proxy-related materials directly to non-objecting beneficial owners under NI 54-101;

(c) that management of the reporting issuer has decided not to pay for intermediaries to forward to objecting beneficial owners under NI 54-101 the proxy-related materials and Form 54-101F7 – Request for Voting Instructions Made by Intermediary, ~~the information circular must state this fact. The information circular must also state~~and that it is the responsibility of objecting beneficial owners to contact their intermediaries to make any necessary arrangements to exercise voting rights attached to securities they beneficially own.

~~*4.4* If management of the reporting issuer has determined to use notice-and-access only in respect of certain registered holders or beneficial owners, disclose this fact and provide an explanation of this decision.~~

***6.* This Instrument is effective on [*].**

**SCHEDULE E**
**REVISED PROPOSED CHANGES TO 51-102CP**

**The following are proposed changes to Companion Policy 51-102CP to National Instrument 51-102 *Continuous Disclosure Obligations.***

***1. Proposed changes to section 3.5***

**3.5 Delivery of Financial Statements and Paper Copies of Information Circulars**

Section 4.6 of the Instrument requires reporting issuers to send a request form to the registered holders and beneficial owners of their securities. The registered holders and beneficial owners may use the request form to request a copy of the reporting issuer's annual financial statements and related MD&A, an interim financial report and related MD&A, or both. In addition, instructions to receive the annual financial statements and related MD&A also constitute instructions to include a paper copy of the information circular where the reporting issuer uses notice-and-access.

~~MD&A, or both.~~ Reporting issuers are only required to deliver financial statements and MD&A to the person or company that requests them. As a result, if a beneficial owner requests financial statements and MD&A through its intermediary, the issuer is only required to deliver the requested documents to the intermediary.

Failing to return the request form or otherwise specifically request a copy of the financial statements or MD&A from the reporting issuer will override the beneficial owner's standing instructions under NI 54-101 in respect of the financial statements. However, failing to return the request form will not override any beneficial owner standing instructions under NI 54-101 to receive a paper copy of the information circular if the reporting issuer is using notice-and-access to deliver proxy-related materials.

The Instrument does not prescribe when the request form must be sent, or how it must be returned to the reporting issuer.

***2. Proposed changes to Part 10 Electronic Delivery of Documents***

**PART 10 ELECTRONIC DELIVERY OF DOCUMENTS**

**10.1 Electronic Delivery of Documents**

~~Any~~Generally, any documents required to be sent under the Instrument may be sent by electronic delivery, as long as such delivery is ~~made in compliance with Québec Notice 11-201 *Relating to the Delivery of Documents by Electronic Means*, in Québec, and National Policy 11-201 *Delivery of Documents by Electronic Means*, in the rest of Canada,~~consistent with the guidance in National Policy 11-201 *Electronic Delivery of Documents*. However, if a reporting issuer is using notice-and-access to deliver proxy-related materials, it should refer to the specific guidance in section 10.3 of the Policy.

**10.2 Delivery of Proxy-Related Materials**

(1) This section provides guidance on delivery of proxy-related materials. Reporting issuers should also review any other applicable legislation, such as corporate legislation.

(2) Paper copies of proxy-related materials must be sent using prepaid mail, courier or an equivalent delivery method. An equivalent delivery method is any delivery method where the registered holder receives paper copies in a similar time frame as prepaid mail or courier. For example, a reporting issuer that sponsors an employee share purchase plan could arrange for the proximate intermediary to deliver proxy-related materials to registered holder employees through the reporting issuer's internal mail system.

**10.3 Notice-and-access**

(1) The Instrument permits a reporting issuer to use notice-and-access to send proxy-related materials to registered holders.

Prior to using notice-and-access for the first time, a reporting issuer must provide advance notice as specified in section 9.1.2 of the Instrument. We also encourage issuers to consider what additional methods of advance notice are appropriate. For example, an issuer could consider a special purpose mailing to its retail registered holders in advance of the first meeting for which notice-and-access is used.

(2) Subparagraph 9.1.1(1)(a)(i) of the Instrument requires the registered holder to be sent a notice containing required information about the meeting. With respect to matters to be voted on at the meeting, the notice must only contain a factual description of each matter or group of related matters identified in the form of proxy. We expect that reporting issuers who use notice-and-access will state each matter or group of related matters in the proxy in a reasonably clear and user-friendly manner. For example, it would not be appropriate to identify the matter to be voted on solely by referring to disclosure contained in the information circular, e.g., "To vote For or Against the resolution in Schedule A of management's information circular".

Subparagraph 9.1.1(1)(a)(ii) of the Instrument requires the registered holder be sent a plain language document that explains notice-and-access. This document can also be used to explain other aspects of the proxy voting process to registered holders. However, this document should not contain any substantive discussion of the matters to be considered at the meeting.

(3) Paragraph 9.1.1(1)(b) of the Instrument requires the registered holder to be sent as part of the notice package the form of proxy.

(4) Paragraph 9.1.1(1)(c) of the Instrument requires that the registered holder of voting securities be sent the notice package by prepaid mail, courier or the equivalent. In the case of a solicitation by reporting issuer management, the notice package must be sent at least 30 days before the date fixed for the meeting.

(5) Paragraph 9.1.1(1)(d) of the Instrument requires the reporting issuer to file the notification of meeting and record dates required by subsection 2.2(1) of NI 54-101 at least 30 days before the date fixed for the meeting. This is intended to broadly communicate to the reporting issuer's registered holders that the reporting issuer is using notice-and-access.

(6) Paragraph 9.1.1(1)(e) of the Instrument requires the information circular and other proxy-related materials to be filed on SEDAR and posted on a website other than SEDAR. The non-SEDAR website can be the website of the person or company soliciting proxies (e.g., the reporting issuer's website) or the website of a service provider.

(7) Paragraph 9.1.1(1)(f) of the Instrument requires the person or company soliciting proxies to establish a toll-free telephone number for the registered holder to request a paper copy of the information circular. A person or company soliciting proxies may choose to, but is not required to, provide additional methods for requesting a paper copy of the information circular. If a person or company soliciting proxies does so, it must still comply with the fulfillment timelines in paragraph 9.1.1(1)(g) of the Instrument.

(8) Subsection 9.1.3(2) of the Instrument is intended to allow registered holders to access the posted proxy-related materials in a user-friendly manner. For example, requiring the registered holder to navigate through several web pages to access the proxy-related materials would not be user-friendly. Providing the registered holder with the specific URL where the documents are posted would be more user-friendly. We encourage reporting issuers and their service providers to develop best practices in this regard.

(9) Where a reporting issuer uses notice-and-access, it generally must send the same basic notice package to all registered holders. However, the following are exceptions to this general principle:

- Section 9.1.4 of the Instrument provides that where a reporting issuer uses notice-and-access, a registered holder still can be sent proxy-related materials using an alternate method to which the registered holder has previously consented. For example, service providers acting on behalf of reporting issuers may have previously obtained (and continue to obtain) consents from shareholders for proxy-related materials to be sent by email. This delivery method would still be available.

- Section 9.1.5 of the Instrument permits a reporting issuer to obtain standing instructions from a registered holder to be sent a paper copy of the information circular in all cases where the reporting issuer uses notice-and-access. Where such standing instructions have been obtained, the notice package for the registered holder will contain a paper copy of the information circular.

- Section 4.6 of the Instrument establishes an annual request form mechanism for shareholders to request copies of a reporting issuer's annual financial statements and annual MD&A for the following year. A request for annual financial statements and annual MD&A will also constitute a request that the notice package for the registered holder contain a paper copy of the information circular.

The addition of a paper information circular to the notice package sent to some registered holders is referred to as "stratification" and is a term defined in section 1.1 of the Instrument.

We do not mandate the use of stratification, other than to the extent it is necessary to comply with standing instructions or annual requests for paper copies of information circulars that reporting issuers or intermediaries have chosen to obtain from registered holders or beneficial owners. We expect that any additional stratification criteria will develop and evolve through market demand and practice. However, we expect that a reporting issuer that uses stratification for purposes other than complying with shareholder instructions does so in order to enhance effective communication, and not to disenfranchise shareholders. We require reporting issuers to disclose whether they are using stratification, and what criteria they are applying to determine which shareholders will receive a copy of the information circular.

## ANNEX I
## LOCAL INFORMATION

### ADDITIONAL NOTICE REQUIREMENTS IN ONTARIO

In Ontario, the following provisions of the *Securities Act* (Ontario) (the **Ontario Act**) provide the Ontario Securities Commission (the **Ontario Commission**) with authority to adopt the revised proposed amendment instruments in respect of NI 54-101 and NI 51-102:

- Paragraph 143(26) of the Ontario Act authorizes the Ontario Commission to make rules prescribing the requirements for the validity and solicitation of proxies, prescribing activities for the purposes of clause (g) of the definition of "solicit" and "solicitation" in section 84 and prescribing circumstances for the purpose of clause 86(2)(a.1).

- Paragraph 143(27) of the Ontario Act authorizes the Ontario Commission to make rules providing for the application of Part XVIII (Continuous Disclosure) and Part XIX (Proxies and Proxy Solicitation) in respect of registered holders or beneficial owners of voting securities or equity securities of reporting issuers or other persons or companies on behalf of whom the securities are held, including requirements for reporting issuers, recognized clearing agencies, registered holders, registrants and other persons or companies who hold securities on behalf of persons or companies but who are not the registered holders.

- Paragraph 143(39) of the Ontario Act authorizes the Ontario Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by this Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents, including proxies and information circulars.

- Paragraph 143(45) of the Ontario Act authorizes the Ontario Commission to make rules establishing requirements for and procedures in respect of the use of an electronic or computer-based system for the filing, delivery or deposit of documents or information.

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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 |
|---|---|---|---|---|
| 05/19/2011 | 66 | 7678576 Canada Inc. - Receipts | 4,356,000.00 | 17,424,000.00 |
| 05/26/2011 | 32 | Admiral Inn Development Limited Partnership - Units | 675,000.00 | 135.00 |
| 05/10/2011 to 05/13/2011 | 2 | Advantex Marketing International Inc. - Units | 1,800,000.00 | 1,800.00 |
| 05/06/2011 | 10 | Ambit Energy Corporation - Units | 1,036,600.00 | 518,300.00 |
| 05/20/2011 | 3 | Applewood II Hotel Holdings Inc. & Combo Construction Limited - Units | 1,635,926.00 | 1,635,926.00 |
| 05/25/2011 | 37 | ARIUS3D Corp. - Units | 1,194,634.08 | 9,955,284.00 |
| 04/05/2011 | 29 | Arrow Lakes Power Corporation - Bonds | 350,000,000.00 | 4.00 |
| 06/03/2011 | 1 | BAC Canada Finance Company - Note | 5,050,000.00 | 1.00 |
| 04/15/2011 to 04/18/2011 | 3 | Balmoral Resources Ltd. - Flow-Through Shares | 3,000,404.00 | 1,435,600.00 |
| 06/01/2011 | 1 | Bank of Montreal - Note | 1,942,800.00 | 1.00 |
| 06/01/2011 | 4 | Barrick Gold Corporation - Notes | 399,749,575.93 | N/A |
| 05/11/2011 | 152 | Brilliant Mining Corp. - Units | 11,187,167.24 | 41,433,946.00 |
| 02/28/2011 | 62 | Carlisle Goldfields Limited - Common Shares | 1,521,000.00 | 6,084,000.00 |
| 05/30/2011 | 5 | Carmax Mining Corp. - Units | 265,000.00 | 1,325,000.00 |
| 03/31/2011 | 77 | Centurion Apartment Real Estate Investment Trust (Amended) - Units | 2,270,728.59 | 225,854.59 |
| 01/26/2011 | 6 | Centurion Minerals Ltd. - Common Shares | 1,736,800.00 | 1,120,515.00 |
| 05/18/2011 | 13 | Century Iron Mines Corporation - Common Shares | 6,051,104.00 | 2,075,221.00 |
| 05/18/2011 | 1 | Century Iron Mines Corporation - Common Shares | 60,877,670.58 | 23,197,768.00 |
| 05/27/2011 | 1 | CHY Fund - Trust Units | 13,645,392.69 | 1,462,999.11 |
| 04/14/2011 | 43 | Colorado Resources Ltd. - Investment Trust Interests | 14,110,500.00 | N/A |
| 04/15/2011 | 1 | Colorado Resources Ltd. - Units | 2,000,000.00 | 2,222,222.00 |
| 05/18/2011 | 11 | Commander Resources Ltd. - Units | 686,808.00 | 2,861,700.00 |
| 05/23/2011 | 10 | Concho Resources Inc. - Notes | 6,814,500.00 | N/A |
| 05/27/2011 | 10 | Conway Resources Inc. - Units | 128,000.00 | 1,828,571.43 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 04/12/2011 to 04/14/2011 | 12 | Corazon Gold Corp. - Common Shares | 8,022,580.00 | 11,974,000.00 |
| 05/27/2011 | 1 | Credit Suisse AG - Note | 9,800,000.00 | 1.00 |
| 05/23/2011 | 3 | Cricket Communications, Inc. - Note | 4,838,138.58 | N/A |
| 05/25/2011 | 2 | CSX Corporation - Notes | 1,950,180.40 | 2.00 |
| 12/10/2010 | 53 | Doctor's Research Group, Inc. - Units | 7,769,812.00 | 163,818.00 |
| 05/20/2011 | 11 | Dynamic Systems Holdings Inc. - Common Shares | 345,000.00 | 670,000.00 |
| 01/17/2011 | 1 | Dynamic Systems Holdings Inc. - Note | 10,000.00 | 1.00 |
| 01/31/2011 to 02/08/2011 | 3 | Dynamic Systems Holdings Inc. - Notes | 25,000.00 | 4.00 |
| 05/25/2011 | 2 | Dynamic Systems Holdings Inc. - Notes | 20,000.00 | 2.00 |
| 04/29/2011 | 1 | Dynamic Systems Holdings Inc. - Note | 20,000.00 | 1.00 |
| 05/16/2011 | 5 | East Coast Energy Inc. - Units | 100,000.00 | 666,666.00 |
| 03/28/2011 | 72 | El Nino Ventures Inc. - Common Shares | 1,988,859.63 | 26,483,709.00 |
| 05/19/2011 | 1 | Eldorado Resorts LLC and Eldorado Capital Corp. - Notes | 14,551,500.00 | 15,000.00 |
| 11/12/2010 | 10 | Everton Resources Inc. - Investment Trust Interests | 220,000.00 | 880,000.00 |
| 05/18/2011 | 1 | First Leaside Global Limited Partnership - Units | 55,606.00 | 56,310.00 |
| 05/26/2011 | 2 | First Leaside Venture Limited Partnership - Units | 20,000.00 | 20,000.00 |
| 05/27/2011 | 51 | First Star Resources Inc. - Units | 901,200.00 | 6,008,000.00 |
| 05/12/2011 | 42 | Focus Metals Inc. - Units | 20,000,000.00 | 20,000.00 |
| 05/31/2011 | 18 | Forent Energy Ltd. - Flow-Through Shares | 2,251,000.08 | 8,900,840.00 |
| 05/13/2011 | 1 | Foundation Group Capital Trust - Units | 203,172.00 | 16,931.00 |
| 05/24/2011 | 4 | Glencore International plc - Common Shares | 33,480,000.00 | 4,000,000.00 |
| 11/22/2009 | 153 | GMP Capital Inc. - Common Shares | 87,114,671.27 | 8,875,697.00 |
| 05/30/2011 | 33 | Gold World Resources Inc. - Units | 1,393,650.00 | 8,360,714.00 |
| 06/01/2011 | 13 | GoldTrain Resources Inc. - Common Shares | 118,000.05 | 2,360,001.00 |
| 04/20/2011 | 13 | Grand River Ironsands Incorporated - Flow-Through Shares | 641,941.00 | N/A |
| 02/15/2011 | 22 | Guerrero Exploration Inc. - Common Shares | 500,000.00 | 2,500,000.00 |
| 05/13/2011 | 16 | Guinea Iron Ore Limited - Common Shares | 416,600.00 | 1,388,667.00 |
| 05/31/2011 | 9 | HRG Healthcare Resource Group Inc. - Common Shares | 301,500.00 | 402,000.00 |

| Transaction Date | | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|---|
| 05/24/2011 05/27/2011 | to | 83 | IGW Real Estate Retail Investment Trust - Units | 2,438,639.46 | N/A |
| 05/19/2010 | | 13 | International Lithium Corp. - Units | 3,935,875.00 | 19,243,500.00 |
| 05/31/2011 | | 3 | InvestPlus Opportunity Fund IV Limited Partnership - Limited Partnership Units | 170,000.00 | 34.00 |
| 05/25/2011 06/02/2011 | to | 43 | Ironone Inc. - Units | 4,675,000.00 | 20,820,000.00 |
| 05/13/2011 | | 7 | Iskander Energy Corp. - Special Warrants | 2,195,250.00 | 2,927,000.00 |
| 05/30/2011 | | 4 | Iskander Energy Corp. - Special Warrants | 99,900.00 | 133,200.00 |
| 05/19/2011 | | 1 | J.P. Morgan Structured Products B.V. - Notes | 47,653.13 | 50.00 |
| 05/13/2011 05/20/2011 | to | 11 | J.P. Morgan Structured Products B.V. - Notes | 3,350,000.00 | 3,350.00 |
| 11/17/2010 11/24/2010 | to | 18 | Key Gold Holdings Inc. - Common Shares | 354,998.50 | 2,839,988.00 |
| 05/02/2011 | | 5 | La Quinta Resources Corporation - Units | 108,000.00 | 1,350,000.00 |
| 05/20/2011 | | 14 | Lachlan Star Limited - Common Shares | 2,474,406.69 | 170,552,287.00 |
| 05/11/2011 | | 2 | Lam Research Corporation - Notes | 4,311,900.00 | 2.00 |
| 05/26/2011 | | 1 | Lateegra Gold Corp. - Common Shares | 165,000.00 | 500,000.00 |
| 12/24/2010 01/17/2011 | to | 66 | Leeward Capital Corp. - Flow-Through Units | 1,630,000.00 | 0.00 |
| 05/13/2011 | | 74 | Liquid Nutrition Group Inc. - Common Shares | 2,687,500.00 | 2,687,500.00 |
| 05/11/2011 | | 11 | Lomiko Metals Inc. - Common Shares | 232,000.00 | 2,900,000.00 |
| 05/11/2011 05/12/2011 | to | 9 | Magellan Fuel Solutions Inc. - Common Shares | 209,285.75 | 837,143.00 |
| 12/31/2010 | | 17 | Magellan Resources Ltd. - Common Shares | 3,301,900.00 | 5,388,722.00 |
| 05/27/2011 | | 6 | Magor Communications Corp. - Debentures | 434,575.00 | N/A |
| 05/25/2011 05/27/2011 | to | 13 | Member-Partners Solar Energy Limited Partnership - Units | 579,000.00 | 579,000.00 |
| 05/04/2011 | | 2 | Micromem Technologies Inc. - Common Shares | 510,000.00 | 5,100,000.00 |
| 05/30/2011 | | 1 | Micromem Technologies Inc. - Units | 94,800.00 | 790,000.00 |
| 11/30/2010 | | 32 | Mitomics Inc. - Notes | 1,701,000.00 | 32.00 |
| 05/20/2011 | | 3 | MMS Investments Inc. - Units | 2,460,000.00 | 2,460,000.00 |
| 05/25/2011 | | 3 | MOVE Trust - Notes | 6,079,339.37 | 3.00 |
| 05/05/2011 | | 3 | Newmac Resources Inc. - Units | 720,000.00 | 9,000,000.00 |
| 10/15/2010 | | 25 | North American Gem Inc. - Flow-Through Units | 286,000.00 | 3,623,825.00 |
| 09/20/2010 | | 49 | North American Gem Inc. - Flow-Through Units | 792,086.00 | 9,901,078.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 05/24/2011 | 97 | North American Nickel Inc. - Flow-Through Shares | 3,200,002.00 | 5,645,463.00 |
| 04/29/2011 | 30 | Northern Lion Gold Corp. - Units | 2,701,350.00 | 6,003,000.00 |
| 05/26/2011 | 3 | OGX Petroleo e Gas Participacoes S.A. - Notes | 39,726,450.00 | 3.00 |
| 05/23/2011 | 7 | ONCAP III (Canada) LP - Limited Partnership Interest | 77,500,000.00 | N/A |
| 05/24/2011 | 3 | Open EC Technologies, Inc. - Units | 344,000.00 | 4,300,000.00 |
| 05/24/2011 | 33 | Pathocept Corporation - Common Shares | 1,418,601.60 | 1,313,520.00 |
| 05/27/2011 | 1 | Peat Resources Limited - Units | 60,000.00 | 300,000.00 |
| 03/04/2011 | 29 | Pennant Energy Inc. - Flow-Through Shares | 841,999.95 | 4,006,666.00 |
| 12/22/2010 | 31 | Perfco International Energy Inc. - Units | 1,525,000.00 | 2,010,000.00 |
| 01/07/2011 | 7 | Perfco International Energy Inc. - Units | 305,000.00 | 405,000.00 |
| 02/02/2011 | 4 | Perfco International Energy Inc. - Units | 1,966,000.00 | 1,966,000.00 |
| 05/24/2011 | 48 | Petro Viking Energy Inc. - Units | 922,999.85 | N/A |
| 05/13/2011 | 1 | Platinex Inc. - Common Shares | 115,000.00 | 1,045,454.00 |
| 05/26/2011 to 06/01/2011 | 13 | Portex Minerals Inc. - Common Shares | 187,500.00 | 3,750,000.00 |
| 05/25/2011 | 4 | Profound Medical Inc. - Preferred Shares | 4,400,000.00 | 5,500,000.00 |
| 05/20/2011 | 16 | RAE-Wallace Mining Company - Units | 742,500.00 | 2,970,000.00 |
| 05/18/2011 | 1 | Rainy River Resources Ltd. - Common Shares | 309,000.00 | 50,000.00 |
| 05/31/2011 | 29 | Rencore Resources Ltd. - Units | 1,850,000.15 | 7,551,021.00 |
| 05/24/2011 to 05/27/2011 | 8 | Residences At Quadra Village Limited Partnership - Units | 446,000.00 | 446,000.00 |
| 06/02/2011 | 7 | RJK Explorations Ltd. - Units | 698,000.00 | 4,362,500.00 |
| 05/19/2011 | 12 | Rock Tech Lithium Inc. - Flow-Through Units | 3,780,020.00 | N/A |
| 05/18/2011 | 7 | Royal Bank of Canada - Notes | 1,693,614.80 | 1,740.00 |
| 05/12/2011 | 88 | Ryan Gold Corp. - Flow-Through Shares | 47,750,000.00 | N/A |
| 05/12/2011 | 52 | Ryan Gold Corp. - Units | 30,000,000.00 | 15,000,000.00 |
| 05/16/2011 | 2 | Salmon River Resources Ltd. - Common Shares | 100,000.00 | 200,000.00 |
| 05/05/2011 | 1 | Satmex Escrow, S.A. de C.V. - Note | 970,000.00 | 1.00 |
| 05/04/2011 | 3 | Semcan Inc. - Common Shares | 240,756.00 | 841,736.00 |
| 05/04/2011 to 05/05/2011 | 16 | ShaMaran Petroleum Corp. - Capital Commitment | 50,400,000.00 | 56,000,000.00 |
| 05/17/2011 | 1 | Shoal Point Energy Ltd. - Units | 45,000.00 | 100,000.00 |

| Transaction Date | No. of Purchasers | Issuer/Security | Total Purchase Price ($) | No. of Securities Distributed |
|---|---|---|---|---|
| 05/15/2011 | 92 | Skyline Apartment Real Estate Investment Trust - Units | 12,679,002.99 | 1,152,636.64 |
| 06/06/2011 | 1 | Slam Exploration Ltd. - Flow-Through Units | 150,000.00 | 1,200,000.00 |
| 12/31/2010 | 5 | Solar Income Fund LP #1 - Units | 805,000.00 | 805.00 |
| 05/12/2011 | 7 | Speedy Cash Intermediate Holdings Corp. - Notes | 19,400,000.00 | N/A |
| 05/27/2011 | 91 | Sprylogics International Corp. - Units | 2,599,436.00 | 37,140,084.00 |
| 05/20/2011 | 130 | Summerland Energy Inc. - Common Shares | 15,000,000.00 | 7,500,000.00 |
| 05/19/2011 | 8 | The Magpie Mines Inc. - Flow-Through Shares | 3,234,499.60 | 4,406,428.00 |
| 05/25/2011 | 5 | The Mosaic Company - Common Shares | 21,403,200.00 | 336,000.00 |
| 10/01/2009 | 3 | The Presbyterian Church in Canada - Units | 505,500.00 | 10,834.62 |
| 04/21/2011 | 1 | Trueclaim Exploration Inc. - Common Shares | 24,000.00 | 150,000.00 |
| 05/13/2011 to 05/16/2011 | 9 | Tumi Resources Limited - Units | 1,225,000.00 | 6,125,000.00 |
| 05/24/2011 | 1 | UBS AG, Jersey Branch - Notes | 279,151.67 | 250.00 |
| 05/18/2011 | 9 | Venerable Ventures Ltd. - Units | 105,000.00 | 420,000.00 |
| 05/25/2011 | 5 | Victory Gold Mines Inc. - Units | 142,250.00 | 113,333.00 |
| 04/29/2011 | 1 | Vinci Capital Partners II-A, L.P. - Note | 474,300.00 | 1.00 |
| 05/27/2011 | 17 | Walton MD Potomac Crossing LP - Units | 551,471.97 | 56,457.00 |
| 05/27/2011 | 9 | Walton Silver Crossing Investment Corporation - Common Shares | 237,630.00 | 23,763.00 |
| 05/27/2011 | 7 | Walton Silver Crossing LP - Units | 435,223.01 | 44,556.00 |
| 02/17/2011 | 90 | WG Limited - Common Shares | 7,880,678.40 | 14,072,640.00 |
| 11/02/2010 | 19 | Xebec Adsorption Inc. - Units | 3,796,754.40 | 9,491,886.00 |
| 05/06/2011 | 51 | Xinergy Corp. - Notes | 204,982,800.00 | 204,982.80 |
| 05/20/2011 | 16 | Xplorent Communications Inc. - Units | 230,000,000.00 | 230,000.00 |
| 05/24/2011 | 6 | Yandex N.V. - Common Shares | 6,951,757.50 | 284,500.00 |
| 05/24/2011 | 1 | Z-Gold Exploration Inc. - Common Shares | 24,000.00 | 150,000.00 |
| 05/20/2011 | 10 | Zaruma Resources Inc. - Receipts | 23,328,151.00 | 466,582,418.00 |
| 05/26/2011 | 2 | Zelos Therapeutics Inc. - Notes | 81,741.66 | 2.00 |
| 05/18/2011 | 1 | ZTEST Electronics Inc. - Warrants | 0.00 | 500,000.00 |

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## Chapter 11

# IPOs, New Issues and Secondary Financings

**Issuer Name:**
Cana Venture Capital Corp.
Principal Regulator - Alberta
**Type and Date:**
Preliminary CPC Prospectus dated June 8, 2011
NP 11-202 Receipt dated June 9, 2011
**Offering Price and Description:**
Minimum Offering: $600,000.00 or 3,000,000 Common Shares; Maximum Offering: $750,000.00 or 3,750,000 Common Shares Price: $0.20 per Common Share
**Underwriter(s) or Distributor(s):**
Intergral Wealth Securities Limited
**Promoter(s):**
Ryan Danard
**Project** #1756814

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**Issuer Name:**
Canaccord Financial Inc.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated June 9, 2011
NP 11-202 Receipt dated June 9, 2011
**Offering Price and Description:**
$100,000,000.00 - 4,000,000 Cumulative 5-Year Rate Reset First Preferred Shares, Series A Price: $25.00 per Series A Preferred Share
**Underwriter(s) or Distributor(s):**
CIBC WORLD MARKETS INC.
CANACCORD GENUITY CORP.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
GMP SECURITIES L.P.
MACQUARIE CAPITAL MARKETS CANADA LTD.
HSBC SECURITIES (CANADA) INC.
RAYMOND JAMES LTD.
WELLINGTON WEST CAPITAL MARKETS INC.
CORMARK SECURITIES INC.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
HAYWOOD SECURITIES INC.
MACKIE RESEARCH CAPITAL CORPORATION
MANULIFE SECURITIES INCORPORATED
**Promoter(s):**
-
**Project** #1757309

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**Issuer Name:**
CuOro Resources Corp.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated June 8, 2011
NP 11-202 Receipt dated June 10, 2011
**Offering Price and Description:**
$13,380,000.00 - 6,690,000 Common Shares and 3,345,000 Common Share Purchase Warrants Issuable on Exercise of 6,690,000 Outstanding Special Warrants
**Underwriter(s) or Distributor(s):**
Canaccord Genuity Corp.
Scotia Capital Inc.
**Promoter(s):**
ROBERT SEDGEMORE
**Project** #1757881

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**Issuer Name:**
Dundee International Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated June 8, 2011
NP 11-202 Receipt dated June 9, 2011
**Offering Price and Description:**
$ * - * Units and $ * - * % Convertible Unsecured Subordinated Debentures due June 30, 2018
Price: $ * per Unit and $ * per Debenture
**Underwriter(s) or Distributor(s):**
TD Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Dundee Securities Ltd.
HSBC Securities (Canada) Inc.
Brookfield Financial Corp.
GMP Securities L.P.
National Bank Financial Inc.
**Promoter(s):**
Dundee Realty Corporation
**Project** #1756925

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**Issuer Name:**
Magnum Capital Corp.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary CPC Prospectus dated June 10, 2011
NP 11-202 Receipt dated June 13, 2011
**Offering Price and Description:**
$300,000.00 - 3,000,000 COMMON SHARES Price: $0.10 per Common Share
**Underwriter(s) or Distributor(s):**
Macquarie Private Wealth Inc.
**Promoter(s):**
Daniel B. Evans
**Project** #1758110

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**Issuer Name:**
mHealth Capital Corp.
Principal Regulator - Alberta
**Type and Date:**
Preliminary CPC Prospectus dated June 8, 2011
NP 11-202 Receipt dated June 8, 2011
**Offering Price and Description:**
$500,000.00 - 5,000,000 Common Shares Price: $0.10 Per Common Share
**Underwriter(s) or Distributor(s):**
Leede Financial Markets Inc.
**Promoter(s):**
Massimiliano Brezzi
**Project** #1756577

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**Issuer Name:**
New Moon Minerals Corp.
Principal Regulator - Manitoba
**Type and Date:**
Preliminary Long Form Prospectus dated June 8, 2011
NP 11-202 Receipt dated June 9, 2011
**Offering Price and Description:**
$2,500,000.00 Offering of Units - (12,500,000 Units at a price of $0.20 per Unit)
**Underwriter(s) or Distributor(s):**
HAYWOOD SECURITIES INC.
**Promoter(s):**
Richard Rivet
Andrew Gracie
**Project** #1756866

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**Issuer Name:**
ORANGE Directional Technologies Inc.
Principal Regulator - Alberta
**Type and Date:**
Preliminary Long Form Prospectus dated June 13, 2011
NP 11-202 Receipt dated June 13, 2011
**Offering Price and Description:**
Up to $30,000,000.00 - • Common Shares - and - Distribution of 2,421,400 Common Shares issuable upon the conversion of previously issued Special Warrants Price: $ * per Common Share
**Underwriter(s) or Distributor(s):**
FirstEnergy Capital Corp.
Dundee Securities Ltd.
Haywood Securities Inc.
**Promoter(s):**
-
**Project** #1758252

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**Issuer Name:**
Retrocom Mid-Market Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated June 14, 2011
NP 11-202 Receipt dated June 14, 2011
**Offering Price and Description:**
$40,000,000.00 - 5.45% Convertible Unsecured Subordinated Debentures Price: $1,000 Per Debenture
**Underwriter(s) or Distributor(s):**
TD SECURITIES INC.
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
DESJARDINS SECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
DUNDEE SECURITIES LTD.
**Promoter(s):**
-
**Project** #1758898

---

**Issuer Name:**
Scotia Income Advantage Fund
Scotia U.S. $ Balanced Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectuses dated June 10, 2011
NP 11-202 Receipt dated June 10, 2011
**Offering Price and Description:**
Class A Units
**Underwriter(s) or Distributor(s):**
Scotia Securities Inc.
**Promoter(s):**
Scotia Asset Management L.P.
**Project** #1757643

---

**Issuer Name:**
Silver Bull Resources, Inc.
Principal Regulator - British Columbia
**Type and Date:**
Amended and Restated Preliminary MJDS Prospectus dated June 9, 2011
NP 11-202 Receipt dated June 10, 2011
**Offering Price and Description:**
US$125,000,000.00 - * Common Shares Price: US$ * per Common Share
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1710267

---

**Issuer Name:**
TD Comfort Conservative Income Portfolio
TD Global Low Volatility Fund
TD Target 300 Fund
TD Target 500 Fund
TD U.S. Monthly Income Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectuses dated June 13, 2011
NP 11-202 Receipt dated June 13, 2011
**Offering Price and Description:**
Investors Series Units, H-Series Units and O-Series Units
**Underwriter(s) or Distributor(s):**
TD Investment Services Inc.
**Promoter(s):**
TD Asset Management Inc.
**Project** #1758065

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**Issuer Name:**
TD Global Low Volatility Fund
TD Target 300 Fund
TD Target 500 Fund
TD U.S. Monthly Income Fund
Principal Regulator - Ontario
**Type and Date:**
Combined Preliminary and Pro Forma Simplified Prospectus, Annual Information Form and Fund Facts (NI 81-101) dated June 13, 2011
NP 11-202 Receipt dated June 14, 2011
**Offering Price and Description:**
Advisor Series, F-Series, T-Series and S-Series Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
TD Asset Management Inc.
**Project** #1758360

---

**Issuer Name:**
Agnico-Eagle Mines Limited
Principal Regulator - Ontario
**Type and Date:**
Final Base Shelf Prospectus dated June 14, 2011
NP 11-202 Receipt dated June 14, 2011
**Offering Price and Description:**
US$500,000,000.00:
Debt Securities
Common Shares
Warrants
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1756157

---

**Issuer Name:**
Select 80i20e Managed Portfolio Corporate Class
Select 70i30e Managed Portfolio Corporate Class
Select 60i40e Managed Portfolio Corporate Class
Select 50i50e Managed Portfolio Corporate Class
Select 40i60e Managed Portfolio Corporate Class
Select 30i70e Managed Portfolio Corporate Class
Select 20i80e Managed Portfolio Corporate Class
(Class IT8 Shares)
Principal Regulator - Ontario
**Type and Date:**
Amendment #2 dated May 9, 2011 to the Simplified Prospectuses and Annual Information Form dated July 014, 2010
NP 11-202 Receipt dated June 14, 2011
**Offering Price and Description:**
Class IT8 Shares @ Net Asset Value
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
CI Investments Inc.
**Project** #1596541

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**Issuer Name:**
Canadian Capital Auto Receivables Asset Trust II
Principal Regulator - Ontario
**Type and Date:**
Final Base Shelf Prospectus dated June 8, 2011
NP 11-202 Receipt dated June 9, 2011
**Offering Price and Description:**
Up to $4,000,000,000.00 of Auto Loan Receivables-Backed Notes
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Ally Credit Canada Limited
**Project** #1754056

---

**Issuer Name:**
Class A, Class B, Class D, Class F, Class L, Class M, Class O and Class P units of:
CRITERION GLOBAL DIVIDEND FUND
Class A and Class F units of:
CANADIAN CONVERTIBLE BOND FUND
CRITERION REIT INCOME FUND
CRITERION UTILITY PLUS FUND
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated June 10, 2011
NP 11-202 Receipt dated June 13, 2011
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1741676

---

**Issuer Name:**
Claymore Advantaged Convertible Bond ETF
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated June 7, 2011
NP 11-202 Receipt dated June 8, 2011
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Claymore Investments, Inc.
**Promoter(s):**
Claymore Investments Inc.
**Project** #1745804

---

**Issuer Name:**
Dynamic Blue Chip Balanced Fund (formerly, Dynamic Focus+ Balanced Fund)
(Series A, G, F, FT, I, O and T securities)
Dynamic Blue Chip Equity Fund (formerly, Dynamic Focus+ Equity Fund)
(Series A, G, F, I and O securities)
Dynamic Focus+ Resource Fund
(Series A, G, F, I, IP, O and OP securities)
Principal Regulator - Ontario
**Type and Date:**
Amendment #3 dated May 26, 2011 to the Simplified Prospectuses and Annual Information Form dated December 14, 2010
NP 11-202 Receipt dated June 10, 2011
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Goodman & Company, Investment Counsel Ltd.
**Promoter(s):**
Goodman & Company, Investment Counsel Ltd.
**Project** #1651947, 1669182

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**Issuer Name:**
Dynamic Blue Chip Balanced Class (formerly Dynamic Focus+ Balanced Class)
(Series A, F, I, O and T shares)
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated May 26, 2011 to the Simplified Prospectus and Annual Information Form dated March 21, 2011
NP 11-202 Receipt dated June 10, 2011
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
Goodman & Company, Investment Counsel Ltd.
**Promoter(s):**
Goodman & Company, Investment Counsel Ltd.
**Project** #1689508

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**Issuer Name:**
Fortis Inc.
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated June 8, 2011
NP 11-202 Receipt dated June 8, 2011
**Offering Price and Description:**
$300,300,000.00 - 9,100,000 COMMON SHARES Price: $33.00 per Common Share
**Underwriter(s) or Distributor(s):**
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
BEACON SECURITIES LIMITED
**Promoter(s):**
-
**Project** #1754038

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**Issuer Name:**
Trimark Global Balanced Class
(Series A, F, H, T4, T6, T8, FH, P, PF and PH Shares)
Trimark Canadian First Class
(Series A, F, I, T4, T6 and T8 Shares)
Trimark U.S. Companies Class
(Series A, F, H, FH, P, PF and PH Shares)
Trimark Global Endeavour Class
(Series A, F, H, P and PF Shares)
Trimark Select Growth Class
(Series A, F, H, I, T4, T6, T8, FH, P, PF and PH Shares)
Trimark Global Health Sciences Class
(Series A and F Shares)
Invesco International Growth Class
(Series A, F, I, P and PF Shares)
Invesco Core Global Equity Class
(Series A, F and I Shares)
Principal Regulator - Ontario
**Type and Date:**
Amendment #2 dated May 27, 2011 to the Simplified Prospectuses and Annual Information Form dated August 11, 2010
NP 11-202 Receipt dated June 9, 2011
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Invesco Trimark Ltd.
**Project** #1595494

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**Issuer Name:**
Mackenzie Universal Canadian Shield Fund
(formerly The Canadian Shield Fund)
(Series A Securities)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus dated June 10, 2011
NP 11-202 Receipt dated June 13, 2011
**Offering Price and Description:**
Series A Securities @ Net Asset Value
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Mackenzie Financial Corporation
**Project** #1712918

---

**Issuer Name:**
MCM Capital One Inc.
Principal Regulator - Ontario
**Type and Date:**
Amended and Restated Prospectus dated June 8, 2011 amending and restating the Prospectus dated February 28, 2011
NP 11-202 Receipt dated June 10, 2011
**Offering Price and Description:**
Minimum Offering: $250,000.00 or 1,250,000 Common Shares; Maximum Offering: $350,000.00 or 1,750,000 Common Shares Price: $0.20 per Common Share
**Underwriter(s) or Distributor(s):**
INTEGRAL WEALTH SECURITIES LIMITED
**Promoter(s):**
Rob Fia
**Project** #1641606

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**Issuer Name:**
OCP Credit Strategy Fund
Principal Regulator - Ontario
**Type and Date:**
Final Short Form Prospectus dated June 14, 2011
NP 11-202 Receipt dated June 14, 2011
**Offering Price and Description:**
Maximum $87,032,000.00 - Maximum 8,600,000 Units
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
HSBC Securities (Canada) Inc.
Macquarie Capital Markets Canada Ltd.
Raymond James Ltd.
Mackie Research Capital Corporation
Wellington West Capital Inc.
Rothenberg Capital Management
**Promoter(s):**
OCP Credit Partners, LLC
**Project** #1754838

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**Issuer Name:**
Postmedia Network Canada Corp.
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Non-Offering Prospectus dated June 7, 2011
NP 11-202 Receipt dated June 8, 2011
**Offering Price and Description:**
--
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1711089

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**Issuer Name:**
PowerShares 1-5 Year Laddered Investment Grade Corporate Bond Index ETF
PowerShares Ultra DLUX Long Term Government Bond Index ETF
PowerShares Fundamental High Yield Corporate Bond (CAD Hedged) Index ETF
PowerShares Canadian Dividend Index ETF
PowerShares Canadian Preferred Share Index ETF
PowerShares QQQ (CAD Hedged) Index ETF
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated June 7, 2011
NP 11-202 Receipt dated June 8, 2011
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Invesco Trimark Ltd.
**Project** #1737055

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# Chapter 12

# Registrations

### 12.1.1 Registrants

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| Consent to Suspension (Pending Surrender) | Geneva Merger & Acquisition Services of Canada (Ont.) Inc. | Exempt Market Dealer | June 8, 2011 |
| Change in Registration Category | PCJ Investment Counsel Ltd. | From: Portfolio Manager<br>To: Portfolio Manager and Investment Fund Manager | June 9, 2011 |
| Change in Registration Category | First Defined Portfolio Management Co. | From: Mutual Funds Dealer<br>To: Investment Fund Manager and Mutual Funds Dealer | June 10, 2011 |

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# Chapter 25

# Other Information

## 25.1 Consents

### 25.1.1 EM Resources Inc. – s. 4(b) of the Regulation

**Headnote**

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the BVI Business Companies Act, 2004 (as amended).

**Statutes Cited**

Business Corporations Act, R.S.O. 1990, c. B16, as am.
Business Corporations Act, R.S.A. 2000 c B9, as am.
Securities Act, R.S.O. 1990, c.S.5, as am.

**Regulation Cited**

Regulation made under the Business Corporations Act, O. Reg. 289/00, as am., s. 4(b).

**IN THE MATTER OF**
**R.R.O 1990, REGULATION 289/00, AS AMENDED**
**(the "Regulation")**
**MADE UNDER THE**
**BUSINESS CORPORATIONS ACT (ONTARIO),**
**R.S.O. 1990, c.B.16, AS AMENDED**
**(the "OBCA")**

**AND**

**IN THE MATTER OF**
**EM RESOURCES INC.**

**CONSENT**
**(Subsection 4(b) of the Regulation)**

**UPON** the application (the "**Application**") of EM Resources Inc. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") requesting the consent from the Commission for the Applicant to continue in another jurisdiction (the "**Continuance**"), as required by clause 4(b) of the Regulation;

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

**AND UPON** the Applicant having represented to the Commission that:

1. The Applicant is a corporation existing under the provisions of the OBCA and was formed by Articles of Incorporation pursuant to the *Business Corporations Act* (Ontario) on April 8, 2005.

2. The Applicant's registered office is located at Suite 806, 390 Bay Street, Toronto, Ontario M5H 2Y2.

3. The Applicant's authorized share capital consists of an unlimited number of common shares (the "**Common Shares**") of which 1,900,000 Common Shares are issued and outstanding as at May 5, 2011.

4. The Applicant proposes to make an application to the Director under the OBCA pursuant to section 181 of the OBCA (the "**Application for Continuance**") for authorization to continue as a company under the *BVI Business Companies Act, 2004* (as amended) (the "**BVI Act**").

5. The Application for Continuance is being made in connection with the proposed reverse take-over transaction involving the acquisition by the Applicant of Rio Verde Minerals Corp., a private company incorporated under the BVI Act (the "**Acquisition**").

6. As a result of the Meeting (as defined below), wherein the shareholders approved the Applicant's corporate name change to "Rio Verde Minerals Corp.", the Applicant proposes to make the application for authorization to continue as Rio Verde Minerals Corp. Upon completion of the name change and the consent to continue, Rio Verde Minerals Corp. will continue under the BVI Act.

7. Pursuant to clause 4(b) of the Regulation, where a corporation is an offering corporation under the OBCA, the Application for Continuance must be accompanied by a consent from the Commission.

8. The Applicant is an offering corporation under the OBCA and is a reporting issuer within the meaning of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"). The Applicant intends to remain a reporting issuer under the Act following the Continuance.

9. The Applicant is not in default of any of the provisions of the Act or the regulations or rules made under the Act.

10. The Applicant is not a party to any proceeding or, to the best of its knowledge, information and belief, pending proceeding under the Act.

11. The holders of the Common Shares of the Applicant authorized the Continuance at the annual and special meeting of shareholders (the "**Meeting**") held on May 31, 2011. The special resolution authorizing the Continuance was approved at the Meeting by 91.6% of the votes cast. None of the shareholders of the Applicant exercised dissent rights pursuant to section 185 of the OBCA.

12. The management information circular dated May 5, 2011 (the "**Information Circular**") provided to all shareholders of the Applicant in connection with the Meeting included full disclosure of the reasons for, and the implications of, the proposed Continuance, included a summary of the material differences between the OBCA and the applicable laws of the British Virgin Islands and advised the shareholders of the Applicant of their dissent rights in connection with the Application for Continuance pursuant to section 185 of the OBCA

13. The Continuance has been proposed to facilitate the Acquisition and the future business of the resulting issuer. The Continuance will allow the Applicant to take advantage of the favourable tax treatment accorded to companies governed by the BVI Act, particularly in light of the fact that the Applicant and the resulting issuer have no operations or material assets in Canada.

14. The material rights, duties and obligations of a company governed by the laws of the British Virgin Islands and memorandum of association and articles of association substantially similar to those approved by the shareholders of the Applicant at the Meeting (the "**Memorandum and Articles of Association**") are substantially similar to those of a corporation governed by the OBCA. Such rights provided by the Memorandum and Articles of Association cannot be amended without the consent of the shareholders of the Applicant.

15. As the Applicant does not intend to maintain a corporate office in Canada subsequent to the Continuance, the Applicant has provided an undertaking (the "**Undertaking**") to the Commission that it will complete and file an "Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process" in the form of Schedule "A" thereto (the "**Submission to Jurisdiction Form**") with the Commission through the System for Electronic Document Analysis and Retrieval (SEDAR) promptly following the effective date of the Continuance. The Undertaking also provides that the Applicant will maintain and update the information contained in the Submission to Jurisdiction Form, or furnish a new Submission to Jurisdiction Form, in accordance with the provisions contained therein. The form of Undertaking provided to the Commission is attached as Appendix "A".

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

**THE COMMISSION HEREBY CONSENTS**, subject to the approval of the shareholders of the Applicant of the Application for Continuance, to the continuance of the Applicant as a company under the BVI Act.

**DATED** at Toronto, Ontario this 7th day of June, 2011.

"Edward P. Kerwin"
Commissioner

"Christopher Portner"
Commissioner

**APPENDIX "A"**

**UNDERTAKING**

**To: Ontario Securities Commission (the "Commission")**

**RE: EM Resources Inc. (the "Applicant") – Application dated May 20, 2011 for a Consent to continuance to the British Virgin Islands (the "Continuance") pursuant to clause 4(b) of Ontario Regulation 289/00 made under the Business Corporations Act, R.S.O. 1990, c. B. 16**

The Applicant hereby undertakes that it will complete and file an "Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process" in the form of Schedule "A" hereto (the "Submission to Jurisdiction Form") with the Commission through the System for Electronic Document Analysis and Retrieval (SEDAR) promptly following the effective date of the Continuance.

The Applicant hereby further undertakes that it will maintain and update the information contained in the Submission to Jurisdiction Form, or furnish a new Submission to Jurisdiction Form, in accordance with the provisions contained therein.

Dated: June 3, 2011

**EM RESOURCES INC.**

"Dennis H. Peterson"
Dennis H. Peterson
Director

**SCHEDULE "A"**

**ISSUER FORM OF SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS**

1. Name of issuer (the "Issuer"):

_____

2. Jurisdiction of incorporation, or equivalent, of Issuer:

_____

3. Address of principal place of business of Issuer:

_____

4. Description of securities (the "Securities"):

_____

5. Name of agent for service of process (the "Agent"):

_____

6. Address for service of process of Agent in Canada (which address may be anywhere in Canada):

_____

7. The Issuer designates and appoints the Agent at the address of the Agent stated above as its agent upon whom may be served with any notice, pleading, subpoena, summons or other process in an action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding (the "Proceeding") arising out of, relating to or concerning the obligations of the Issuer as a reporting issuer and irrevocably waives any right to raise as a defence in any such Proceeding an alleged lack of jurisdiction to bring such Proceeding.

8. The Issuer irrevocably and unconditionally submits to the non-exclusive jurisdiction of:

   (a) the judicial, quasi-judicial and administrative tribunals of each of the provinces and territories of Canada in which the Securities have been distributed; and

   (b) any administrative proceeding in any such province or territory,

   in any Proceeding arising out of or related to or concerning the obligations of the Issuer as a reporting issuer.

9. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file a new Submission to Jurisdiction and Appointment of Agent for Service of Process in this form or as otherwise prescribed by securities law at least 30 days before termination, for any reason, of this Submission to Jurisdiction and Appointment of Agent for Service of Process.

10. Until six years after it has ceased to be a reporting issuer in any Canadian province or territory, the Issuer shall file an amended Submission to Jurisdiction and Appointment of Agent for Service of Process at least 30 days before a change in the name or address of the Agent.

11. This Submission to Jurisdiction and Appointment of Agent for Service of Process shall be governed by and construed in accordance with the laws of [insert province or territory of above address of Agent].

Dated: _____ _____

Signature of Signing Officer of Issuer

Print name and title of person signing

AGENT

The undersigned accepts the appointment as agent for service of process of [insert name of Issuer] under the terms and conditions of the preceding Submission to Jurisdiction and Appointment of Agent for Service of Process.

Dated: _____

_____
Signature of Agent

Print name and title of person signing and, if Agent is not an individual, the title of the person

and the Memorandum and Articles of Association filed as part of the Continuance will be deemed to be the constitutional documents of the Company

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# Index