The Ontario Securities Commission

OSC Bulletin

October 7, 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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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

October 7, 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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Vern Krishna	__	VK
Christopher Portner	—	CP
Judith N. Robertson	—	JNR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

October 11, 2011 2:30 p.m.	**Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Siklos (Also Known As Peter Kuti), Jan Chomica, and Lorne Banks** s. 127 H. Craig/C. Rossi in attendance for Staff Panel: CP
October 12, 2011 10:00 a.m.	**Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt** s. 127 M. Vaillancourt in attendance for Staff Panel: PLK
October 12, 2011 10:00 a.m.	**Mosaid Technologies Incorporated and Wi-Lan Inc.** s. 127 K. Daniels in attendance for Staff Panel: MGC/CWMS/SBK
October 12-21, 2011 10:00 a.m.	**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun** s. 127 C. Price in attendance for Staff Panel: CP

October 13, 2011 10:00 a.m.	**Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg** s. 127 H Craig in attendance for Staff Panel: JEAT
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
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: MGC
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: JDC
November 1, 2011 10:00 a.m.	**Vincent Ciccone and Medra Corp.** s. 127 M. Vaillancourt in attendance for Staff Panel: TBA
November 1, 2011 10:00 a.m.	**Ciccone Group, Medra Corporation, 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vince Ciccone, Darryl Brubacher, Andrew J. Martin., Steve Haney, Klaudiusz Malinowski and Ben Giangrosso** s. 127 M. Vaillancourt in attendance for Staff Panel: TBA
November 1, 2011 2:00 p.m. December 19, 2011 10:00 a.m.	**York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott Bassingdale** s. 127 H. Craig/C. Watson in attendance for Staff Panel: VK/EPK
November 2, 2011 10:00 a.m.	**North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti** s. 127 M. Vaillancourt in attendance for Staff Panel: TBA
November 7, 2011 10:00 a.m.	**Application for Reactivation of Sanjiv Sawh and Vlad Trkulja** s. 8(2) R. Goldstein/S. Horgan in attendance for Staff Panel: MGC/JNR

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 7, 2011 10:00 a.m.	**Zungui Haixi Corporation** s. 127 J. Superina in attendance for Staff Panel: CP
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: VK
November 21, 2011 10:00 a.m.	**Investment Industry Regulatory Organization Of Canada v. Mark Allen Dennis** S. 21.7 S. Horgan in attendance for Staff Panel: MGC
November 23, 2011 9:15 a.m.	**Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton** s. 127 H. Craig in attendance for Staff Panel: JEAT
November 23, 2011 10:00 a.m.	**American Heritage Stock Transfer Inc., American Heritage Stock Transfer, Inc., BFM Industries Inc., Denver Gardner Inc., Sandy Winick, Andrea Lee McCarthy, Kolt Curry and Laura Mateyak** s. 127 J. Feasby in attendance for Staff Panel: CP
November 28, 2011 10:00 a.m.	**Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff** s. 127 H. Craig in attendance for Staff Panel: CP
December 1, 2011 10:00 a.m.	**MBS Group (Canada) Ltd., Balbir Ahluwalia and Mohinder Ahluwalia** s. 37, 127 and 127.1 C. Rossi in attendance for staff Panel: JEAT
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

December 5 and December 7-16, 2011 10:00 a.m.	**L. Jeffrey Pogachar, Paola Lombardi, Alan S. Price, New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., 2126375 Ontario Inc., 2108375 Ontario Inc., 2126533 Ontario Inc., 2152042 Ontario Inc., 2100228 Ontario Inc., and 2173817 Ontario Inc.** s. 127 M. Britton in attendance for Staff Panel: EPK/PLK
December 7, 2011 10:00 a.m.	**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
December 19, 2011 9:00 a.m.	**New Hudson Television Corporation, New Hudson Television L.L.C. & James Dmitry Salganov** s. 127 C. Watson in attendance for Staff Panel: MGC
January 3-10, 2012 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** s. 127 and 127.1 C. Johnson in attendance for Staff Panel: JDC
January 18-23, 2012 10:00 a.m.	**Peter Beck, Swift Trade Inc. (continued as 7722656 Canada Inc.), Biremis, Corp., Opal Stone Financial Services S.A., Barka Co. Limited, Trieme Corporation and a limited partnership referred to as "Anguilla LP"** s. 127 B. Shulman in attendance for Staff Panel: TBA
January 18-30 and February 1-10, 2012 10:00 a.m.	**Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Vadim Tsatskin, Michael Schaumer, Elliot Feder, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff** s. 37, 127 and 127.1 H. Craig in attendance for Staff Panel: TBA
January 26-27, 2012 10:00 a.m.	**Empire Consulting Inc. and Desmond Chambers** s. 127 D. Ferris in attendance for Staff Panel: TBA

February 1-13, February 15-17 and February 21-23, 2012 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: TBA
February 15-17, 2012 10:00 a.m.	**Maitland Capital Ltd., Allen Grossman, Hanoch Ulfan, Leonard Waddingham, Ron Garner, Gord Valde, Marianne Hyacinthe, Dianna Cassidy, Ron Catone, Steven Lanys, Roger McKenzie, Tom Mezinski, William Rouse and Jason Snow** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: TBA
February 29-March 12 and March 14-March 21, 2012 10:00 a.m.	**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
March 8, 2012 10:00 a.m.	**Energy Syndications Inc., Green Syndications Inc., Syndications Canada Inc., Land Syndications Inc. and Douglas Chaddock** s. 127 C. Johnson in attendance for Staff Panel: TBA
March 12, March 14-26, and March 28, 2012 10:00 a.m.	**David M. O'Brien** s. 37, 127 and 127.1 B. Shulman in attendance for Staff Panel: TBA
April 2-5, April 9, April 11-23 and April 25-27, 2012 10:00 a.m.	**Bernard Boily** s. 127 and 127.1 M. Vaillancourt/U. Sheikh in attendance for Staff Panel: TBA
April 30-May 7, May 9-18 and May 23-25, 2012 10:00 a.m.	**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	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA

TBA

Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell

s. 127

J. Waechter in attendance for Staff

Panel: TBA

TBA

Frank Dunn, Douglas Beatty, Michael Gollogly

s. 127

K. Daniels in attendance for Staff

Panel: TBA

TBA

MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric

s. 127 and 127(1)

D. Ferris in attendance for Staff

Panel: TBA

TBA

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

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

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

Paul Donald

s. 127

C. Price 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

TBA

Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk

s. 37, 127 and 127.1

C. Price in attendance for Staff

Panel: TBA

TBA

Goldpoint Resources Corporation, Pasqualino Novielli also known as Lee or Lino Novielli, Brian Patrick Moloney also known as Brian Caldwell, and Zaida Pimentel also known as Zaida Novielli

s. 127(1) and 127(5)

C. Watson in attendance for Staff

Panel: TBA

TBA

Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins

s. 127

C. Rossi in attendance for Staff

Panel: TBA

TBA

Peter Sbaraglia

s. 127

J. Lynch in attendance for Staff

Panel: TBA

TBA

Crown Hill Capital Corporation and Wayne Lawrence Pushka

s. 127

A. Perschy in attendance for Staff

Panel: TBA

TBA

Ground Wealth Inc., Armadillo Energy Inc., Paul Schuett, Doug DeBoer, James Linde, Susan Lawson, Michelle Dunk, Adrion Smith, Bianca Soto and Terry Reichert

s. 127

S. Schumacher in attendance for Staff

Panel: TBA

TBA

Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman

s. 127(7) and 127(8)

H. Craig in attendance for Staff

Panel: TBA

TBA

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

s. 127

A. Perschy / B. Shulman in attendance for Staff

Panel: TBA

TBA

Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung

s. 127

A. Perschy/H. Craig in attendance for Staff

Panel: TBA

TBA

Carlton Ivanhoe Lewis, Mark Anthony Scott, Sedwick Hill, Leverage Pro Inc., Prosporex Investment Club Inc., Prosporex Investments Inc., Prosporex Ltd., Prosporex Inc., Prosporex Forex SPV Trust, Networth Financial Group Inc., and Networth Marketing Solutions

s. 127 and 127.1

H. Daley in attendance for Staff

Panel: TBA

TBA	**Normand Gauthier, Gentree Asset Management Inc., R.E.A.L. Group Fund III (Canada) LP, and CanPro Income Fund I, LP** s. 127 B. Shulman in attendance for Staff Panel: TBA
TBA	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: VK/MCH

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

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

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

1.1.2 OSC Staff Notice 11-739 (Revised) – Policy Reformulation Table of Concordance and List of New Instruments

OSC STAFF NOTICE 11-739 (REVISED)

POLICY REFORMULATION TABLE OF CONCORDANCE AND LIST OF NEW INSTRUMENTS

The following revisions have been made to the Table of Concordance and List of New Instruments. A full version of the Table of Concordance and List of New Instruments as of September 30, 2011 has been posted to the OSC Website at www.osc.gov.on.ca.

Table of Concordance

Item Key
The third digit of each instrument represents the following: 1-National/Multilateral Instrument; 2-National/Multilateral Policy; 3-CSA Notice; 4-CSA Concept Release; 5-Local Rule; 6-Local Policy; 7-Local Notice; 8-Implementing Instrument; 9-Miscellaneous

Reformulation

Instrument	Title	Status
	None	

New Instruments

Instrument	Title	Status
91-402	Derivatives: Trade Repositories	***Published for comment July 1, 2011***
31-325	Marketing Practices of Portfolio Managers	***Published July 8, 2011***
31-103	Registration Requirements and Exemptions – Amendments	***Minister's approval published July 8, 2011***
33-109	Registration Information – Amendments	***Minister's approval published July 8, 2011***
33-506	(Commodity Futures Act) Registration Information – Amendments	***Minister's approval published July 8, 2011***
11-739	Policy Reformulation Table of Concordance and List of New Instruments	***Published July 8, 2011***
31-325	Marketing Practices of Portfolio Managers	***Published July 8, 2011***
41-101	General Prospectus Requirements – Amendments	***Published for comment July 15, 2011***
44-101	Short Form Prospectus Distributions – Amendments (tied to NI 41-101)	***Published for comment July 15, 2011***
44-102	Shelf Distributions – Amendments (tied to NI 41-101)	***Published for comment July 15, 2011***
81-101	Mutual Fund Prospectus Disclosure – Amendments (tied to NI 41-101)	***Published for comment July 15, 2011***
52-107	Acceptable Accounting Principles and Auditing Standards – Amendments (tied to NI 41-101)	***Published for comment July 15, 2011***
51-102	Continuous Disclosure Obligations – Amendments (tied to NI 41-101)	***Published for comment July 15, 2011***
13-101	System for Electronic Document and Analysis Retrieval – Amendments (tied to NI 41-101)	***Published for comment July 15, 2011***

Instrument	Title	Status
31-326	Outside Business Activities	***Published July 15, 2011***
51-334	Continuous Disclosure Review Program Activities for the Fiscal Year ended March 31, 2011	***Published July 15, 2011***
43-704	Mineral Brine Projects and National Instrument 43-101 Standards of Disclosure for Mineral Projects	***Published July 22, 2011***
51-102	Form 51-102F6 – Statement of Executive Compensation - Amendments	***Commission approval published July 22, 2011***
58-101	Disclosure of Corporate Governance Practices - Amendments	***Commission approval published July 22, 2011***
51-103	Ongoing Governance and Disclosure Requirements for Venture Issuers	***Published for comment July 29, 2011***
41-101	General Prospectus Requirements – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
44-101	Short Form Prospectus Disclosures – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
45-106	Prospectus and Registration Exemptions – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
43-101	Standards of Disclosure for Mineral Projects – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
44-102	Shelf Distributions – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
45-101	Rights Offerings – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
51-101	Standards of Disclosure for Oil and Gas Activities – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
51-102	Continuous Disclosure Obligations – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
52-107	Acceptable Accounting Principles and Accounting Standards – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
52-109	Certification of Disclosure in Issuers' Annual and Interim Filings – Amendments (tied to NI 51-103)'	***Published for comment July 29, 2011***
52-110	Audit Committees – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
55-104	Insider Reporting Requirements and Exemptions – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
58-101	Disclosure of Corporate Governance Practices – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
61-101	Protection of Minority Security Holders in Special Transactions – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
71-102	Continuous Disclosure and Other Exemptions Relating to Foreign Issuers – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
12-202	Revocation of a Compliance Related Cease Trade Order – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
12-203	Cease Trade Orders for Continuous Disclosure Defaults – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
51-201	Disclosure – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***

Instrument	Title	Status
58-201	Corporate Governance Guidelines (tied to NI 51-103)	***Published for comment July 29, 2011***
51-802	Implementing National Instrument 51-103 Ongoing Governance and Disclosure Requirements for Venture Issuers (tied to NI 51-103)	***Published for comment July 29, 2011***
13-502	Fees – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
51-801	Implementation of NI 51-102 Continuous Disclosure Obligations – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
62-504	Take-Over Bids and Issuer Bids – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
51-601	Reporting Issuer Defaults – Amendments (tied to NI 51-103)	***Published for comment July 29, 2011***
23-311	Regulatory Approach to Dark Liquidity in the Canadian Market	***Published July 29, 2011***
81-101	Mutual Fund Prospectus Disclosure – Amendments (Stage 2 of Point of Sale Disclosure for Mutual Funds)	***Published August 12, 2011***
81-102	Mutual Funds – Amendments (Stage 2 of Point of Sale Disclosure for Mutual Funds)	***Published August 12, 2011***
81-715	Cross-Listings by Foreign Exchange-Traded Funds	***Published August 26, 2011***
31-327	Broker-Dealer Registration in the Exempt Market Dealer Category	***Published September 2, 2011***
51-336	Issuers Using Mass Advertising	***Published September 16, 2011***
31-328	Revocation of Omnibus/Blanket Orders Exempting Registrants from Certain Provisions of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations	***Published September 16, 2011***
31-714	OSC Staff Supplement to CSA Staff Notice 31-328 Revocation of Omnibus/Blanket Orders Exempting Registrants from Certain Provisions of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations	***Published September 16, 2011***
33-736	2011 Annual Summary Report for Dealers, Advisers and Investment Fund Managers	***Published September 23, 2011***
31-329	Omnibus/blanket orders exempting registrants from certain provisions of NI 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and related staff positions	***Published September 30, 2011***

For further information, contact:

Darlene Watson
Project Coordinator
Ontario Securities Commission
416-593-8148

October 7, 2011

1.2 Notices of Hearing

1.2.1 Vincent Ciccone and Medra Corp. – ss. 127, 127.1

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

AND

IN THE MATTER OF
VINCENT CICCONE AND MEDRA CORP.

NOTICE OF HEARING
(Sections 127 and 127.1)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on November 1, 2011 at 10:00 a.m., or as soon thereafter as the hearing can be held, to consider:

(i) whether, in the opinion of the Commission, it is in the public interest, pursuant to ss. 127 and 127.1 of the Act to order that:

(a) trading in any securities by the Respondents cease permanently or for such period as is specified by the Commission;

(b) the acquisition of any securities by the Respondents is prohibited permanently or for such other period as is specified by the Commission;

(c) any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as is specified by the Commission;

(d) the Respondents be reprimanded;

(e) Vincent Ciccone ("Ciccone") resign one or more positions that he holds as a director or officer of any issuer, registrant or investment fund manager;

(f) Ciccone be prohibited from becoming or acting as a director or officer of any issuer, a registrant or investment fund manager;

(g) the Respondents be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter;

(h) the Respondents each pay an administrative penalty of not more than $1 million for each failure by that Respondent to comply with Ontario securities law;

(i) each of the Respondents disgorge to the Commission any amounts obtained as a result of non-compliance by that Respondent with Ontario securities law; and,

(j) the Respondents be ordered to pay the costs of the Commission investigation and the hearing;

(ii) whether to make such further orders as the Commission considers appropriate.

BY REASON OF the allegations as set out in the Statement of Allegations of Staff of the Commission dated September 30, 2011 and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 3rd day of October, 2011

"John Stevenson"

1.2.2 MOSAID Technologies Incorporated and Wi-LAN Inc. – s. 127

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

AND

IN THE MATTER OF
MOSAID TECHNOLOGIES INCORPORATED
AND WI-LAN INC.

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing (the "Hearing") at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario commencing on Wednesday, October 12, 2011, at 10:00 a.m. or as soon thereafter as the Hearing can be held;

TO CONSIDER whether it is in the public interest to make a cease trade order in respect of the shareholder rights plan of MOSAID Technologies Incorporated pursuant to an application by Wi-LAN Inc.

Dated at Toronto this 4th day of October, 2011

"John Stevenson"
Secretary to the Commission

1.3 News Releases

1.3.1 OSC Panel Releases Decision Regarding Coventree Inc., Geoffrey Cornish and Dean Tai Related to Breaches of Ontario Securities Act

FOR IMMEDIATE RELEASE
September 28, 2011

OSC PANEL RELEASES DECISION
REGARDING COVENTREE INC.,
GEOFFREY CORNISH AND DEAN TAI
RELATED TO BREACHES OF
ONTARIO SECURITIES ACT

TORONTO – In a decision released today, an Ontario Securities Commission (OSC) panel found that Coventree Inc., Geoffrey Cornish and Dean Tai failed to meet continuous disclosure obligations and that the conduct of Coventree, Cornish and Tai, in contravening Ontario securities laws, was contrary to the public interest.

Staff had alleged that Coventree failed to meet its continuous disclosure obligations by failing to disclose the decision by Dominion Bond Rating Service Limited (DBRS) in January 2007 to change its credit rating methodology, which resulted in a material change to Coventree's business or operations.

Staff had also alleged that Coventree failed to meet its continuous disclosure obligations by failing to disclose liquidity and liquidity-related events and the risk of a market disruption in the days leading up to the disruption in the ABCP market that occurred in August 2007.

In its decision, the OSC panel found that Coventree contravened the *Securities Act* by failing to forthwith issue and file a news release disclosing the material change that occurred as a result of a news release issued by DBRS in January 2007, and by failing to forthwith issue and file a news release disclosing the material changes that occurred by the close of business on August 1, 2007.

The panel also concluded that Cornish and Tai authorized, permitted or acquiesced in Coventree's non-compliance with Ontario securities laws and are deemed also to have not complied with Ontario securities laws.

The OSC panel dismissed Staff allegations that Coventree failed to make full, true and plain disclosure in its prospectus by failing to disclose the fact that DBRS had adopted more restrictive credit rating criteria for ABCP in November 2006 and dismissed allegations that Coventree made materially misleading statements in April 2007.

A sanctions hearing in this matter is pending.

A copy of the Reasons and Decisions of the OSC panel in respect of Coventree Inc., Geoffrey Cornish and Dean Tai are 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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1.4 Notices from the Office of the Secretary

1.4.1 Coventree Inc. et al.

FOR IMMEDIATE RELEASE
September 28, 2011

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

AND

IN THE MATTER OF
COVENTREE INC.,
GEOFFREY CORNISH AND DEAN TAI

TORONTO – Following the hearing on the merits in the above named matter, the Commission released its Reasons for Decision today.

A copy of the Reasons for Decision dated September 28, 2011 is available at **www.osc.gov.on.ca**.

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1.4.2 North American Financial Group Inc. et al.

FOR IMMEDIATE RELEASE
September 29, 2011

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that the Temporary Order as further amended is extended to November 3, 2011; and the hearing in this matter be adjourned to Wednesday, November 2, 2011 at 10:00 a.m. or to such other date or time as set by the Office of the Secretary and agreed to by the parties.

A copy of the Order dated September 29, 2011 is available at **www.osc.gov.on.ca**.

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1.4.3 Ciccone Group et al.

FOR IMMEDIATE RELEASE
September 29, 2011

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued an Order in the above named matter which provides that, pursuant to subsections 127(7) and (8) of the Act, (i) the Temporary Order is extended as against Ciccone Group, Medra, 990509 (now named Ciccone Group Inc.), Ciccone, Tadd, Brubacher and Martin to November 2, 2011; and (ii) the Hearing is adjourned to November 1, 2011 at 10:00 a.m. or to such other date or time as set by the Office of the Secretary and agreed to by the parties.

A copy of the Order dated September 29, 2011 is available at **www.osc.gov.on.ca**.

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1.4.4 Deutsche Bank Securities Limited

FOR IMMEDIATE RELEASE
September 30, 2011

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

AND

IN THE MATTER OF
DEUTSCHE BANK SECURITIES LIMITED

AND

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

TORONTO – Following the hearing on January 7, 2011 in the above noted matter, the Panel released its Reasons and Decision.

A copy of the Reasons and Decision dated September 30, 2011 is available at **www.osc.gov.on.ca**.

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1.4.5 Vincent Ciccone and Medra Corp.

FOR IMMEDIATE RELEASE
October 4, 2011

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

AND

IN THE MATTER OF
VINCENT CICCONE AND MEDRA CORP.

TORONTO – The Office of the Secretary issued a Notice of Hearing on October 3, 2011 setting the matter down to be heard on November 1, 2011, at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated October 3, 2011 and Statement of Allegations of Staff of the Ontario Securities Commission dated September 30, 2011 are available at **www.osc.gov.on.ca**.

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

AND

IN THE MATTER OF
VINCENT CICCONE AND MEDRA CORP.

STATEMENT OF ALLEGATIONS
OF STAFF OF THE
ONTARIO SECURITIES COMMISSION

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

I. OVERVIEW

1. During the period April 2008 to June 2010, over $19 million in investor funds were deposited into bank accounts belonging to Ciccone Group Inc. ("Ciccone Group"), a company controlled by Vincent Ciccone ("Ciccone"). These investor funds were raised from various distributions of securities in breach of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") and in a manner that was contrary to the public interest.

2. In relation to three of the distributions of securities, Ciccone and Ciccone Group committed a fraud by using investor funds for purposes other than the investment purposes that were communicated to investors.

3. In general, other than using the proceeds to pay interest and redemptions to investors, proceeds from the distributions were directed to Ciccone business ventures, to charities or loaned to friends, associates and/or companies related to Ciccone in circumstances where there was no or very little prospect of ever generating returns, despite the fact that Ciccone and Ciccone Group promised over 20% returns on the Ciccone Group promissory notes they sold to investors.

4. Ciccone Group was assigned into bankruptcy on November 30th, 2010, at which time it owed over $17 million to investors.

5. The conduct at issue occurred during the period December 2007 to December 2010 (the "Material Time").

II. BACKGROUND

A. The Respondents

6. Ciccone is a resident of Cambridge, Ontario. Ciccone was registered as a salesperson in the dealer category of a limited market dealer during the period November 1, 2004 to August 29, 2005. Ciccone was not registered in any capacity during the Material Time.

7. During the Material Time, Ciccone was the sole officer and director of Ciccone Group, an Ontario company incorporated on August 18, 1992 that was formerly named 990509 Ontario Inc. (collectively referred to as "Ciccone Group"). Ciccone Group purported to be one of the fastest growing niche financial venture companies in Canada.

8. Medra Corp. ("Medra") is a Delaware company incorporated on July 13, 2006 that was formerly named DCH Technology Inc. From about March 2008 up to and including December 2009, Ciccone was the CEO and President of Medra. During this time, Medra represented to investors that it specialized in resort real-estate development and land acquisition.

B. Illegal Distributions and trading without registration

(i) Ciccone Group Promissory Notes

9. Since approximately 2006, Ciccone Group issued promissory notes to the public. During the period November 2008 to December 31 2009 (the "Ciccone Group Distribution Period"), Ciccone Group issued promissory notes ("Ciccone Group securities") totalling $2.7 million to approximately 46 investors.

10. During the Ciccone Group Distribution Period, Ciccone Group and Ciccone traded in Ciccone Group securities when they were not registered with the Commission and when no exemptions from registration were available to them under the Act.

11. The sale of Ciccone Group securities were trades in securities not previously issued and were therefore distributions. Ciccone Group has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of Ciccone Group securities.

(ii) Medra shares and Founding Partners Program

12. During the period April 2008 to December 2009 (the "Medra Distribution Period"), Medra raised approximately $8 million from investors from the issuance and sale of over 85 million shares to over 370 investors and from the sale of units of Medra's Founding Partners Program to at least 15 investors. During this period, Medra was quoted on the Pink Sheets under the symbol "MDRA".

13. Each unit of Medra's Founding Partners Program was an investment contract and thereby a security under the Act.

14. In particular, each unit of Medra's Founding Partners Program was priced at $50,000 and purported to grant investors 20 weeks of lease time in Medra's Puerto Aventuras Resort during a 5 year period. At the end of the 5 year period, an investor could either seek a return of the $50,000 or could purchase a right of first refusal to purchase a share of stock of the 13 shares issued by a not-for-profit Mexican corporation that owned a condo unit in the Puerto Aventuras Resort. If that option was exercised, the investor's 1/13 share would be listed for sale by Medra and the investor would receive 50% of the net proceeds of the sale.

15. During the Medra Distribution Period, Ciccone Group, Ciccone and Medra traded in shares of Medra and in units of Medra's Founding Partners Program when they were not registered with the Commission and when no exemptions from registration were available to them under the Act.

16. The sale of Medra shares and of units of Medra's Founding Partners Program (collectively the "Medra securities") were trades in securities not previously issued and were therefore distributions. Medra has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of Medra securities.

(iii) GEMS Capital Limited Partnership II ("GEMS II") units

17. GEMS II was registered under the *Limited Partnerships Act* on January 6, 2009.

18. During the period February 2009 to October 2009 (the "GEMS II Distribution Period"), GEMS II raised approximately $6.2 million from the issuance and sale of GEMS II units ("GEMS II securities") to approximately 30 investors.

19. During the GEMS II Distribution Period, Ciccone and Ciccone Group traded in GEMS II securities when they were not registered with the Commission and when no exemptions from registration were available to them under the Act.

20. The sale of GEMS II securities were trades in securities not previously issued and were therefore distributions. GEMS II has never filed a preliminary prospectus or a prospectus with the Commission, and no prospectus receipt has ever been issued to qualify the sale of GEMS II securities.

C. Misleading Statements – The GEMS II Offering Memorandum ("OM")

21. Ciccone received drafts of the GEMS II OM and provided the final GEMS II OM to investors.

22. The GEMS II OM contained statements which Ciccone and Ciccone Group knew or reasonably ought to have known, were, in a material respect and at the time and in light of the circumstances under which they were made, misleading and did not state a fact that was required to be stated or necessary to make the statements not misleading, contrary to section 126.2(1) of the Act and contrary to the public interest. In particular:

    a. Carmine Domenicucci ("Domenicucci") is referred to in the GEMS II OM as an investment advisor to the Fund Manager. This reference remained in the OM and the OM was provided to investors even when Ciccone and Ciccone Group knew or ought to have known that Domenicucci was not fulfilling that function.

    b. The OM also stated that three investment advisors to the fund were supported by an experienced network of traders, analysts and operations staff when Ciccone and Ciccone Group knew or ought to have known that this statement was not true.

    c. The OM contained a certificate signed by Domenicucci to the effect that the OM contained no misrepresentations. Ciccone and Ciccone Group knew or ought to have known that this statement was not true.

23. The misleading statements referred to above would reasonably be expected to have a significant effect on the market price or value of the GEMS II securities.

D. Ciccone and Ciccone Group engaged in advising

24. During the Material Time, Ciccone and Ciccone Group provided advice to investors regarding securities, including providing opinions on the merits of investments, their level of risk and by expressly or impliedly recommending or endorsing them.

25. Ciccone and Ciccone Group thereby acted as advisers without being registered with the Commission to advise in securities.

E. Fraudulent conduct

(i) Use of Medra Investor Funds

26. Ciccone, Ciccone Group and Medra engaged in acts, practices or courses of conduct relating to Medra securities that they knew or reasonably ought to have known perpetrated a fraud on investors and that was contrary to the public interest. In particular, while Medra was marketed as a company specializing in resort real-estate development and land acquisition, Ciccone, Ciccone Group and Medra misappropriated Medra investor funds and used those funds for purposes completely unrelated to real estate development and land acquisition. Specifically, during the period April 2008 to June 2010, approximately $2.6 million in Medra investor funds were transferred to Ciccone Group and used primarily to invest either in Axcess Automation LLC ("Axcess") (a company purportedly in the business of computerized trading) or were ultimately transferred to Ciccone personally and used by him to purchase Medra shares in the secondary market to create an artificial price and/or artificial volume for Medra shares. Approximately $1.6 million was paid back to Medra by Ciccone Group, leaving an unpaid balance of approximately $1 million in misappropriated Medra investor funds.

(ii) Use of Minas and GEMS II Investor Funds

27. Ciccone and Ciccone Group engaged in acts, practices or courses of conduct relating to securities of Minas Investments Limited Partnership ("Minas"), a limited partnership registered under the *Limited Partnerships Act* on June 3, 2008 and GEMS II securities that they knew or reasonably ought to have known perpetrated a fraud on investors and that was contrary to the public interest.

28. In particular, during the period October 2008 to May 2009 (the "Minas Distribution Period"), Minas raised approximately $1.9 million from the issuance and sale of Minas units ("Minas securities") to approximately 43 investors.

29. The Minas investor funds, for the most part, were transferred to Ciccone Group in exchange for Ciccone Group Promissory Notes. Ciccone and Ciccone Group advised the General Partner of Minas that Minas investor funds would be invested in Axcess.

30. In addition, Ciccone and Ciccone Group were aware or reasonably ought to have been aware that the GEMS II OM stated that its primary investment strategy was to utilize proprietary computerized trading programs with a secondary strategy of real estate development once the funds were sufficiently capitalized.

31. However, although Ciccone Group received at least $6.9 million from Minas and GEMS II during the period November 2008 to June 2010, from November 2008 onwards, less than $950,000 was invested by Ciccone Group in computerized trading programs or real estate developments. The majority of Minas and GEMS II investor funds were used by Ciccone and Ciccone Group for purposes other than computerized trading programs or real estate.

F. Breach of Temporary Cease Trade Order by Ciccone and Ciccone Group

32. On April 21, 2010, the Commission made a temporary order that, among other things, all trading in any securities by Ciccone and 990509 Ontario Inc. (the predecessor name for Ciccone Group) shall cease (the "TCTO").

33. On April 23, 2010, Ciccone confirmed his receipt of the TCTO.

34. Commencing in 2010 and continuing after April 23, 2010, Ciccone and Ciccone Group traded in Ciccone Group Class B shares.

35. The trades in Ciccone Group Class B shares by Ciccone and Ciccone Group after April 23, 2010 were done in breach of the TCTO and were contrary to the public interest.

G. Conduct contrary to the public interest

36. The conduct referred to above was contrary to the Act and contrary to the public interest.

37. In addition, Ciccone, Medra and Ciccone Group engaged in other conduct that was contrary to the public interest. In particular, each of these Respondents was involved in a scheme whereby Medra shares were purchased in the secondary market for the specific purpose of creating an artificial price for Medra shares and/or an artificial volume for Medra shares.

STAFF'S ALLEGATIONS – Conduct Contrary to Ontario Securities Law and Contrary to the Public Interest

38. The specific allegations advanced by Staff are:

a. Ciccone and Ciccone Group traded in securities of Ciccone Group without being registered to trade in securities, contrary to section 25 of the Act and contrary to the public interest;

b. Ciccone and Ciccone Group traded in securities of Ciccone Group when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53 of the Act and contrary to the public interest;

c. Ciccone and Ciccone Group breached the TCTO contrary to section 122(1)(c) of the Act and contrary to the public interest;

d. Ciccone, Ciccone Group and Medra traded in securities of Medra without being registered to trade in securities, contrary to section 25 of the Act and contrary to the public interest;

e. Ciccone, Ciccone Group and Medra traded in securities of Medra when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53 of the Act and contrary to the public interest;

f. Ciccone and Ciccone Group traded in securities of GEMS II without being registered to trade in securities, contrary to section 25 of the Act and contrary to the public interest;

g. Ciccone and Ciccone Group traded in securities of GEMS II when a preliminary prospectus and a prospectus had not been filed and receipts had not been issued for them by the Director, contrary to section 53 of the Act and contrary to the public interest;

h. Ciccone and Ciccone Group engaged in advising without being registered to advise in securities, contrary to section 25 of the Act and contrary to the public interest;

i. Ciccone, Ciccone Group and Medra engaged or participated in acts, practices or courses of conduct relating to Medra securities that Ciccone, Ciccone Group and Medra knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to section 126.1(b) of the Act and contrary to the public interest;

j. Ciccone and Ciccone Group engaged or participated in acts, practices or courses of conduct relating to GEMS II and Minas securities that Ciccone and Ciccone Group knew or reasonably ought to have known perpetrated a fraud on persons or companies, contrary to section 126.1(b) of the Act and contrary to the public interest;

k. Ciccone and Ciccone Group made statements in the GEMS II OM which they knew or reasonably ought to have known, were, in a material respect and at the time and in light of the circumstances under which they were made, misleading and did not state a fact that was required to be stated or necessary to make the statements not misleading, contrary to section 126.2(1) of the Act and contrary to the public interest;

l. Ciccone, as the sole director and officer of Ciccone Group and as the president and CEO of Medra, did authorize, permit or acquiesce in the breaches of the Act by Ciccone Group and Medra referred to above, contrary to section 129.2 of the Act; and

m. Ciccone, Ciccone Group and Medra engaged in a course of conduct related to Medra securities with a view to creating a misleading appearance of trading activity or an artificial price for Medra securities which conduct was contrary to the public interest.

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

Dated at Toronto this 30th day of September, 2011

1.4.6 Global Energy Group, Ltd. et al.

FOR IMMEDIATE RELEASE
October 4, 2011

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that the Temporary Order is extended against Rash until November 29, 2011, and the hearing is adjourned to November 28, 2011, at 10:00 a.m., at which time Rash will have the opportunity to make submissions regarding any further extension of the Temporary Order against him.

A copy of the Order dated September 26, 2011 is available at **www.osc.gov.on.ca**.

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1.4.7 Global Energy Group, Ltd. et al.

FOR IMMEDIATE RELEASE
October 4, 2011

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

AND

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

TORONTO – Following the hearing held on September 26, 2011, the Commission issued Orders in the above noted matter.

A copy of the Order and Motion Order dated September 26, 2011 are available at **www.osc.gov.on.ca**.

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1.4.8 Firestar Capital Management Corp. et al.

FOR IMMEDIATE RELEASE
October 4, 2011

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing to consider whether to continue the Temporary Orders is adjourned to November 23, 2011 at 9:15 a.m.; and the Temporary Orders currently in place as against Firestar Capital, Kamposse, Firestar Investment, and Mitton are further continued until November 24, 2011, or until further order of the Commission.

A copy of the Order dated October 3, 2011 is available at **www.osc.gov.on.ca**.

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1.4.9 MOSAID Technologies Incorporated and Wi-LAN Inc.

FOR IMMEDIATE RELEASE
October 4, 2011

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

AND

IN THE MATTER OF
MOSAID TECHNOLOGIES INCORPORATED
AND WI-LAN INC.

TORONTO – On October 4, 2011, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* to consider the Application of Wi-LAN Inc. dated September 28, 2011.

The hearing is set down to be heard on October 12, 2011 at 10:00 a.m. in the Large Hearing Room, 17th Floor at 20 Queen Street West or as soon thereafter as the hearing can be held.

A copy of the Notice of Hearing dated October 4, 2011 and the Application dated September 28, 2011 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:
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Wendy Dey
Director, Communications & Public Affairs
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IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5 AS AMENDED

AND

IN THE MATTER OF
MOSAID TECHNOLOGIES INCORPORATED

APPLICATION
(Section 127 of the Securities Act,
R.S.O. 1990, C. S.5, as amended)

1. Wi-LAN Inc. ("WiLAN") applies to the Ontario Securities Commission (the "Commission") pursuant to section 127 of the Ontario *Securities Act* for an order cease trading the shareholder rights plan of MOSAID Technologies Incorporated ("MOSAID").

2. On the application, WiLAN seeks:

   (a) a permanent order pursuant to section 127 of the *Securities Act*, effective at 9:00 a.m. (Toronto time) on October 14, 2011, that trading cease in respect of any securities issued, or to be issued, under or in connection with the shareholder rights plan (the "Shareholder Rights Plan") of MOSAID, including without limitation, in respect of the rights issued under the Shareholder Rights Plan (the "Rights") and any common shares of MOSAID to be issued upon the exercise of the Rights;

   (b) a permanent order removing prospectus exemptions in respect of the distribution of Rights on the occurrence of the Separation Time (as defined in the Shareholder Rights Plan) and in respect of the exercise of the Rights; and

   (c) such further relief as counsel for the applicant may advise.

3. The grounds for this application are as follows:

   (a) WiLAN has made an offer for all the issued and outstanding common shares of MOSAID for $38.00 per common share ("Share") in cash which was announced on August 17, 2011, commenced on August 23, 2011, and extended and varied on September 28, 2011 (the "Offer");

   (b) the Offer expires on October 14, 2011 at 5:00 p.m.;

   (c) MOSAID's response to the Offer appeared initially to be based principally on a transaction it entered into after the Offer was commenced – the "Core Wireless transaction", the value of which to MOSAID Shareholders has been obscured by MOSAID's inconsistent and incomplete disclosure;

   (d) more recently, MOSAID also claims to be considering alternatives to the Offer, however very little substantive detail has been provided to Shareholders regarding the status of any process in place to seek out an alternative that maximizes value for Shareholders;

   (e) MOSAID has been aware of the prospect of the Offer being made since August 10, 2011 (65 days before the expiry of the Offer), the intention to make the Offer was announced on August 17, 2011 (58 days before the expiry of the Offer), and the Offer was commenced on August 23, 2011 (52 days before the expiry of the Offer);

   (f) MOSAID has had sufficient time to find alternatives to the Offer;

   (g) WiLAN will not be able to take up and pay for MOSAID Shares tendered to the Offer, and MOSAID Shareholders will be deprived of the decision to sell their Shares pursuant to the Offer, unless the Shareholder Rights Plan is cease traded; and therefore

   (h) it is in the public interest that the Commission make an order pursuant to section 127 of the Securities Act cease trading the operation of the Shareholder Rights Plan.

4. In support of this application, WiLAN intends to rely on the affidavit of Prashant Watchmaker, sworn September 27, 2011, and the exhibits thereto, and on such further evidence as counsel may advise.

September 28, 2011

Torys LLP
79 Wellington Street West
Suite 3000
Toronto, Ontario
M5K 1N2

Andrew Gray LSUC#46626V
Tel: 416.865.7630
Fax: 416.865.7380

Lawyers for the Applicant
Wi-Lan Inc.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Icron Technologies 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.

Ontario Statutes

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

September 28, 2011

McCarthy Tétrault LLP
1300, 777 Dunsmuir Street
P.O. Box 10424, Pacific Centre
Vancouver, BC V7Y 1K2

Attention: Catherine I. Anderson

Dear Madam:

Re: Icron Technologies Corporation (the Applicant) – Application for a decision under the securities legislation of Alberta and Ontario (the Jurisdictions) that the Applicant is not a reporting issuer

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

2.1.2 Barclays Bank PLC and Barclays Capital INC.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application by UK-based issuer and U.S. broker-dealer subsidiary for relief from dealer registration requirement applicable to filers in connection with dissemination of sales communications relating to the distribution pursuant to the issuer's base shelf prospectus of exchange-traded notes (ETNs), the return on which is linked to the performance of an index – ETNs will be in continuous distribution to investors through the TSX – U.S. broker-dealer subsidiary will purchase ETNs as principal and resell ETNs to market makers and/or act as agent and sell ETNs to market makers – market makers will sell ETNs to investment dealers that place buy orders on the TSX – issuers will require sellers of ETNs to deliver the prospectus to each purchaser of ETNs on the TSX – issuer's Canadian investment dealer subsidiary and other investment dealers will sign underwriter certificates in the prospectus – filers expect to be primary entities desiring to foster market awareness and promote trading in ETNs through the dissemination of sales communications, including, without limitation, websites, print and online advertisements, product and educational brochures, term sheets, direct mail, email, sales presentations and web seminars – filers will not directly solicit expressions of interest from investors in ETNs at those sessions – all sales of ETNs to purchasers through the TSX will be made under prospectus – all purchasers of ETNs on the TSX will have purchasers' statutory rights as described in the prospectus – all sales communications will include legend required by section 13.2 of National Instrument 41-101 General Prospectus Requirements and state the prospectus may be obtained by contacting Canadian investment dealer subsidiary or other investment dealer party to distribution agreement – Relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 74(1).
National Instrument 41-101 General Prospectus Requirements, s. 13.2.

July 22, 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
BARCLAYS BANK PLC
(BARCLAYS)

AND

BARCLAYS CAPITAL INC.
(BCI, AND, TOGETHER WITH BARCLAYS,
THE FILERS)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision (the **Exemption Sought**) under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the dealer registration requirement of the Legislation applicable to the Filers in connection with the dissemination of sales communications relating to the distribution pursuant to the Barclays base shelf prospectus relating to Global Medium Term Notes, Series A (**Notes**) (or any renewal thereof), as supplemented by a prospectus supplement, (together, the **Prospectus**), of one or more series of iPath-branded Notes or other exchange-traded Notes (each such class of Notes, an **ETN**), the return on which is linked to the performance of an index.

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

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

(b) the Filers have provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the provinces of Canada other than Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 44-101 and NI 44-102 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. Barclays is a public limited company registered in England and Wales having its registered office at 1 Churchill Place, London, England E14 5HP. Barclays is a wholly owned subsidiary of Barclays PLC.

2. Barclays is a reporting issuer in each of the provinces of Canada and is not in default of securities legislation in any province of Canada.

3. Barclays is a major global financial services provider engaged in retail banking, credit cards,

corporate banking, investment banking, wealth management and investment management services with an extensive international presence in Europe, the Americas, Africa and Asia.

4. As of December 31, 2010, Barclays was among the largest financial institutions in the world measured by total assets. As of that date, Barclays had total assets of £1,490 billion and total shareholders' equity of £62.3 billion.

Description of the Notes

5. Barclays intends to distribute pursuant to the Prospectus one or more series of ETNs.

6. The ETNs will be direct, unconditional, unsecured and unsubordinated obligations of Barclays, ranking *pari passu* with all of its other unsecured and unsubordinated obligations (except such obligations as are preferred by operation of law).

7. The ETNs will be issued under a trust indenture (the **Indenture**) dated September 16, 2004, between Barclays and The Bank of New York Mellon, as trustee, and will be in registered, book-entry form represented by one or more global notes.

8. Each series of ETNs will be linked to the performance of an underlying index. The valuation of each series of ETNs will be primarily derived from the value of the index to which it is linked, subject to an investor fee and any other applicable fees and charges. At the time of issuance of an ETN, to the extent necessary, Barclays will have entered into a license agreement with the sponsor or publisher of each index underlying the ETN, permitting Barclays to link the relevant ETN to that index.

9. Holders of the ETNs will be allowed, at their option and subject to certain restrictions, to cause Barclays to redeem their ETNs on any of the specified daily redemption dates between issuance and maturity. This redemption option is subject to a minimum number of ETNs being redeemed, generally 25,000 or 50,000. Upon redemption, the holder would generally receive a cash payment equal to the principal amount of the ETNs being redeemed *multiplied by* the indicative value of the ETNs on the redemption date (as adjusted to account for any relevant fees and charges).

10. Barclays intends to apply to list the ETNs on the Toronto Stock Exchange (the TSX).

Method of distribution in the U.S.

11. Barclays first offered iPath ETNs in the United States in 2006. As of April 1, 2011, an aggregate of US$9.9 billion of iPath ETNs and US$96 million of non-iPath ETNs were issued and outstanding.

12. In the United States, iPath ETNs are not distributed by underwriters soliciting expressions of interest from potential investors. Rather, iPath ETNs are deemed to be in continuous distribution to investors pursuant to market-making resale transactions, in connection with which a prospectus is delivered to investors in the manner required by the U.S. Securities and Exchange Commission (the SEC). A sample of such prospectus may be viewed on the SEC's website, at: http://www.sec.gov/Archives/edgar/data/312070/000119312511081429/d424b2.htm.

Method of distribution in Canada

13. Barclays has not previously distributed iPath ETNs in Canada but has distributed three series of fixed interest rate Notes that are listed on the TSX, namely:

    (a) Extendible Step-up Deposit Notes, Series I-10 (supplement dated April 14, 2010);

    (b) Extendible Step-up Deposit Notes, Series I-26 (supplement dated February 9, 2011, amended and restated February 22, 2011); and

    (c) 10-Year Fixed Rate Deposit Notes, Series I-28 (supplement dated April 11, 2011).

    Series I-10 Notes were purchased by registered investment dealers as principal and sold at a non-fixed price to purchasers through the facilities of the TSX. Series I-26 and I-28 Notes were sold by Barclays to registered investment dealers purchasing as principal and re-sold to investors, not over the TSX. Series I-26 and I-28 were not listed at the time of distribution, but were subsequently listed.

14. As is the case with the distribution of iPath ETNs in the U.S., it is not anticipated that the ETNs offered under the Prospectus will be distributed by underwriters soliciting expressions of interest from potential investors. Rather, it is intended that BCI, a broker-dealer registered with the U.S. Securities and Exchange Commission, and a wholly owned subsidiary of Barclays, will

    (a) purchase the ETNs as principal from Barclays and resell the ETNs to Market Makers (as defined below) purchasing as principal; and/or

    (b) act as agent of Barclays in selling ETNs to Market Makers purchasing as principal.

The Market Makers will sell the ETNs to investment dealers that place buy orders on the TSX, either as principal or as agent on behalf of their clients.

15. For each ETN offered under the Prospectus, Barclays will appoint one or more TSX participants to act as market maker (the **Market Makers**) for that ETN, to purchase ETNs from Barclays or BCI when the ETN is initially listed, enter buy and sell orders for the ETNs on the TSX to assist in maintenance of an efficient market for the ETNs and purchase additional ETNs from Barclays or BCI when demand exists that cannot be met from third party sellers of ETNs.

16. Barclays, BCI, Barclays Capital Canada Inc. (**BCCI**), a registered investment dealer and wholly owned subsidiary of Barclays, and other registered investment dealers, will enter into a distribution agreement (**Distribution Agreement**) pursuant to which BCI, BCCI and such other registered investment dealers may purchase as principal from Barclays a portion of any ETNs being issued or distribute the ETNs as agent on behalf of Barclays.

17. BCCI and the other registered investment dealers that are party to the Distribution Agreement would sign an underwriter certificate page in the prospectus supplement and have underwriter liability for misrepresentations in the Prospectus. BCI will rely upon the exemptions from the dealer registration requirement and underwriter registration requirement in paragraph 8.18(2)(e) and section 8.3, respectively, of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* in connection with the distribution of ETNs through BCCI and other registered investment dealers acting as agents.

18. Depending on the level of demand for a series of ETNs, Barclays may issue additional amounts of such series of ETNs that would constitute a further distribution of, and trade fungibly with, the ETNs of such series issued on the original issue date.

Prospectus delivery requirement

19. ETNs may be purchased directly from Market Makers, BCCI or other registered investment dealers and orders may only be placed on any day when there is a trading session on the TSX. Under the Distribution Agreement and Market Maker agreements, BCCI or other registered investment dealers and Market Makers will agree to offer ETNs for sale to the public only as permitted by applicable Canadian securities legislation. Securities legislation in Canada requires a Prospectus to be delivered to purchasers buying ETNs as part of a distribution, including purchasers of ETNs in a distribution on the TSX.

20. Under the terms of the Distribution Agreement and Market Maker agreements, Barclays will require sellers of ETNs to deliver the Prospectus to each purchaser of ETNs on the TSX.

21. All purchasers of ETNs on the TSX will have purchasers' statutory rights as described in the Prospectus including the two-day right of withdrawal exercisable against the Market Maker or other registered investment dealer that is the seller of the ETN.

Need for registration relief

22. Under the terms of the Distribution Agreement, no investment dealers other than BCCI will solicit expressions of interest from investors to purchase ETNs in connection with the distribution of ETNs. As a result, the Filers expect to be the primary entities desiring to foster market awareness and promote trading in the ETNs through the dissemination of sales communications, including, without limitation, websites such as www.ipathetn.com, print and online advertisements, product and educational brochures, term sheets, direct mail, email, sales presentations and web seminars.

23. All sales communications will include the legend required by section 13.2 of National Instrument 41-101 *General Prospectus Requirements* and state that the Prospectus may be obtained by contacting BCCI or another registered investment dealer that is party to the Distribution Agreement.

24. Barclays will retain a third party to develop promotional materials for iPath ETNs but not to distribute or act as underwriter, broker or dealer of iPath ETNs.

25. Noteholders that wish to dispose of their ETNs may generally do so by selling their ETNs on the TSX, through a registered investment dealer, subject only to customary brokerage commissions. As described above, holders of the ETNs would be allowed, at their option, to cause Barclays to redeem their ETNs on any of the specified daily redemption dates (provided that redemption dates and valuation dates may be postponed upon the occurrence of certain market disruption events) between issuance and maturity. In order to redeem ETNs, a holder would need to follow the procedures set forth in the applicable pricing supplement to the Prospectus.

26. The Filers expect that the value of the relevant underlying index on any day will affect the market price of the associated series of ETNs more than any other factor. Other factors may influence the market price of the ETNs, which other factors the Filers believe may include, but would not be

limited to, supply and demand for the particular series of ETNs; the volatility of the relevant underlying index; the market price of the components of the relevant underlying index; the rate of interest on Treasury Bills; the volatility of commodities, equities or other asset prices; economic, financial, political, regulatory or judicial events that affect the value of the relevant underlying index or the market price of its components; the general interest rate environment; and the perceived creditworthiness of Barclays. However, as a result of the potential arbitrage opportunities inherent in their structure and assuming that the redemption feature functions as intended, the Filers do not expect that the ETNs will trade at a material discount or premium to the value of the relevant underlying indices.

27. It is expected that intraday "Indicative Values" meant to approximate the economic value of each series of ETNs will be calculated and published by Bloomberg or a similar medium regularly throughout the TSX trading day on each day on which the relevant series of ETNs are traded on the TSX. Additionally, the Filers or a third party will calculate and publish on a website the closing Indicative Value of each series of ETNs on each trading day.

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.

"Edward P. Kerwin"
Commissioner

"Vern Krishna"
Commissioner

2.1.3 INDEXPLUS Dividend Fund

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Closed-end investment fund exempt from prospectus requirements in connection with the sale of units repurchased from existing security holders pursuant to market purchase programs and by way of redemption of units by security holders subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, ss. 110, 144.

Citation: INDEXPLUS Dividend Fund, Re, 2011 ABASC 502

September 26, 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
INDEXPLUS DIVIDEND FUND
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer be exempted from the requirement contained in the Legislation to file a prospectus (the **Prospectus Requirement**) in connection with the distribution of units of the Filer (**Units**) that have been repurchased by the Filer pursuant to the Programs (as that term is defined below) (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that 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, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Northwest Territories, Nunavut and Yukon; and

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

Interpretation

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

Representations

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

1. The Filer is an unincorporated closed-end investment trust established under the laws of Alberta by a declaration of trust made as of January 27, 2011 (as amended from time to time, the **Declaration of Trust**).

2. The Filer is not a "mutual fund" as defined in the Legislation because the holders of the Units (**Unitholders**) are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Filer as contemplated by the definition of "mutual fund" in the Legislation.

3. The Filer is a reporting issuer or has equivalent status in each of the provinces and territories of Canada and is not in default of any of the requirements of securities legislation applicable to it.

4. The Units are listed and posted for trading on the Toronto Stock Exchange (the **TSX**). As of February 18, 2011, there were 10,000,000 Units issued and outstanding.

5. Each whole Unit is entitled to one vote at all meetings of Unitholders and is entitled to participate equally with all other Units with respect to any and all distributions made by the Filer.

6. Middlefield Limited (the **Manager**), which was incorporated pursuant to the *Business Corporations Act* (Alberta), is the manager and the trustee of the Filer. The Manager is not in default of any applicable requirements of the securities legislation of the Jurisdictions.

7. In order to enhance liquidity and to provide market support for the Units, pursuant to the Declaration of Trust and the terms and conditions that attach to the Units, the Filer is, subject to compliance with any applicable regulatory requirements, obligated to purchase (the **Mandatory Purchase Program**) any Units offered on the TSX (or any successor thereto) if, at any time after the closing of the Filer's initial public offering, the price at which Units are then offered for sale on the TSX (or any successor thereto) is less than 95% of the net asset value of the Filer (**Net Asset Value**) per Unit as at the close of business in Toronto, Ontario on the immediately preceding business day, provided that the maximum number of Units that the Filer is required to purchase pursuant to the Mandatory Purchase Program in any calendar quarter is 1.25% of the number of Units outstanding at the beginning of each such period.

8. The Filer is not required to purchase Units pursuant to the Mandatory Purchase Program if:

   (a) the Manager reasonably believes that the Filer would be required to make an additional distribution in respect of the year to Unitholders of record on December 31 of such year in order that the Filer will generally not be liable to pay income tax under the *Income Tax Act* (Canada) after the making of such purchase;

   (b) in the opinion of the Manager, the Filer lacks the cash, debt capacity or other resources to make such purchases; or

   (c) in the opinion of the Manager, such purchases would adversely affect the ongoing activities of the Filer or the remaining Unitholders.

9. The Declaration of Trust provides that the Filer, subject to applicable regulatory requirements and limitations, shall have the right, but not the obligation, exercisable in its sole discretion, at any time, to purchase outstanding Units in the market at prevailing market prices (the **Discretionary Purchase Program**).

10. Subject to the Filer's right to suspend redemptions, Units may be surrendered for redemption (the **Redemption Program**):

   (a) on the last business day of each month (**Monthly Redemption Date**) to the principal office of the Filer's registrar and transfer agent (the **Transfer Agent**) in Toronto, Ontario by no later than 5:00 p.m. (Toronto time) on a date which is at least 20 business days prior to the Monthly Redemption Date, in order to be redeemed at a redemption price per Unit equal to an amount that is equal to the lesser of:

      (i) 94% of the weighted average trading price of the Units on the TSX during the 15 trading days preceding the Monthly Redemption Date; and

      (ii) the "closing market price" of the Units (generally determined as the closing market price of the Units on the principal market on which the Units are quoted for trading on the Monthly Redemption Date); and

   (b) on August 31 of each year commencing in 2012, to the principal office of the Transfer Agent in Toronto, Ontario on a date that is at least 20 business days prior to the last day of August of such year at a redemption price per Unit equal to the Redemption Price per Unit (as defined in the Prospectus).

11. At the sole discretion of the Manager and subject to the receipt of any necessary regulatory approvals, the Manager may allow additional redemptions from time to time of Units (**Additional Redemptions**), provided that the holder thereof shall be required to use the full amount received on such redemption to purchase treasury securities of a new or existing fund promoted by Middlefield Limited or an affiliate thereof then being offered to the public by prospectus.

12. Purchases of Units made by the Filer under the Mandatory Purchase Program, Discretionary Purchase Program, Redemption Program, and Additional Redemptions (collectively, the **Programs**) are exempt from the issuer bid requirements of the Legislation pursuant to exemptions contained therein.

13. On the Filer redeeming or otherwise acquiring any Units pursuant to the Programs the Filer shall not be considered to be a Unitholder and, pending the sale of such Units, the rights, privileges, and obligations attached to issued and outstanding Units shall be suspended and such Units shall not be considered to be issued and outstanding Units. Upon the sale of one or more Units that have been so previously redeemed or otherwise acquired by the Filer, such Units shall then be entitled to the rights and privileges and subject to the obligations of the Declaration of Trust and shall be considered to be issued and outstanding for the purposes of the Declaration of Trust.

14. The Filer desires to, and the Declaration of Trust provides that the Filer shall have the ability to, sell through one or more securities dealers, Units that have been repurchased by the Filer pursuant to the Programs (**Repurchased Units**), subject to obtaining all necessary regulatory approvals.

15. In order to effect sales of Repurchased Units by the Filer, the Filer intends to sell, in its sole discretion and at its option, any Repurchased Units purchased by it under the Programs primarily through one or more securities dealers and through the facilities of the TSX (or such other exchange on which the Units are then listed).

16. All Repurchased Units will be held by the Filer for a period of 4 months after the repurchase thereof by the Filer (the **Hold Period**), prior to the resale thereof.

17. The sale of Repurchased Units will not have a significant adverse impact on the market price of the Units.

18. Repurchased Units that the Filer does not resell within 12 months after the Hold Period (or 16 months after the date of repurchase) will be cancelled by the Filer.

19. During any calendar year, the Filer will not resell a number of Repurchased Units that is greater than 5% of the number of Units outstanding at the beginning of such calendar year.

20. Prospective purchasers of Repurchased Units will have access to the Filer's continuous disclosure, which will be filed on SEDAR.

21. The Legislation provides that a trade by or on behalf of an issuer in previously issued securities of that issuer have been purchased by that issuer is a distribution and, as such, is subject to the Prospectus Requirement. In the absence of the Exemption Sought, any sale by the Filer of Repurchased Units is a distribution that is subject to the Prospectus Requirement.

Decision

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

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

(a) the Repurchased Units are sold by the Filer through the facilities of and in accordance with the regulations and policies of the TSX or of any other exchange on which the Units are then listed;

(b) the Filer complies with the insider trading restrictions imposed by securities legislation with respect to the trades of the Repurchased Units; and

(c) the Filer complies with the conditions of paragraphs 1 through 5 of subsection 2.8(2) of National Instrument 45-102 *Resale of Securities* with respect to the sale of the Repurchased Units.

For the Commission:

“Glenda Campbell, QC”
Vice-Chair

”Stephen Murison”
Vice-Chair

2.1.4 HSBC Global Asset Management (Canada) Limited and the existing mutual funds listed in Schedule A

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from investment prohibition in s. 4.1(1) of NI 81-102 to permit purchases of securities under private placements where the issuer is a reporting issuer – relief granted from prohibition in s. 4.1(2) of NI 81-102 to permit funds to purchase securities of related entity on secondary market and to purchase long-term debt securities of a related entity under primary offerings of the related entity – relief granted from s. 4.2(1) of NI 81-102 to permit principal trading of debt securities with a related dealer in the secondary market – relief conditional on funds complying with several conditions, including IRC approval.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 4.1(1), 4.1(2), 4.2(1), 19.1.
National Instrument 81-107 Independent Review Committee for Investment Funds.

September 8, 2011

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

AND

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

AND

IN THE MATTER OF
HSBC GLOBAL ASSET MANAGEMENT (CANADA) LIMITED
(the Filer)

AND

IN THE MATTER OF
THE EXISTING MUTUAL FUNDS LISTED IN SCHEDULE A AND
ANY MUTUAL FUNDS THAT MAY BE ESTABLISHED
IN THE FUTURE WHICH ARE MANAGED OR ADVISED BY
THE FILER OR AN AFFILIATE OF THE FILER AND TO WHICH
NATIONAL INSTRUMENT 81-102 MUTUAL FUNDS (NI 81-102)
APPLIES (each, a Fund, and collectively the Funds)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Makers) has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdictions (the Legislation) for:

(a) relief (the Private Placement Relief) from the restriction in section 4.1(1) of NI 81-102 (the Section 4.1(1) Restriction) to enable the Funds to purchase equity securities (Private Placement Securities) of a reporting issuer during the period of distribution (the Distribution) of the Private Placement Securities under a private placement offering (the Private Placement) and for the 60-day period (the 60-Day Period) following completion of the Distribution (the Distribution and the 60-Day Period, together, the Restricted Period), notwithstanding that the dealer manager of the Funds or an associate or an affiliate of the dealer manager acts or has acted as an underwriter in connection with the Distribution (each, a Relevant Offering);

(b) relief (the Related Party Debt in the Secondary Market Relief) from the requirement in section 4.1(2) of NI 81-102 (the Section 4.1(2) Restriction) which prevents a dealer managed mutual fund from investing in a class of securities of an issuer (a Related Issuer) of which a partner, director, officer or employee of the dealer manager of the mutual fund, or a partner, director, officer or employee of an affiliate or associate of the dealer manager of the mutual fund, is a partner, director or officer, unless the partner, director, officer or employee:

(i) does not participate in the formulation of investment decisions made on behalf of the dealer managed mutual fund;

(ii) does not have access before implementation to information concerning investment decisions made on behalf of the dealer managed mutual fund; and

(iii) does not influence, other than through research, statistical and other reports generally available to clients, the investment decisions made on behalf of the dealer managed mutual fund;

in order to permit trades of debt securities between Funds and Related Issuers on the secondary market;

(c) relief (the Long Term Debt Relief) from the Section 4.1(2) Restriction in order to permit a Fund to purchase and hold non-exchange traded debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Issuer in a primary distribution or treasury offering (Primary Offering); and

(d) relief (the Principal Trade Related Account Relief) from the restriction in section 4.2(1) of NI 81-102 which prevents a mutual fund from purchasing a security from or selling a security to any of the following persons or companies:

(i) the manager, portfolio adviser or trustee of the mutual fund;

(ii) a partner, director or officer of the mutual fund or of the manager, portfolio adviser or trustee of the mutual fund;

(iii) an associate or affiliate of a person or company referred to in paragraph (i) or (ii); and

(iv) a person or company, having fewer than 100 securityholders of record, of which a partner, director or officer of the mutual fund or a partner, director or officer of the manager or portfolio adviser of the mutual fund is a partner, director, officer or securityholder; and

if such persons or companies (each a Related Person) are acting as principal, in order to permit a Fund to purchase from or sell to a Related Person that is a principal dealer in the Canadian debt securities market (a Principal Dealer) debt securities of an issuer other than the federal or a provincial government (Non-Government Debt Securities) or debt securities issued or fully and unconditionally guaranteed by the federal or a provincial government (Government Debt Securities) in the secondary market;

collectively, the Exemption Sought.

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 Passport System (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, and Newfoundland and Labrador (the Non-Principal Jurisdictions); and

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

Interpretation

2 Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, 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.

Representations

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

General

1. the Filer is a corporation organized under the laws of Canada, with its head office in Vancouver, British Columbia; the Filer is registered as a portfolio manager in each of the provinces of Canada other than Prince Edward Island;

2. the Filer, or an affiliate or associate of the Filer, is or will be the manager or principal portfolio adviser or both of the Funds; in addition, from time to time, third parties who are registered as portfolio managers may act as portfolio advisers to the Funds;

3. Schedule A contains a list of all the mutual funds that are subject to NI 81-102 of which the Filer is, as of August 3, 2011, the principal portfolio adviser or the manager or both;

4. each of the Funds is or will be a dealer managed mutual fund as such term is defined in NI 81-102;

5. each Fund is or will be an open-ended mutual fund trust or corporation established under the laws of one of the Jurisdictions or the Non-Principal Jurisdictions;

6. each of the Funds is or will be a reporting issuer under the laws of one or more of the Jurisdictions or the Non-Principal Jurisdictions;

7. the Filer and the Funds are not in default of securities legislation in any jurisdiction;

8. the securities of the Funds are or will be qualified for distribution in one or more Canadian jurisdictions under simplified prospectuses and annual information forms that have been prepared and filed in accordance with applicable securities legislation;

9. an independent review committee (IRC) has or will be constituted for each of the Funds in accordance with the requirements of NI 81-107;

Private Placement Relief

10. an affiliate or associate of the Filer may be a party to an underwriting agreement (the Related Underwriter) with a reporting issuer in respect of Private Placement Securities that are offered on a Private Placement basis; the Filer may wish to cause its relevant Funds to invest in such Private Placement Securities during the Restricted Period;

11. at the time of purchase by a Fund, the Private Placement Securities will either be (i) equity securities of a reporting issuer or (ii) convertible securities, such as special warrants, which automatically permit the holder to purchase, convert or exchange such convertible securities into other equity securities of the reporting issuer once such other equity securities are listed and traded on an exchange;

12. despite the affiliation between the Filer and the Related Underwriter, they operate independently of each other; in particular, the investment banking and related dealer activities of the Related Underwriter and the portfolio management activities of the Filer on behalf of the Funds are separated by ethical walls; accordingly, no information flows from one to the other concerning their respective business operations or activities generally;

13. the Funds will not be required or obligated to purchase any Private Placement Securities during the Restricted Period;

14. any purchase of Private Placement Securities by the Funds will be consistent with the investment objectives of the Funds and represent the business judgment of the Filer uninfluenced by considerations other than the best interests of the Funds;

15. to the extent that a Related Underwriter participates as an underwriter in an offering, the Section 4.1(1) Restriction restricts the Funds from making certain investments in the issuer's Private Placement Securities during the relevant Restricted Period, which can result in the portfolio adviser of the Fund incurring extra costs, which are ultimately borne by the relevant Fund, to substitute investments for those that it is restricted from purchasing;

16. subsection 4.1(1) of NI 81-102 provides an exemption from the Section 4.1(1) Restriction if the Filer or any of its associates or affiliates acts as a member of a selling group distributing 5% or less of the underwritten

securities; however, this de minimis exemption is not available to entities that are underwriting a Distribution (as opposed to being in the selling group) and therefore the Funds cannot avail themselves of this exemption;

17. the Funds would not be restricted by the Section 4.1(1) Restriction if, in accordance with section 4.1(4) of NI 81-102, certain conditions are met, including that the IRC of the Funds has approved the transaction in accordance with section 5.2(2) of NI 81-107, that a prospectus is filed with one or more securities regulatory authorities or regulators in Canada in connection with a Relevant Offering and, during the 60-day Period, that the investment is made on an exchange on which the class of equity securities of the issuer is listed and traded;

18. the Filer will not be able to rely on section 4.1(4) of NI 81-102 if the offering is made on a Private Placement basis, as a prospectus is not filed in such circumstance; however, the Filer will comply with each of the other conditions in section 4.1(4), including section 4.1(4)(a) that the IRC of the Fund will approve any purchases of Private Placement Securities during the Restricted Period;

Related Party Debt in the Secondary Market Relief

19. the investment strategies of each Fund that relies on the Related Party Debt in the Secondary Market Relief permit or will permit it to invest in the securities purchased, either as a principal strategy in achieving its investment objective or as a temporary strategy pending the purchase of other securities;

20. section 6.2 of NI 81-107 provides an exemption from the mutual fund conflict of interest investment restrictions for purchases of Related Issuer securities if the purchase is made on an exchange; it does not provide an exemption from section 4.1(2) of NI 81-102 and it does not provide an exemption for purchases of non-exchange traded securities;

21. Related Issuers of the Filer are significant issuers of both exchange-traded and non-exchange traded securities;

22. non-exchange traded securities that are debt securities issued by a Related Issuer, in addition to securities that are listed and traded on an exchange, may be appropriate investments for the Funds;

23. in respect of the Funds of the Filer, directors, officers and employees of the Filer or of an affiliate or associate of the Filer may be directors, officers or employees of a Related Issuer who do not meet the exceptions in section 4.1(2) of NI 81-102 such that the Related Party Debt in Secondary Market Relief is required by the Filer to permit the Funds to invest in securities of a Related Issuer;

24. each purchase of securities of a Related Issuer will occur in the secondary market and not under primary distributions or treasury offerings of a Related Issuer;

25. each non-exchange traded security purchased by a Fund in reliance on the Related Party Debt in Secondary Market Relief will be a debt security 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;

26. the Filer considers that the Funds should have access to such securities for the following reasons:

    (a) there is currently and has been for several years a very 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 of the Filer are included in most of the Canadian debt indices;

27. if a Fund's purchase of non-exchange-traded securities issued by Related Issuers involves an inter-fund trade with another fund to which NI 81-107 applies, the provisions of section 6.1(2) of NI 81-107 will apply to such transaction;

Long Term Debt Relief

28. the investment strategies of each Fund that relies on the Long Term Debt Relief permit or will permit it to invest in the securities purchased, either as a principal strategy in achieving its investment objective or as a temporary strategy pending the purchase of other securities;

29. Related Issuers of the Filer are significant issuers of both exchange-traded and non-exchange traded securities;

30. section 6.2 of NI 81-107 provides an exemption from the mutual fund conflict of interest investment restrictions for exchange-traded securities, such as common shares; it does not provide relief from the Section 4.1(2) Restriction to permit a Fund to purchase non-exchange-traded securities issued by Related Issuers; some securities of Related Issuers, such as debt securities, of the Filer are not listed and traded;

31. Related Issuers (in particular HSBC Bank Canada) 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 currently and has been for several years a very 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 of the Filer are included in most of the Canadian debt indices;

32. the Filer is seeking the Long Term Debt Relief to permit the Funds to purchase and hold non-exchange traded securities that are debt securities, other than asset backed commercial paper securities, with a term to maturity of 365 days or more, issued by a Related Issuer in a Primary Offering;

33. each non-exchange traded security purchased by a Fund in reliance on the Long Term Debt Relief will be a debt security, other than an asset backed commercial paper security, with a term to maturity of 365 days or more, 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;

34. each non-exchange traded debt security purchased by a Fund in reliance on the Long Term Debt Relief will be purchased in a Primary Offering where 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;

Principal Trade Related Account Relief

35. the investment strategies of each Fund that relies on the Principal Trade Related Account Relief permit or will permit it to invest in the securities purchased, either as a principal strategy in achieving its investment objective or as a temporary strategy, pending the purchase of other securities;

36. Related Persons of the Funds are Principal Dealers in the Canadian debt securities market, both primary and secondary;

37. section 4.3 of NI 81-102 which provides certain relief from the Section 4.2(1) Restriction does not provide an exemption from the Section 4.2(1) Restriction for transactions in Government Debt Securities or Non-Government Debt Securities that are not the subject of public quotations or not inter-fund trades that comply with Section 6.1(2) of NI 81-107;

38. the Filer has requested the Principal Trade Related Account Relief so that a Fund may purchase from or sell to a Related Person that is a Principal Dealer, Non-Government Debt Securities or Government Debt Securities in the secondary market;

39. the purchase of debt securities from a Related Person in the secondary market is subject to the Section 4.2(1) Restriction;

40. the Filer considers that the Funds should have access to the Government Debt Securities and Non-Government Debt Securities for the following reasons:

    (a) there is a limited supply of Non-Government Debt Securities and Government Debt Securities available to the Funds; and

    (b) frequently the only source of Non-Government Debt Securities and Government Debt Securities is a Related Person of the Funds;

41. the Funds require the Principal Trade Related Account Relief in order to continue to pursue their investment objectives and strategies effectively;

Decision

4 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:

1. the Private Placement Relief is granted provided that:

    (a) at the time of each purchase of Private Placement Securities by a Fund during a Restricted Period for a Relevant Offering:

        (i) the investment will be in compliance with the investment objectives of the Fund;

        (ii) the Fund has an IRC that complies with NI 81-107;

        (iii) the IRC of the Fund will have approved the investment in accordance with section 4.1(4)(a) of NI 81-102; and

        (iv) the Fund complies with paragraphs 4.1(4)(c)(ii) and 4.1(4)(d) of NI 81-102;

    (b) each issuer of Private Placement Securities in a Relevant Offering is a reporting issuer or equivalent under the applicable legislation in a Canadian jurisdiction at the time of each purchase by a Fund during the Restricted Period for the Relevant Offering;

    (c) prior to the first reliance on the Private Placement Relief by a Fund:

        (i) the website of the Fund or Filer, as applicable, discloses, and

        (ii) on the date which is the earlier of:

            (A) the date when an amendment to the simplified prospectus of the Fund is filed for reasons other than the Private Placement Relief; and

            (B) the date on which the initial or renewal simplified prospectus of the Fund is receipted,

        Part A of the simplified prospectus of the Fund discloses,

    that the Fund may invest in the Private Placement Securities during the Restricted Period in reliance on the Private Placement Relief, notwithstanding that a Related Underwriter has acted as underwriter in the Relevant Offering of the same class of such Private Placement Securities; and

    (d) on the date which is the earlier of:

        (i) the date when an amendment to the annual information form of the Fund is filed for reasons other than the Private Placement Relief; and

        (ii) the date on which the initial or renewal annual information form of the Fund is receipted;

the annual information form of the Fund discloses the information referred to in paragraph (c) above and describes the policies or procedures and standing instructions, if any, that have been approved by the IRC in relation to investments that can only be made in reliance on the Private Placement Relief; and

2. the Related Party Debt in the Secondary Market Relief is granted provided that:

   (a) the purchase is consistent with, or is necessary to meet, the investment objective of the Fund;

   (b) the IRC of the Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;

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

   (d) if the security is an exchanged-traded security, the purchase is made on an exchange on which the securities of the issuer are listed and traded;

   (e) if the security is not an exchange-traded security:

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

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

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

         (B) if the purchase does not occur on a marketplace:

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

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

   (f) the transaction complies with any applicable "market integrity requirements" as defined in section 6.1(1)(b) of NI 81-107;

   (g) no later than the time the Fund files its annual financial statements, the Filer, or an affiliate or associate of the Filer, files with the securities regulatory authority or regulator the particulars of any investments; and

   (h) the reporting obligation in section 4.5 of NI 81-107 applied to the Related Party Debt in Secondary Market Relief granted in this Decision and 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 Fund did not comply with any of the conditions of the Related Party Debt in Secondary Market Relief; and

3. the Long Term Debt Relief is granted provided that:

   (a) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Fund;

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

   (c) the manager of the Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;

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

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

(f) no Fund may 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 the Related Issuer;

(g) no Fund may participate in the Primary Offering if following its purchase such Fund together with related Funds will hold more than 20% of the securities issued in the Primary Offering;

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

(i) no later than the time the Fund files its annual financial statements, the Filer files with the securities regulatory authority the particulars of such investments; and

4. the Principal Trade Related Account Relief is granted provided that:

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

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

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

(d) the bid and ask price of the Non-Government Debt Security or Government Debt Security are readily available, as provided in Commentary 7 to section 6.1 of NI 81-107;

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

(f) the purchase or sale is subject to "market integrity requirements" as defined in section 6.1(1)(b) of NI 81-107; and

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

The Private Placement Relief will terminate on the coming into force of any securities legislation dealing with Private Placements in the context of section 4.1 of NI 81-102.

The Related Party Debt in Secondary Market Relief will terminate on the coming into force of any securities legislation relating to purchases of related party debt securities by mutual funds in the secondary market in the context of in section 4.1(2) of NI 81-102.

The Long Term Debt Relief will terminate on the coming into force of any securities legislation relating to purchases of Related Issuer debt securities by mutual funds in a Primary Offering in the context of in section 4.1(2) of NI 81-102.

The Principal Trade Related Account Relief will terminate on the coming into force of any securities legislation relating to purchases of Non-Government Debt Securities or Government Debt Securities from Principal Dealers in the context of section 4.2(1) of NI 81-102.

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

SCHEDULE A

HSBC Canadian Money Market Fund
HSBC U.S. Dollar Money Market Fund
HSBC Mortgage Fund
HSBC Canadian Bond Fund
HSBC Monthly Income Fund
HSBC U.S. Dollar Monthly Income Fund
HSBC Canadian Balanced Fund
HSBC Dividend Income Fund
HSBC Equity Fund
HSBC Small Cap Growth Fund
HSBC Global Equity Fund
HSBC U.S. Equity Fund
HSBC European Fund
HSBC AsiaPacific Fund
HSBC Chinese Equity Fund
HSBC Indian Equity Fund
HSBC Emerging Markets Fund
HSBC BRIC Equity Fund
HSBC Global Climate Change Fund
HSBC World Selection Diversified Conservative Fund
HSBC World Selection Diversified Moderate Conservative Fund
HSBC World Selection Diversified Balanced Fund
HSBC World Selection Diversified Growth Fund
HSBC World Selection Diversified Aggressive Growth Fund
HSBC Canadian Money Market Pooled Fund
HSBC Mortgage Pooled Fund
HSBC Canadian Bond Pooled Fund
HSBC International Bond Pooled Fund
HSBC U.S. High Yield Bond Pooled Fund
HSBC Canadian Dividend Income Pooled Fund
HSBC Canadian Equity Pooled Fund
HSBC Canadian Small Cap Equity Pooled Fund
HSBC U.S. Equity Pooled Fund
HSBC International Equity Pooled Fund
HSBC Emerging Markets Pooled Fund
HSBC Global Inflation Linked Bond Pooled Fund
HSBC Emerging Markets Debt Pooled Fund
HSBC MultiAlpha Canadian Bond Pooled Fund
HSBC MultiAlpha Canadian Equity Pooled Fund
HSBC MultiAlpha Canadian Small Cap Equity Pooled Fund
HSBC MultiAlpha U.S. Equity Pooled Fund
HSBC MultiAlpha U.S. Small/Mid Cap Equity Pooled Fund
HSBC MultiAlpha International Equity Pooled Fund

2.2 Orders

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

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

AND

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

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

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

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

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

1. pursuant to clause 2 of subsection 127(1) of the Act, that all trading in the securities of NAFG and NAC shall cease;

2. pursuant to clause 2 of subsection 127(1) of the Act, that NAFG, NAC, Flavio and Gino cease trading in all securities; and

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

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

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

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

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

AND WHEREAS by Order dated April 29, 2011, the Temporary Order as further amended was extended to August 2, 1011;

AND WHEREAS by Order dated July 29, 2011, the Temporary Order as further amended was extended to October 3, 2011 and the hearing was adjourned to September 30, 2011;

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

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

IT IS ORDERED that the Temporary Order as further amended is extended to November 3, 2011;

IT IS FURTHER ORDERED that the hearing in this matter be adjourned to Wednesday, November 2, 2011 at 10:00 a.m. or to such other date or time as set by the Office of the Secretary and agreed to by the parties.

DATED at Toronto this 29th day of September, 2011.

"James E. A. Turner"

2.2.2 Ciccone Group et al. – ss. 127(7), 127(8)

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

AND

**IN THE MATTER OF
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**

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

WHEREAS on April 21, 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") that the Respondents cease trading in securities; that the exemptions contained in Ontario securities law do not apply to all of the Respondents except 990509 Ontario Inc. ("990509"); and that trading in the securities of 990509 and Medra Corporation ("Medra") cease (the "Temporary Order");

AND WHEREAS on April 21, 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 22, 2010, the Commission issued a Notice of Hearing giving notice that it will hold a hearing (the "Hearing") on May 3, 2010 at 10:00 a.m., to consider, among other things, whether it is in the public interest to extend the Temporary Order pursuant to subsections 127(7) and (8) of the Act until the conclusion of the Hearing, or until such further time as considered necessary by the Commission;

AND WHEREAS on May 3, 2010, the Commission extended the Temporary Order against all of the named respondents to October 22, 2010 and adjourned the Hearing to October 21, 2010;

AND WHEREAS on October 21, 2010, the Commission extended the Temporary Order as against Ciccone Group, Medra, 990509, Cachet Wealth Management Inc. ("Cachet"), Tadd Financial Inc. ("Tadd"), Vince Ciccone ("Ciccone"), Klaudiusz Malinowski ("Malinowski"), Darryl Brubacher ("Brubacher") and Andrew J. Martin ("Martin") to January 26, 2011 and adjourned the Hearing to January 25, 2011;

AND WHEREAS on January 25, 2011, the Commission extended the Temporary Order as against Ciccone Group, 990509, Cachet, Tadd, Ciccone, Malinowski, Brubacher and Martin to May 11, 2011 and adjourned the Hearing to May 10, 2011;

AND WHEREAS on May 10, 2011, the Commission extended the Temporary Order as against Ciccone Group, 990509, Cachet, Tadd, Ciccone, Malinowski, Brubacher and Martin to August 11, 2011 and adjourned the Hearing to August 10, 2011;

AND WHEREAS 990509 (now named Ciccone Group Inc.) made an assignment into bankruptcy on November 30, 2010;

AND WHEREAS on August 10, 2011, the Commission extended the Temporary Order as against Ciccone Group, Medra, 990509 (now named Ciccone Group Inc.), Ciccone, Tadd, Brubacher and Martin to September 30, 2011 and adjourned the hearing to September 29, 2011;

AND WHEREAS Staff advised the Commission that Staff anticipate that proceedings will be commenced shortly in this matter;

AND WHEREAS Staff advised the Commission that Brubacher, Martin and Tadd consent to an extension of the Temporary Order until November 1, 2011;

AND WHEREAS Staff advised the Commission that Ciccone does not oppose an extension of the Temporary Order until November 1, 2011;

AND WHEREAS Staff advised the Commission that Medra and the trustee in bankruptcy for 990509 were served with notice of this Hearing;

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

IT IS HEREBY ORDERED pursuant to subsections 127(7) and (8) of the Act that:

(i) the Temporary Order is extended as against Ciccone Group, Medra, 990509 (now named Ciccone Group Inc.), Ciccone, Tadd, Brubacher and Martin to November 2, 2011; and

(ii) the Hearing is adjourned to November 1, 2011 at 10:00 a.m. or to such other date or time as set by the Office of the Secretary and agreed to by the parties.

DATED at Toronto this 29th day of September, 2011.

"James E. A. Turner"

2.2.3 Chi-X Canada ATS – s. 15.1 of NI 21-101 Marketplace Operation and s. 6.1 of OSC Rule 13-502 Fees

Headnote

Section15.1of National Instrument 21-101 Marketplace Operation (21-101) – exemption granted from the requirement in subsection 6.4(2) of 21-101 to file an amendment to Form 21-101F2 45 days prior to the implementation of changes made to Form 21-101F2 regarding Exhibit G (Fees).

Applicable Legislative Provision

Securities Act, R.S.O. 1990, c. S.5, as am.
National Instrument 21-101 Marketplace Operation, s. 15.1.
Rule 13-502 Fees, s. 6.1.

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

AND

IN THE MATTER OF
CHI-X CANADA ATS

ORDER
(Section 15.1 of National Instrument 21-101
Marketplace Operation
(NI 21-101) and section 6.1 of
OSC Rule 13-502 Fees)

UPON the application (the "Application") of Chi-X Canada ATS Limited (the "Applicant") to the Director for an order pursuant to section 15.1 of NI 21-101 exempting the Applicant from the requirement in paragraph 6.4(2) to file an amendment to the information previously provided in Form 21-101F2 (the "Form") regarding Exhibit G (Fees) 45 days before implementation of the fee changes (the "45 day filing requirement");

AND UPON the Applicant filing an updated Form F2 on September 20, 2011, describing a fee change to be implemented October 1, 2011 (the "Fee Change");

AND UPON the Application by the Applicant (the "Fee Exemption Application") to the Director for an order pursuant to section 6.1 of Rule 13-502 exempting the Applicant from the requirement to pay an activity fee of (a) $3,250 in connection with the Application in accordance with section 4.1 and item E(1) of Appendix C of OSC Rule13-502, and (b) $1,500 in connection with the Fee Exemption Application (Appendix C, item E(2)(a));

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

AND UPON the Applicant having represented to the Director as follows.

1. The Applicant is carrying on business as an alternative trading system in Ontario with its head office in Toronto.

2. The Applicant received customer input prior to arriving at the new fee model and plans to provide notice to the industry prior to the implementation of the resulting fee schedule changes.

3. The Applicant would like to implement changes to its fee schedule on October 1, 2011.

4. The current multi-market trading environment requires frequent changes to the fees and fee model to remain competitive and it has become unduly burdensome to delay 45 days before responding to participants' needs and/or competitors' initiatives.

5. The policy rationale behind the 45 day filing requirement, which the Applicant understands is to provide Commission staff with an opportunity to analyze the changes and determine if any objections should be raised prior to implementation, can be met in a shorter period.

6. Given that the notice period was created prior to multi-marketplaces becoming a reality, and in light of the current competitive environment and the limited and highly technical nature of the exemption being sought, it would be unduly onerous to pay fees in these circumstances;

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

IT IS ORDERED by the Director:

(a) pursuant to section 15.1 of NI 21-101 that the Applicant is exempted from the 45 day filing period for the Fee Change, and

(b) pursuant to section 6.1 of OSC Rule 13-502 that the Applicant is exempted from:

  (i) paying an activity fee of $3,250 in connection with the Application, and

  (ii) paying an activity fee of $1,500 in connection with the Fee Exemption Application.

DATED this 28th day of September, 2011.

“Tracey Stern”
Manager, Market Regulation
Ontario Securities Commission

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

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

AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND WHEREAS on June 14, 2010, on hearing the submissions of Staff, a Panel of the Commission ordered that the First Temporary Order be extended until September 1, 2010 and that the hearing in this matter be adjourned to September 1, 2010, at 1:00 p.m.;

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

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

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

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

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

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

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

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

AND WHEREAS on December 7, 2010, Staff, Schaumer, Silverstein, counsel for Pasternak, Walker and Brikman, and an agent for new counsel for Feder attended the hearing; and whereas no person appeared on behalf of the Corporate Respondents; and whereas Harper, Rash, Tsatskin, Groberman, Bajovski, Cohen and Shiff did not appear;

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

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

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

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

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

AND WHEREAS on December 7, 2010, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest that pursuant to subsections 127(7) and 127(8) of the Act, the Temporary Order be extended to March 3, 2011, without prejudice to Feder to bring a motion if he opposes the extension and that the hearing in this matter be adjourned to February 16, 2011 at 2:00 p.m.;

AND WHEREAS on February 16, 2011, Staff, Schaumer, Shiff, counsel for Feder attended the hearing; and whereas no person appeared on behalf of the Corporate Respondents; and whereas counsel for Pasternak, Walker and Brikman; Harper, Rash, Tsatskin, Groberman, Bajovski and Cohen did not appear;

AND WHEREAS on February 16, 2011, Staff requested the extension of the Temporary Order against the Individual Respondents and Corporate Respondents; and Schaumer and Shiff consented to the extension of the Temporary Order;

AND WHEREAS on February 16, 2011, counsel for Feder consented to the extension of the Temporary Order of December 7, 2010, save and except for the exceptions outlined in this order;

AND WHEREAS on February 16, 2011, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to adjourn the hearing to May 3, 2011 at 10:00 a.m. and further extended the Temporary Order until May 4, 2011;

AND WHEREAS on February 16, 2011, it was further ordered pursuant to subsections 127(7) and (8) of the Act, that the Temporary Order be extended to May 4, 2011, save and except that:

(a) Feder is permitted to trade securities in an account in his own name or in an account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)) in which Feder has the sole legal and beneficial ownership, provided that:

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

(ii) that Feder carries out any permitted trading through a dealer registered with the Commission (which dealer must be given a copy of this order) and through accounts opened in Feder's name only; and

(b) Feder is permitted to contact the existing shareholders of (i) Genesis Rare Diamonds (Ontario) Ltd. (ii) Kimberlite Diamond Corporation and (iii) their subsidiaries, none of which is a reporting issuer, or their counsel and to discuss/explore the potential for the sale of Feder's shares in those corporations to any or all of their existing shareholders and/or the purchase of Feder's shares in those corporations by the respective corporations for cancellation, provided that Feder's shares are not actually sold and/or purchased without Feder first obtaining a further exemption/order from the Commission that permits such sale(s) and/or purchase(s);

AND WHEREAS on May 3, 2011, Staff, Schaumer, Shiff, and Silverstein attended the hearing; no one appeared on behalf of the Corporate Respondents; and counsel for Pasternak, Walker and Brikman; counsel for Rash; Tsatskin, Harper, Groberman, Bajovski and Cohen did not appear;

AND WHEREAS on May 3, 2011, Staff requested an extension of the Temporary Order against the Individual Respondents and Corporate Respondents; and Schaumer, Shiff and Silverstein did not object to an extension of the Temporary Order;

AND WHEREAS on May 3, 2011, 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 against all named Respondents, except Rash, to the conclusion of the hearing on the merits; to extend the Temporary Order against Rash until July 12, 2011, and to adjourn the hearing to July 11, 2011 at 10:00 a.m., at which time Rash will have the opportunity to make submissions regarding any further extension of the Temporary Order against him;

AND WHEREAS on July 11, 2011, Staff, Harper and Shiff attended the hearing; and no one appeared on behalf of the Corporate Respondents, Pasternak, Walker, Brikman, Feder, Tsatskin, Schaumer, Silverstein, Groberman, Bajovski or Cohen;

AND WHEREAS on July 11, 2011, Staff informed the Commission that Rash had recently retained new counsel in a related matter, and that Rash's new counsel had advised Staff that he would not be attending the hearing;

AND WHEREAS on July 11, 2011, Staff requested a further extension of the Temporary Order against Rash;

AND WHEREAS on July 11, 2011, 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 against Rash to September 27, 2011, and to adjourn the hearing to September 26, 2011, at 10:00 a.m., at which time Rash would have the opportunity to make submissions regarding any further extension of the Temporary Order against him;

AND WHEREAS on September 1, 2011, the Panel approved settlement agreements between Staff and each of Oded Pasternak, Allan Walker and Vyacheslav Brikman;

AND WHEREAS on September 26, 2011, Staff, Harper, Schaumer, Silverstein and Shiff attended the hearing; and no one appeared on behalf of the Corporate Respondents, Feder, Rash, Tsatskin, Groberman, Bajovski or Cohen;

AND WHEREAS on September 26, 2011, Staff requested a further extension of the Temporary Order against Rash;

AND WHEREAS on September 26, 2011, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to make this order;

IT IS ORDERED that the Temporary Order is extended against Rash until November 29, 2011, and the hearing is adjourned to November 28, 2011, at 10:00 a.m., at which time Rash will have the opportunity to make submissions regarding any further extension of the Temporary Order against him.

DATED at Toronto this 26th day of September, 2011.

"Christopher Portner"

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

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

AND

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

ORDER
(Section 127 of the Securities Act)

WHEREAS on June 8, 2010, the Commission issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) accompanied by a Statement of Allegations dated June 8, 2010, issued by Staff of the Commission (“Staff”) with respect to Global Energy Group, Ltd. (“Global Energy”), New Gold Limited Partnerships, (“New Gold”), Christina Harper (“Harper”), Michael Schaumer (“Schaumer”), Elliot Feder (“Feder”), Vadim Tsatskin (“Tsatskin”), Oded Pasternak (“Pasternak”), Alan Silverstein (“Silverstein”), Herbert Groberman (“Groberman”), Allan Walker (“Walker”), Peter Robinson (“Robinson”), Vyacheslav Brikman (“Brikman”), Nikola Bajovski (“Bajovski”), Bruce Cohen (“Cohen”) and Andrew Shiff (“Shiff”) (collectively, the “Respondents”);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND WHEREAS on November 8, 2010, upon hearing the submissions of Staff, Schaumer, Shiff, Silverstein, and counsel for Pasternak, Walker and Brikman, it was ordered that the hearing be adjourned to December 7, 2010 at 2:30 p.m. to continue the pre-hearing conference;

AND WHEREAS on December 7, 2010, Staff confirmed that the Commission had received the affidavit of Charlene Rochman sworn December 7, 2010, which indicated that all parties, except for Bajovski or Cohen, had been served with notice of the pre-hearing conference personally, electronically, through their counsel or at their last known address;

AND WHEREAS Staff continued to have no current effective address for service for Bajovski and Cohen;

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

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

AND WHEREAS on December 7, 2010, upon hearing submissions from Staff, Schaumer, Silverstein, counsel for Pasternak, Walker and Brikman, and an agent for counsel for Feder, it was ordered that the hearing be adjourned to February 16, 2011 at 2:00 p.m. to set dates for the hearing on the merits and that Staff renew efforts to obtain an effective address for service on Bajovski and Cohen;

AND WHEREAS on February 16, 2011, Staff confirmed that the Commission had received the affidavit of Charlene Rochman sworn on February 14, 2011, which indicated that all parties, except for Bajovski and Cohen, had been served with notice of the pre-hearing conference, personally, electronically, through their counsel or at their last known address;

AND WHEREAS Staff continued to have no current effective address for service for Bajovski and Cohen;

AND WHEREAS on February 16, 2011, Staff, Schaumer, Shiff, and counsel for Feder attended the hearing;

AND WHEREAS on February 16, 2011, upon hearing submissions from Staff, Schaumer, Shiff and counsel for Feder, it was ordered that the hearing be adjourned to May 3, 2011 at 10:00 a.m. for a pre-hearing conference to set the dates for the hearing on the merits, and that Staff would renew efforts to obtain an effective address for service on Bajovski and Cohen;

AND WHEREAS on May 3, 2011, Staff confirmed that the Commission had received the affidavit of Charlene Rochman sworn on May 2, 2011, which indicated that all parties, except for Bajovski and Cohen, had been served with notice of the pre-hearing conference personally, electronically, through their counsel or at their last known address;

AND WHEREAS on May 3, 2011, Staff confirmed that they had renewed their efforts to obtain an effective address for service on Bajovski and Cohen, but that they continued to have no current effective address for service for Bajovski and Cohen;

AND WHEREAS on May 3, 2011, Staff, Schaumer, Silverstein and Shiff appeared before the Commission, and scheduling of the hearing on the merits was discussed;

AND WHEREAS on May 3, 2011, Schaumer, Silverstein and Shiff had no objection that the dates of the hearing on the merits be set;

AND WHEREAS on May 3, 2011, it was ordered that the hearing on the merits shall commence on January 18, 2012 at 10:00 a.m., and shall continue on January 19, 20, 23, 24, 25, 26, 27 and 30, 2012 and February 1, 2, 3, 6, 7, 8, 9, and 10, 2012;

AND WHEREAS on May 3, 2011, it was further ordered that the parties attend before the Commission on July 11, 2012 at 10:00 a.m., for a status hearing;

AND WHEREAS on July 11, 2011, Staff confirmed that the Commission had received the affidavit of Charlene Rochman sworn on July 8, 2011, which indicated that all parties, except for Bajovski and Cohen, had been served with notice of the status hearing personally, electronically, through their counsel or at their last known address;

AND WHEREAS on July 11, 2011, Staff, Harper and Shiff appeared before the Commission for a status hearing, and Staff provided a status report to the Commission;

AND WHEREAS on July 11, 2011, Harper advised the Commission that she wished to bring a motion to sever the hearing on the merits against her from the hearing on the merits against all other named Respondents;

AND WHEREAS on July 11, 2011, the Panel advised Harper that she would have to comply with the requirements of Rule 3 of the Ontario Securities Commission *Rules of Procedure* (2010), 33. O.S.C.B. 8017 (the "Rules") with respect to setting a motion date and serving the Office of the Secretary and all other named Respondents with her motion materials;

AND WHEREAS on July 11, 2011, Staff requested that another status hearing be scheduled towards the end of September 2011 and Shiff consented to scheduling another status hearing;

AND WHEREAS on July 11, 2011, it was ordered that the parties attend before the Commission on September 26, 2011 at 10:00 a.m. for a status hearing, and for Harper's motion to sever, if she decides to proceed with her motion and does so in accordance with the Rules;

AND WHEREAS on September 1, 2011, the Commission approved settlement agreements between Staff and each of Oded Pasternak, Allan Walker and Vyacheslav Brikman;

AND WHEREAS on September 26, 2011, Staff confirmed that the Commission had received the affidavit of Salvina Greco sworn on September 23, 2011, which indicated that all parties, except Bajovski and Cohen, had been served with notice of the status hearing personally, electronically, through their counsel or at their last known address;

AND WHEREAS on September 26, 2011, Staff, Harper, Schaumer, Silverstein and Shiff appeared before the Commission for a status hearing;

AND WHEREAS on September 26, 2011, Staff requested that another status hearing be scheduled for November 28, 2011, and all parties present consented to scheduling another status hearing;

IT IS ORDERED that the parties attend before the Commission on November 28, 2011 at 10:00 a.m. for a status hearing at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto.

DATED at Toronto this 26th day of September, 2011.

"Christopher Portner"

2.2.6 Global Energy Group, Ltd. et al. – Rule 3 of the OSC Rules of Procedure (2010), 33 O.S.C.B. 8017

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

AND

IN THE MATTER OF
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

MOTION ORDER
(Rule 3 of the OSC Rules of Procedure (2010), 33 O.S.C.B. 8017)

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

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

AND WHEREAS the First Temporary Order was extended by the Commission from time to time;

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

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

2. Any exemptions contained in Ontario securities law do not apply to the Individual Respondents;

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

AND WHEREAS the First Temporary Order and the Second Temporary Order have been extended by the Commission from time to time;

AND WHEREAS on June 8, 2010, Staff issued a Statement of Allegations and the Commission issued a Notice of Hearing, returnable on June 14, 2010, with respect to Global Energy, New Gold Partnerships, Harper, Tsatskin, Schaumer, Feder, Pasternak, Silverstein, Groberman, Walker, Robinson, Brikman, Bajovski, Cohen and Shiff;

AND WHEREAS on June 14, 2010, a first appearance was held before the Commission with respect to the Statement of Allegations and the Commission ordered that the hearing be adjourned to September 1, 2010;

AND WHEREAS on August 27, 2010, a hearing was held before the Commission to consider a motion brought by Harper pursuant to Rule 3 of the Commission's Rules of Procedure (2009), 32 O.S.C.B. 1991 in which Harper requested: (i) that her name be struck from the style of cause in the proceeding; (ii) that she be given immunity as a victim in this matter; and (iii) that the Commission "close the book on any potential form of future prosecution" against her in relation to this matter (the "August 2010 Motion");

AND WHEREAS on August 27, 2010, the Commission issued an order dismissing the August 2010 Motion (the "August 2010 Motion Order") on the basis that:

(i) Harper's submissions can best be considered by the Panel dealing with the hearing on the merits in this matter, at which time Harper will have an opportunity to challenge all of Staff's allegations, to cross-examine Staff's witnesses, and to bring evidence forward about how she viewed her role in the events at issue in this matter;

(ii) should the Panel dealing with the hearing on the merits find that Staff's allegations against Harper have been sustained, Harper will have an opportunity, at a sanctions and costs hearing, to bring evidence forward about the effect of the events at issue on her subsequent health;

(iii) the Statement of Allegations and Notice of Hearing, dated June 8, 2010, do not list Harper's name first on any style of cause; and

(iv) it is not legally possible for a Panel of the Commission to grant the forward-looking immunity sought by Harper;

AND WHEREAS on September 1, 2010 the Commission ordered the Second Temporary Order be amended to permit Feder to trade securities in an account in his own name or in an account of his registered retirement savings plan provided certain conditions are met;

AND WHEREAS on December 7, 2010 the Commission directed that the First Temporary Order and the Second Temporary Order, as amended, be consolidated into a single temporary Order (the "Temporary Order");

AND WHEREAS on May 3, 2011 the Commission issued an order extending the Temporary Order against all Respondents, except Rash, to the conclusion of the hearing on the merits, and extending the Temporary Order against Rash until July 12, 2011;

AND WHEREAS on July 11, 2011, the Temporary Order against Rash was extended until September 27, 2011;

AND WHEREAS on September 16, 2011, Harper brought a motion pursuant to Rule 3 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 and section 144 and subsections 127(7) and 127(8) of the Act, supported by an Affidavit, sworn on September 15, 2011, and other documents which Harper filed with the Office of the Secretary and served on Staff on September 16, 2011 (the "September 2011 Motion");

AND WHEREAS on September 23, 2011, Staff filed and served written submissions in response to Harper's September 2011 Motion;

AND WHEREAS on September 26, 2011, a hearing was held before the Commission to consider the September 2011 Motion, at which both Harper and counsel for Staff made oral submissions;

AND WHEREAS Harper seeks the following relief in the September 2011 Motion: (i) the revocation of all the temporary orders issued against her, present and future; and (ii) to have her "name removed from the Action";

AND WHEREAS Staff submits that the September 2011 Motion provides no grounds for granting the relief sought, and that there is no legal basis for the relief sought, which is akin to a stay of proceedings;

AND WHEREAS, on considering Harper's motion materials, Staff's written submissions and the oral submissions of Harper and counsel for Staff, it is the Commission's opinion that it would not be in the public interest to grant the September 2011 Motion, considering that:

(i) we are not satisfied that it is in the public interest to vary or revoke the August 2010 Motion Order or the Temporary Order as requested by Harper in the September 2011 Motion; and

(ii) Harper's submissions can best be considered by the Panel dealing with the hearing on the merits, at which time Harper will have an opportunity to respond to all of Staff's allegations in this matter;

IT IS THEREFORE ORDERED that the September 2011 Motion is dismissed.

DATED at Toronto this 26th day of September, 2011.

"Christopher Portner"

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

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

AND

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

**TEMPORARY ORDER
(Section 127)**

WHEREAS on December 10, 2004, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") to consider whether it is in the public interest to extend the Temporary Orders made on December 10, 2004 ordering that trading in shares of Pender International Inc. by Firestar Capital Management Corp. ("Firestar Capital"), Kamposse Financial Corp. ("Kamposse"), Firestar Investment Management Group ("Firestar Investment"), Michael Mitton ("Mitton"), and Michael Ciavarella ("Ciaverella") (collectively, the "Respondents") cease until further order by the Commission;

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

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

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

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

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

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

AND WHEREAS on November 21, 2005, the hearing to consider whether to continue the Temporary Orders was adjourned until January 30 and 31, 2006 and the Temporary Orders were continued until January 31, 2006;

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

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

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

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

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

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

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

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

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

AND WHEREAS on April 26, 2011, the hearing to consider whether to continue the Temporary Orders was adjourned until May 31, 2011 and the Temporary Orders were continued until June 1, 2011;

AND WHEREAS Staff of the Commission ("Staff") has not been notified that Firestar Capital, Kamposse, Firestar Investment, and Mitton oppose the making of this order;

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

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

AND WHEREAS on May 17, 2011, a settlement agreement between Staff and Ciavarella was approved by the Commission;

AND WHEREAS Staff advised that on May 18, 2011, the Criminal Code charges against Ciavarella before the Superior Court of Justice (Ontario) were stayed;

AND WHEREAS on May 31, 2011, Staff appeared before the Commission and no one appeared for any of the remaining Respondents;

AND WHEREAS on May 31, 2011, the Temporary Orders were continued until July 28, 2011 and the hearing to consider whether to continue the Temporary Orders was adjourned until July 27, 2011;

AND WHEREAS on July 27, 2011, Staff appeared before the Commission and no one appeared for any of the remaining Respondents;

AND WHEREAS Staff requested that the hearing be adjourned for one month for the purpose of exploring settlement with certain Respondents;

AND WHEREAS Staff further requested that the Temporary Orders be extended for the same period;

AND WHEREAS the Commission ordered that the Temporary Orders currently in place as against Firestar Capital, Kamposse, Firestar Investment, and Mitton be further continued until August 30, 2011 and the hearing to consider whether to continue the Temporary Orders be adjourned to August 29, 2011;

AND WHEREAS on August 29, 2011, Staff and counsel for Firestar Investment and Firestar Capital appeared before the Commission and no one appeared on behalf of the remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the Respondents with notice of the hearing;

AND WHEREAS counsel for Firestar Investment and Firestar Capital advised the Panel that he had only recently been retained and requested additional time to consider his client's position;

AND WHEREAS Staff did not oppose a short adjournment;

AND WHEREAS on August 29, 2011, the Commission ordered that the Temporary Orders currently in place as against Firestar Capital, Kamposse, Firestar Investment, and Mitton be further continued until October 4, 2011 and the hearing to consider whether to continue the Temporary Orders was adjourned to October 3, 2011;

AND WHEREAS on October 3, 2011, Staff and counsel for Firestar Investment and Firestar Capital appeared before the Commission and no one appeared on behalf of the remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the Respondents with notice of the hearing;

AND WHEREAS Staff requested that the hearing be adjourned to November 23, 2011, for the purpose of continuing to explore settlement with certain Respondents;

AND WHEREAS Staff further requested that the Temporary Orders be extended for the same period;

IT IS ORDERED that the hearing to consider whether to continue the Temporary Orders is adjourned to November 23, 2011 at 9:15 a.m.;

IT IS FURTHER ORDERED that the Temporary Orders currently in place as against Firestar Capital, Kamposse, Firestar Investment and Mitton are further continued until November 24, 2011, or until further order of the Commission.

DATED at Toronto this 3rd day of October, 2011.

"James E. A. Turner"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Coventree Inc. et al.

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

AND

**IN THE MATTER OF
COVENTREE INC.,
GEOFFREY CORNISH AND DEAN TAI**

REASONS FOR DECISION

Hearing: May 12-14, 17, 19-21, 26-28 and 31, 2010
June 1-4, 14, 15, 28 and 29, 2010
September 15-17, 20, 21 and 24, 2010
October 4, 6-8, 13-15, 18, 19, 25, and 27-29, 2010
November 1-3, 2010
December 1, 3, 8 and 9, 2010

Decision: September 28, 2011

Panel:	James E. A. Turner	–	Vice-Chair and Chair of the Panel
	Mary G. Condon	–	Commissioner
	Paulette L. Kennedy	–	Commissioner
Appearances:	Jane Waechter Michelle Vaillancourt Donna Campbell Shauna Flynn Christie Johnson Daniel Waldman	–	For Staff of the Commission
	Robert W. Staley Shara Roy Jason Woycheshyn Kent E. Thomson Sean Campbell Derek Ricci	–	For Coventree Inc.
	J. Thomas Curry Monique Jilesen Nadia Campion	–	For Geoffrey Cornish
	Paul Le Vay Johanna Braden Paul Saguil	–	For Dean Tai

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REASONS FOR DECISION

I. INTRODUCTION

[1] On December 7, 2009, the Ontario Securities Commission (the "**Commission**") issued a notice of hearing in this matter pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") in connection with a statement of allegations issued by Staff of the Commission ("**Staff**") on the same day (the "**Statement of Allegations**").

[2] This proceeding relates to whether Coventree Inc. ("**Coventree**") complied with its obligations (i) to disclose material facts related to its credit arbitrage business in its final prospectus dated November 15, 2006 offering its common shares for sale to the public (the "**Prospectus**"), and (ii) to disclose material changes that Staff alleges occurred on January 19, 2007 and August 1, 2007, or thereafter and prior to the market disruption in the asset-backed commercial paper ("**ABCP**") market that occurred on August 13, 2007. Staff alleges that Geoffrey Cornish ("**Cornish**") and Dean Tai ("**Tai**"), both senior officers and directors of Coventree, authorized, permitted or acquiesced in Coventree's non-compliance with the Act and are therefore deemed also to have not complied with the Act. Staff also alleges that Coventree breached the Act in April, 2007 by making a misleading statement as to the total U.S. subprime mortgage assets held by Coventree sponsored conduits. Coventree, Cornish and Tai are referred to collectively in these reasons as the "**Respondents**" and individually as a "**Respondent**".

[3] The hearing of this matter took place over 45 hearings days from May 12, 2010 to December 9, 2010.

[4] These are our reasons and decision in this matter.

[5] We have provided a glossary of many of the terms used and defined in these reasons as Schedule A. We have included in Schedule A a list of many of the individuals referred to in these reasons. A chronology of significant events is contained in Schedule E.

II. THE PARTIES

Coventree Inc.

[6] Coventree was incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16 in 1998 as Coventree Capital Group Inc. and changed its name to Coventree Inc. effective October 6, 2006. Its registered office is in Toronto, Ontario.

[7] Coventree became a reporting issuer following an initial public offering of its common shares (the "**IPO**") pursuant to the Prospectus. The Prospectus qualifying the common shares for distribution to the public was filed with the Commission on November 16, 2006. Coventree's common shares (the "**shares**") traded on the Toronto Stock Exchange under the symbol "COF".

[8] Coventree described itself in the Prospectus as "a niche investment bank specializing in structured finance using securitization-based technology". Coventree was the largest third-party (non-bank) sponsor of ABCP in Canada. It appears that Coventree was the only third-party sponsor of ABCP in Canada that was a reporting issuer within the meaning of the Act.

[9] Coventree Capital Inc., a subsidiary of Coventree that was referred to as the Capital Markets Group, was registered with the Commission as a limited market dealer from October 6, 2006 to December 31, 2008.

[10] Nereus Inc. ("**Nereus**") was a wholly-owned subsidiary of Coventree. Nereus commenced business in 2004 and, at that time, Coventree owned 75.5% of the Nereus shares. The balance of the Nereus shares was acquired by Coventree on May 10, 2007. Nereus focused its business principally on credit arbitrage transactions.

Geoffrey Cornish

[11] Mr. Cornish was one of the three founders of Coventree (the others were Tai and David Ellins). Cornish was the President and a director of Coventree during 2006 and 2007. Cornish was also head of Coventree's Capital Markets Group until David Allan took over that position on January 22, 2007. Cornish's primary duties involved transaction structuring and client identification. Cornish was a member of Coventree's strategic council and of its disclosure committee. By the end of September 2006, Cornish resided in Denver, Colorado.

[12] Cornish is a control person of Coventree within the meaning of the Act. After the IPO, Cornish (and entities or persons related to Cornish) owned 4,508,919 Coventree shares or approximately 27% of the outstanding shares.

[13] Cornish was a lawyer at Davies Ward & Beck from 1985 to 1998. He practiced primarily securities and competition law.

Dean Tai

[14] Mr. Tai was the Chief Executive Officer ("**CEO**") and a director of Coventree during 2006 and 2007. Tai was one of the founders of Coventree and was a member of Coventree's strategic council and of its disclosure committee. Tai was primarily responsible for the administration, management and finance side of Coventree's business. Tai divided his time between working at the Coventree Toronto office and working from his home office in Boston, Massachusetts.

[15] Tai is a control person of Coventree within the meaning of the Act. After the IPO, Tai (and entities or persons related to Tai) owned 4,508,919 Coventree shares or approximately 27% of the outstanding shares.

[16] Prior to forming Coventree, Tai was Chairman and Chief Operating Officer of Align Service Delivery Corporation, a company jointly owned by Bell Canada and IBM Canada, that provided client server and network computing services. Tai was previously Treasurer of IBM Canada's leasing division.

III. STAFF ALLEGATIONS

[17] Staff alleges that Coventree breached section 56 (disclosure of material facts in a prospectus), subsection 75(1) (disclosure of material changes), subsection 75(2) (report of material changes) and subsection 126.2(1) (materially misleading or untrue statements).

[18] Staff made the following primary allegations against Coventree in the Statement of Allegations:

(a) Coventree failed to make full, true and plain disclosure in the Prospectus by failing to disclose the fact that Dominion Bond Rating Service Limited ("**DBRS**") had adopted more restrictive credit rating criteria for ABCP in November 2006 (contrary to section 56 of the Act);

(b) Coventree failed to comply with its continuous disclosure obligations by failing to issue and file a news release, and file a material change report, disclosing that DBRS's decision in January 2007 to change its credit rating methodology resulted in a material change in Coventree's business or operations (contrary to subsections 75(1) and 75(2) of the Act);

(c) Coventree made a misleading statement on April 25 and 26, 2007 by telling the market that the total U.S. subprime mortgage exposure ("**subprime exposure**") of its sponsored conduits was 7.4% (the "**subprime statement**"), and by failing to provide investors with a breakdown of that exposure by conduit and ABCP note series (contrary to subsection 126.2(1) of the Act); and

(d) Coventree failed to comply with its continuous disclosure obligations by failing to issue and file a news release, and file a material change report, disclosing liquidity and liquidity-related events and the risk of a market disruption in the days leading up to the disruption in the ABCP market that occurred on August 13, 2007 (contrary to subsections 75(1) and 75(2) of the Act).

[19] Staff alleges that Cornish and Tai, as senior officers and directors of Coventree, authorized, permitted or acquiesced in the breaches of Ontario securities law by Coventree referred to in sub-paragraphs (a), (b) and (d) of paragraph 18 of these reasons and are deemed to also have not complied with Ontario securities law in accordance with section 129.2 of the Act.

[20] Staff's detailed allegations from the Statement of Allegations are set out in Schedule B.

[21] In considering Staff's allegations and in determining materiality for purposes of this proceeding, the principal question we must address is what effect certain facts, events or developments would reasonably be expected to have had on the market price or value of Coventree shares. With the exception noted in paragraph 22 of these reasons, it is not a question of whether any of those facts, events or developments were material to purchasers of ABCP or would reasonably be expected to have had a significant effect on the market price or value of Coventree sponsored ABCP. The latter questions are not the subject of this proceeding.

[22] In addressing Staff's allegation with respect to the subprime statement (referred to in paragraph 18(c) of these reasons), we must determine whether that statement was misleading to the market and contravened subsection 126.2(1) of the Act.

[23] The issues we must determine in this matter are set out in paragraph 112 of these reasons.

IV. WITNESSES AT THE HEARING

[24] We heard testimony from fifteen witnesses.

[25] Mr. Huston Loke ("**Loke**") was a Group Managing Director and Head of Global Structured Finance at DBRS in 2006 and 2007. He testified that in that capacity he managed a team of analysts across Canada, the United States and Europe involved in rating structured finance transactions and was a member of DBRS's rating committee and executive committee. Loke testified regarding the Canadian ABCP market generally, DBRS's role in issuing credit ratings of ABCP, issues related to the DBRS November Letter and the DBRS January Release and DBRS's dealings with Coventree. At the time of the hearing, Loke was Co-President of DBRS. Loke testified for approximately five days.

[26] Mr. Michael Jones ("**Jones**") was the President of Xceed Mortgage Corporation ("**Xceed**"), an asset originator that funded Canadian residential mortgages and sold mortgage portfolios almost exclusively to Coventree sponsored conduits from 2002 to 2007. Tai was a member of Xceed's board of directors and at the time of Coventree's IPO, Coventree owned shares in Xceed representing less than 10% of the shares outstanding.

[27] We heard testimony from three witnesses who were involved in the purchase of Coventree sponsored ABCP:

(a) Mr. Per Homer ("**Homer**") was a Vice-President and Senior Trader at Citibank Canada ("**Citibank**") who worked on its Canada risk treasury desk during 2006 and 2007. During that time, he was primarily responsible for running Citibank's credit portfolio and would have typically been the person carrying out credit or non-sovereign trades. He testified that he invested in Coventree sponsored ABCP on behalf of Citibank.

(b) Mr. Patrick Miller ("**Miller**") was a junior money market trader at Bell Investment Management Corporation ("**BIMCOR**"), the corporation that manages Bell Canada's pension fund. From mid-2006 to 2008, Miller was responsible for trading, among other securities, money market securities. He testified that he invested in Coventree sponsored ABCP on behalf of BIMCOR.

(c) Mr. Craig Allardyce ("**Allardyce**") was an Associate Portfolio Manager at Mavrix Fund Management Inc. ("**Mavrix**"), a mutual fund management company. Allardyce testified that Mavrix invested in Coventree sponsored ABCP.

No witness testified on behalf of Caisse de dépôt et placement du Québec (the "**Caisse**"), the holder of approximately one-third to one-half of Coventree sponsored ABCP outstanding during the relevant period.

[28] Mr. Peter Dymott ("**Dymott**") was head of the Canadian fixed income and currency business at RBC Dominion Securities Inc. ("**RBC**") during 2006 and 2007. He was the only representative of Coventree's dealer syndicate involved in the sale of Coventree sponsored ABCP who testified. He supervised the RBC money market group that sold ABCP. RBC resigned as a member of the dealer syndicate on July 27, 2007 (see the discussion commencing at paragraph 541 of these reasons).

[29] Mr. Michael McCloskey ("**McCloskey**") was a Partner and Director, Investment Banking at Sprott Securities Inc. ("**Sprott**") (Sprott is now Cormark Securities Inc.). McCloskey described Sprott as a small and mid-cap equity specialist. Sprott and RBC were co-lead underwriters of Coventree's IPO. McCloskey was Coventree's lead contact at Sprott during the IPO process.

[30] We heard testimony from four former Coventree employees:

(a) Mr. Doug Paul ("**Paul**") was a member of Coventree's funding group in 2006 and 2007. He was in daily telephone contact with members of Coventree's dealer syndicate regarding sales of Coventree sponsored ABCP. Paul reported to Judi Dalton.

(b) Ms. Judi Dalton ("**Dalton**") was group leader of Coventree's funding group. Initially, she reported to Cornish and then to David Allan when he joined Coventree. In 2006 and 2007, Coventree's funding group consisted of Dalton, Paul and Adrian Leung.

(c) Ms. Bridget Child ("**Child**") is a Chartered Accountant and was Coventree's Chief Financial Officer ("**CFO**") during 2006 and 2007. Child was a member of Coventree's credit committee, of its strategic council and of its disclosure committee. Child signed Coventree's Prospectus as CFO.

(d) Mr. David Allan ("**Allan**") joined Coventree on January 22, 2007 as head of the Capital Markets Group. Prior to joining Coventree, he was head of Global Securitization and Credit Structuring at CIBC World Markets Inc. ("**CIBC**"). Allan was regarded by Coventree as a particular expert in traditional securitizations. Subsequent to January 22, 2007, Allan was the most senior officer located in Coventree's Toronto office. From 1987 to 1995, Allan practiced corporate law with two different major Canadian law firms. The majority of his practice related to securitization transactions. He also advised companies with respect to their disclosure obligations. Allan testified over a period of approximately six days.

[31] Ms. Clara Jane Mowat ("**Mowat**") also testified. She was a Coventree Board member and was Chair of Coventree's Audit Committee. She signed the Prospectus on behalf of the Board.

[32] Two Staff witnesses testified: Ms. Christine George ("**George**") and Mr. Marcel Tillie ("**Tillie**"), both of whom are Senior Forensic Accountants in the Enforcement Branch of the Commission. George gave evidence regarding Staff's investigation. Tillie testified primarily about the significance to Coventree of its credit arbitrage business and about disclosure in the Prospectus.

[33] Cornish testified at the hearing over a period of approximately 10 days. Tai did not testify.

V. THE CANADIAN ABCP MARKET

[34] As a preliminary matter and as background to the issues we must address, we will describe the ABCP market in Canada as it existed in 2006 and 2007.

1. Asset-Backed Commercial Paper

[35] ABCP is short-term commercial paper that was initially offered for sale by banks in Canadian credit markets. It was sold through investment dealers' money market desks and generally had a term to maturity of under one year, with typical maturities of 30 to 90 days. Coventree was one of the first non-bank entities to sponsor ABCP in Canada. By late 2006, there were a number of bank and non-bank sponsors of ABCP that was sold in the Canadian market.

[36] ABCP is backed by a pool of underlying assets. ABCP offered a yield slightly higher than the yield on short-term government issued debt instruments. Traditional ABCP is securitized by repackaging cash flows from long-term financial assets (such as residential or commercial mortgages, equipment leases, auto loans or leases and credit card receivables) into pools backing ABCP securities. ABCP issued in credit arbitrage transactions reflects a broad array of transaction structures and underlying asset classes. The underlying collateral could be investment-grade corporate securities or other fixed income assets such as corporate bonds, commercial and residential mortgage backed securities and emerging market debt. The underlying assets may be purchased directly or exposure to the assets may be created synthetically by entering into credit default swaps with respect to the referenced assets or portfolio.

[37] An investor in ABCP receives interest on the ABCP based on a spread above the Canadian Deposit Offering Rate ("**CDOR**"), which is the daily average of the interest rates for Canadian bankers' acceptances ("**BAs**"). This spread is measured in basis points; each basis point is one one-hundredth of one percent. Spreads would vary based on the type of note series (i.e., A notes or E notes; see paragraphs 68 to 74 of these reasons) and the length to maturity of the ABCP. Spreads would also vary depending on whether the sponsor of the ABCP was a bank or non-bank sponsor. ABCP issued by bank sponsors generally had a lower interest rate spread (approximately two to three basis points lower) than ABCP issued by third-party sponsors.

[38] ABCP distributed in Canada is exempt from the prospectus requirements of the Act under the short-term debt exemption in section 2.35 of National Instrument 45-106 – *Prospectus and Registration Exemptions* ("**NI 45-106**"). No prospectus is required for the distribution of ABCP that has an "approved credit rating" from an "approved credit rating organization" and has a term to maturity of not more than one year from the date of issue.

[39] DBRS was the only approved credit rating organization that rated ABCP in Canada that had Canadian style liquidity (see paragraphs 70 and 71 of these reasons). DBRS's credit ratings were R-1(high), R-1(mid), R-1(low), R-2 and R-3. Under NI 45-106, an approved credit rating must be at or above an R-1(low) rating.

[40] In 2006 and 2007, Canadian ABCP was either sponsored by a bank or other large financial institutions or by a non-bank or "**third-party sponsor**". Bank sponsored ABCP was issued by special purpose vehicles, usually in the form of a trust (referred to as a "**conduit**"), that was sponsored by a bank. Third-party sponsored ABCP was issued by a conduit sponsored by a non-bank or third-party entity, such as Coventree. A sponsor has no legal obligation to repay or make any other payment in respect of ABCP issued by a sponsored conduit.

[41] Coventree sponsored conduits participated in two general types of securitizations: traditional securitization transactions and credit arbitrage transactions. Nereus sponsored conduits focused principally on credit arbitrage transactions.

2. ABCP Transactions: Traditional Securitization Transactions

[42] Initially, Canadian ABCP was issued in connection with traditional securitization transactions. Traditional securitization transactions were used to fund cash-flow-producing asset classes such as credit cards, auto loans or leases, residential or commercial mortgages and personal lines of credit. In traditional securitizations, "**asset originators**" sell a pool of financial assets to the conduits and the conduits fund the purchase of those assets by issuing ABCP to investors.

[43] As a result of the sale of the pool of assets from the asset originator to the conduit, the conduit owns the underlying assets that "back" the ABCP issued to fund their purchase.

[44] For traditional securitizations, asset originators would normally service and manage the underlying assets. When the assets are sold to the conduit, a portion of the purchase price is typically held back, creating a kind of equity or residual interest in the assets on the part of the asset originator.

3. ABCP Transactions: Credit Arbitrage Transactions or SFA Transactions

[45] Eventually, ABCP was also used to fund structured finance transactions referred to as credit arbitrage transactions. Unlike the securitization of traditional asset classes, which is a form of financing for the asset originator, these transactions transfer risk from one financial institution to another. Credit arbitrage transactions involve "arbitraging" the difference between the possible return on the underlying assets acquired by a conduit and the cost of funds of the ABCP issued by the conduit to fund that purchase.

[46] In credit arbitrage transactions, the conduit issues ABCP to fund the purchase of securities, rather than the cash-flow producing assets purchased in a traditional securitization. In some cases, rather than purchase securities directly, the underlying assets can be created synthetically through credit default swaps with respect to the referenced assets or portfolio.

[47] "**Structured Financial Asset Transactions**" or "**SFA transactions**" is a term used by DBRS and others for credit arbitrage transactions. Cornish testified that SFA transactions would include all credit arbitrage transactions, but not all SFA transactions are credit arbitrage transactions.

[48] Credit arbitrage transactions can be broken down into two categories: CDO related credit arbitrage and non-CDO related credit arbitrage.

(a) CDO Related Credit Arbitrage Transactions

[49] Collateralized debt obligations ("**CDOs**") are securitization structures that acquire bonds, loans or other debt and allocate returns and losses in connection with those obligations to investors.

[50] In CDO transactions, a type of special purpose vehicle (the "**CDO Trust**") purchases bonds or other reference securities that are repackaged for sale to a conduit. The securities issued by the CDO Trust are broken down into different series, each with a different credit rating ranging from unrated to the highest rating (these series are referred to as "**tranches**"). Investors' exposure to losses in the portfolio depends on which tranche of securities they purchase; the higher-rated securities experience losses only after the lower-rated securities, so that investors in the highest rated securities suffer losses last. As a result, the higher a security is rated, the lower the interest rate on that security, reflecting its reduced exposure to credit risk.

[51] The point at which an investor in a CDO structure would have exposure to losses is referred to as the "**Attachment Point**". If the Attachment Point of a tranche of securities is 15%, that would mean losses on the reference portfolio would have to be greater than 15% before they are allocated to investors that purchased securities in that tranche. The other investors who invested in securities in lower-rated tranches would bear the entire burden of the first 15% of losses.

(b) CDO Related Credit Arbitrage: Cash and Synthetic CDOs

[52] CDOs took the form of either "**cash CDOs**" or "**synthetic CDOs**".

[53] With cash CDOs, the CDO Trust purchases the pool of underlying securities directly.

[54] With synthetic CDOs, the CDO Trust does not directly purchase the securities (the "**reference portfolio**") but creates an exposure to the reference portfolio through the acquisition of credit default swaps. With a synthetic CDO, the reference portfolio may consist of a specified tranche of underlying securities, for instance, the highest rated tranche.

[55] In a synthetic CDO, the conduit takes the cash from the issue of ABCP and invests that cash in collateral that is generally highly liquid assets such as treasury bills or BAs. The collateral is pledged to a financial institution (the "**protection buyer**") against a decline in the value of the reference portfolio. The protection buyer pays a fee to the conduit for the protection. The collateral can be liquidated to repay ABCP investors at maturity. In connection with these transactions, the conduit is the "**protection seller**".

[56] In addition to the initial pledge of collateral, the conduit may be required to make additional payments to the protection buyer, referred to as "**protection payments**". If losses reach the threshold of the Attachment Point (using the example above, if losses reached 15%), protection payments would be triggered. To make protection payments, conduits would liquidate some of the collateral purchased with the proceeds of the issue of ABCP, leaving less collateral available to repay ABCP investors.

(c) CDO Related Credit Arbitrage: LSS Transactions

[57] A further subset of synthetic CDOs is a CDO for which the highest rated tranche of securities issued by the CDO Trust is subdivided into three levels: junior, mezzanine and super senior. Within this structure, conduits can obtain an interest in an even higher-ranked subset of the CDO Trust securities by purchasing exposure to the super senior securities. Super senior securities would have the highest Attachment Points, so losses in the reference portfolio would have to be at the highest level in order for those losses to be allocated to the holders of super senior securities.

[58] Super senior tranches were the most secure and accordingly provided the CDO Trust with the lowest interest rate return. In order to increase returns on investments in the super senior tranches of CDOs, conduits would purchase exposure to those tranches on a leveraged basis. These CDO transactions are referred to as leveraged super senior transactions (“**LSS transactions**”).

[59] In an LSS transaction with ten times leverage, the “**notional portfolio**” to which the conduit has exposure is ten times the size of the reference portfolio.

[60] Since the Attachment Points are higher for LSS transactions than for CDO transactions with exposures to the highest rated tranches of securities, the likelihood of having to make a protection payment or of incurring losses is much lower. However, if a protection payment is triggered for an LSS transaction, it would be ten times the protection payment payable for an unleveraged transaction with the same reference portfolio.

[61] Because of the potentially higher protection payments, conduits holding LSS assets can be required to post additional collateral at certain thresholds (a “**collateral call**”). These thresholds, referred to as “**triggers**”, are set by the parties to the original transaction structuring the assets. The risk associated with the additional funds that might have to be posted in the event of a collateral call is referred to as “**contingent funding risk**”.

(d) Non-CDO Related Credit Arbitrage Transactions

[62] A non-CDO related credit arbitrage transaction is a credit arbitrage transaction where the securities purchased by the conduit are not CDOs. An example of a non-CDO related transaction is the purchase by a conduit of bonds issued in connection with the term securitization of a pool of residential mortgages. The expectation is that the securities will yield an income stream that exceeds the conduit’s cost of funding that security.

4. Distribution of ABCP in Canada

[63] ABCP in Canada is traded in the over-the-counter market. Dealers sell ABCP by telephone directly to investors on behalf of the conduits that issue the ABCP. On a typical day, ABCP trading is completed by 9:00 a.m.

[64] When a portion of ABCP matures, the dealer will either try to resell ABCP to the same investor, for another term and at current interest rate spreads, or find another investor to purchase the paper. When a buyer cannot be found for maturing ABCP, dealers may purchase the paper through their “**market-making lines**” and hold it in inventory, to be resold at a future date. When maturing ABCP is purchased by the original investor for another term, or is purchased by another investor or dealer, it is said to have “**rolled**”.

[65] ABCP investors can sell their ABCP prior to maturity by asking for “**bids**” to purchase the ABCP from dealers in the secondary market. Generally, dealers will provide bids for ABCP placed by them. Given the short-term maturity of ABCP, it is unusual for ABCP investors to sell ABCP before maturity.

[66] The over-the-counter market for ABCP was a very opaque securities market. There was no public reporting of the prices at which transactions in ABCP were effected, there were no securities law filings required in connection with the sale or trading of ABCP and there was no disclosure legally required with respect to the attributes of, or assets backing, ABCP. As a result, investors relied heavily on the credit rating of the ABCP and had very limited ability to carry out their own due diligence with respect to the ABCP and the assets backing it. The distribution and rolling of ABCP was carried out by dealers through sales to their clients. Coventree did not know who all of those clients were or how much Coventree sponsored ABCP was held by a particular client or dealer. Coventree had limited contact with purchasers of its ABCP. Accordingly, Coventree had to rely heavily on the dealers to provide market information with respect to the sale of its sponsored ABCP.

[67] DBRS had a very significant role in establishing standards in the ABCP market through the conditions it imposed as a requirement for issuing its ratings of ABCP.

5. Different Note Series

[68] There were three series of commercial paper that were issued by Coventree and Nereus sponsored conduits: A notes, E notes and floating rate notes ("**FRNs**").

(a) A Notes or Liquidity-Backed Notes

[69] "**A notes**" were ABCP that was supported by liquidity arrangements that required payments from liquidity providers in the event the conduit could not roll the maturing ABCP, if certain conditions were met. Because the terms to maturity of the assets underlying ABCP were longer than the terms of the ABCP backed by those assets, conduits had to sell new notes to investors (including rolling the paper with existing investors) in order to have the funds to meet its obligations to repay maturing ABCP. Due to this "**rollover risk**", conduits entered into liquidity agreements with financial institutions to provide cash that could be used to pay investors holding maturing A notes if the conduit could not sell new ABCP.

[70] There were two main types of liquidity facilities that could theoretically back ABCP transactions: general market disruption liquidity and global style liquidity. General market disruption liquidity would be provided to a conduit only if two conditions were met: (i) there was a general market disruption of the ABCP market, and, (ii) the rating agency re-confirmed its rating of the assets underlying the ABCP. In contrast, a global style liquidity facility provided liquidity if the ABCP covered by the facility failed to roll for essentially any reason. Accordingly, global style liquidity facilities contained conditions to draw that did not require a general market disruption and were not dependent on confirmation of the ratings of the affected ABCP.

[71] All A notes in Canada were supported by general market disruption liquidity facilities, which were also referred to as "Canadian-style" liquidity facilities. There was no generally accepted definition of a "general market disruption" for purposes of Canadian style liquidity facilities; what constituted a general market disruption could differ from one liquidity agreement to another. Generally, however, there had to be a market disruption that affected the ABCP issued by more than one conduit or sponsor.

[72] Generally, the interest rate spread on all Coventree sponsored A notes was the same for each daily offering of such notes.

(b) E Notes or Extendible Commercial Paper

[73] "**E notes**" were ABCP that were not supported by any liquidity facility. In the event that E notes did not roll on maturity, the conduit sponsor had the option of extending the maturity of the E notes for a period of up to 364 days at a substantially higher spread. For E notes rated R-1 (high), the interest rate spread upon an extension was 110 bps over CDOR. As a result of this "**extension risk**", E notes were offered at higher interest rate spreads than A notes, generally approximately 10 basis points higher than the spread for A notes.

[74] Generally, the interest rate spread on all Coventree sponsored E notes was the same for each daily offering of such notes.

(c) FRNs or Floating Rate Notes

[75] FRNs were also issued by conduits. FRNs are generally notes with terms that exceed one year and which are not backed by liquidity arrangements.

VI. COVENTREE'S BUSINESS

[76] Coventree had three primary lines of business: (i) it acted as a securitization agent for Coventree sponsored conduits, (ii) it administered conduits sponsored by third parties, and (iii) it made investments in other issuers, such as Nereus and Xceed.

1. Role as Securitization Agent

[77] In its role as a securitization agent, Coventree arranged traditional securitization transactions and credit arbitrage transactions. For the three months ended December 31, 2006, March 31, 2007 and June 30, 2007, approximately 80% of Coventree's revenues were derived from credit arbitrage transactions (see paragraph 222 of these reasons). As securitization agent for the Coventree sponsored conduits, Coventree would establish and administer the conduits and carry out securitization transactions through those conduits. Its role included selecting and arranging the purchase of assets by the conduits or entering into credit default swaps, arranging for liquidity and other agreements necessary to carry out securitization transactions, submitting transactions to DBRS for its rating, arranging the issue by the conduits of ABCP and contracting with dealers for the sale of ABCP.

(a) Traditional Securitization Transactions

[78] As discussed above, a traditional securitization transaction provides capital markets-based financing to an asset originator. A pool of receivables from an asset originator is sold to a conduit at a price that is generally less than the face value of the receivables. The conduit finances the purchase by issuing ABCP. Upon completion of the securitization transaction, the conduit owns the underlying assets that ultimately “back” the ABCP issued to fund their purchase.

[79] In its capacity as securitization agent, Coventree earned a “program fee” in connection with each traditional securitization transaction. The fee would be negotiated with the asset originator and was typically calculated as a percentage of the ABCP issued in connection with the particular transaction. Coventree’s program fees were paid on a monthly or quarterly basis and continued to be paid throughout the life of a transaction, or for as long as the conduit retained the assets.

(b) Credit Arbitrage Transactions

[80] Coventree pioneered the structuring of credit arbitrage transactions by ABCP conduits in the Canadian market. As discussed above, credit arbitrage transactions include both CDO related transactions (consisting of cash CDOs or synthetic CDOs, including LSS transactions), and non–CDO related transactions. For credit arbitrage transactions, Coventree earned the spread between the return on the reference assets or portfolio and the conduit’s cost of funds. Coventree would be paid all amounts remaining after payment was made to all other participants in a credit arbitrage transaction, including swap counterparties, the trustee, the rating agency, ABCP dealers and other service providers.

(c) Revenue Backlog

[81] The program fees from traditional securitizations, and estimated revenues from credit arbitrage transactions, that Coventree would receive in the future from transactions that had been completed represented Coventree’s “**revenue backlog**”. The revenue backlog was the present value of Coventree’s total estimated revenues in future years derived from completed transactions using a 15% discount rate. Coventree submits that its calculation of revenue backlog was very conservative. See the discussion of Coventree’s revenue backlog commencing at paragraph 355 of these reasons.

(d) LSS Transactions

[82] In the two-year period leading up to the IPO, LSS transactions were the largest contributor to Coventree’s growth. In 2005, 50% of Coventree’s revenue backlog came from three LSS transactions. The super senior asset portfolios of the conduits were highly leveraged. Allan testified that he discovered on his first day at Coventree that Coventree sponsored conduits were even more highly leveraged than he had anticipated. The Roadshow Presentation described one of Coventree’s weaknesses as “extreme leverage” (see paragraph 260 of these reasons).

(e) Coventree Sponsored Conduits

[83] Coventree sponsored ABCP was issued by separate legal entities known as conduits. Coventree structured each of its conduits as a flow-through trust. Coventree carried out and managed the business functions of the conduits through agreements with the conduit trustees, the dealers selling the conduits’ ABCP and others.

[84] Coventree sponsored eight conduits: Apollo Trust, Aurora Trust, Comet Trust, Gemini Trust, Planet Trust, Rocket Trust, Slate Trust and Venus Trust (the “**Coventree sponsored conduits**”). Nereus, Coventree’s wholly owned subsidiary as of May 10, 2007, sponsored two conduits: Structured Investment Trust III (SIT III) and Structured Asset Trust (SAT) (“**Nereus sponsored conduits**”). Nereus focused principally on credit arbitrage transactions.

[85] The Coventree sponsored conduits were traditional securitization conduits, credit arbitrage conduits, or hybrid conduits. Hybrid conduits contained both traditional assets and structured finance assets. Coventree managed the conduits in this way to accommodate ABCP investor preferences for investment in ABCP backed by certain types of assets. In addition to having preferences relating to asset composition, investors also had preferences with respect to the types of notes they would purchase from a conduit (such as A notes or E notes).

[86] Coventree arranged for the conduits to acquire traditional assets from asset originators and to enter into the arrangements necessary to complete credit arbitrage transactions. In a traditional securitization, the asset originator would typically service and manage the underlying assets. Financial assets could be added or removed from the conduits from time to time. New conduits could be established so that ABCP investors could purchase more Coventree sponsored ABCP without exceeding any of their internal investment limits with respect to the amount of ABCP issued by a single conduit or backed by particular assets that they could hold.

(f) Dealer Syndicate

[87] Coventree sponsored conduits sold ABCP through a syndicate of investment dealers that included National Bank Financial ("**NBF**"), Scotia Capital Inc. ("**Scotia**"), CIBC, RBC, Deutsche Bank Securities Limited ("**Deutsche Bank**"), HSBC Bank Canada ("**HSBC**"), Laurentian Bank Securities Inc. ("**Laurentian Bank**") and BNP Paribas (Canada) ("**BNP**") (collectively, the "**dealer syndicate**" or the "**syndicate**").

[88] NBF was the lead dealer of the syndicate and Scotia was lead dealer for Nereus sponsored conduits. The lead dealers would allocate the ABCP to dealer syndicate members for sale by them and would set the interest rate or yield on the ABCP in consultation with the sponsor and other dealers.

[89] Pursuant to the dealer agreements between the conduits and the dealers, the dealers would act as agents to solicit and receive offers from investors to purchase ABCP. Coventree was a party to the dealer agreements in its role as securitization agent. The dealers would be paid commissions by the conduit for distributing Coventree sponsored ABCP to investors. The larger dealers also maintained market-making lines which allowed the dealers to purchase and hold unsold ABCP in inventory for short periods of time. Typically, the ABCP would be held overnight and sold to investors the following day. The dealers had no obligation to purchase Coventree sponsored ABCP pursuant to their market-making lines. Coventree had limited information as to the amounts of the dealer market-making lines available at any particular time.

[90] Coventree sponsored ABCP was first issued in 2000 by the Rocket Trust. Coventree sponsored ABCP was issued in various note series, the most common being A notes and E notes. E notes were pioneered by Coventree and Coventree became the largest issuer of E notes in the market. As noted above, if a market disruption occurred, the maturity date of E notes could be extended for up to 364 days from the original date of issue at a higher interest rate spread. As a result of this extension risk, the E notes had higher interest rates than the A notes.

[91] When an investor purchased ABCP, they would typically request a specific maturity date of up to 364 days. Cornish testified that the average maturity for Coventree sponsored ABCP was 30 days.

[92] In typical market conditions and for 30 day maturities, Coventree's A notes were issued at CDOR plus two to four basis points and its E notes were issued at CDOR plus 11 to 13 basis points.

[93] The purchasers of Coventree sponsored ABCP were typically sophisticated institutional investors such as pension funds, insurance companies, financial institutions and mutual funds. ABCP could, however, also be purchased by retail investors. ABCP was issued on a prospectus exempt basis (see paragraph 38 of these reasons).

[1]

(g) Coventree's Relationship with the Caisse

[94] Coventree knew through its dealer syndicate that a relatively high percentage of ABCP issued by Coventree sponsored conduits was purchased by a relatively small number of investors. Coventree was aware that the Caisse held a substantial portion of ABCP issued by Coventree sponsored conduits.

[95] The Caisse owned a substantial equity investment in Coventree when Coventree was a private company. At the time, the Caisse held a put option that, if exercised, required Coventree to buy back all of the Caisse's shares in Coventree. The put was terminated if Coventree became a public company. In a memorandum to the Coventree board of directors (the "**Board**") dated February 13, 2006, Tai confirmed that the Caisse intended to exercise its put option in 2008. Coventree considered the exercise of the put as potentially a "firm threatening" event. As a result, after considering other alternatives and after unsuccessful negotiations with the Caisse, Tai recommended to the Board that Coventree become a public company. Accordingly, the put option was the principal reason why Coventree became a public company in November 2006.

(h) Coventree's Initial Public Offering

[96] Coventree retained Sprott as co-lead underwriter, with RBC, for Coventree's IPO. At the request of the Caisse, RBC prepared a valuation of Coventree. The offering was ultimately completed at a price within the range of the RBC valuation and of a separate high level valuation prepared by Sprott. NBF and Scotia were also members of the underwriting group for the IPO.

[97] The preliminary due diligence session with respect to the IPO took place on October 11, 2006 and the preliminary prospectus was filed with the Commission on October 18, 2006. Marketing road shows took place in Toronto and Montreal between November 3 and November 15, 2006 (see the discussion of the roadshow presentation commencing at paragraph 259 of these reasons). The final bring-down due diligence session took place on November 15, 2006 and the final Prospectus was filed on SEDAR on November 16, 2006. The Prospectus was signed by Cornish, Tai, Child and Mowat, on behalf of Coventree and its Board, and by representatives of Sprott, RBC, NBF and Scotia. McCloskey signed the Prospectus on behalf of Sprott.

[98] The IPO involved a secondary offering of approximately 23% of the then outstanding shares held by certain Coventree shareholders. The selling shareholders included the Caisse and entities and persons related to Tai and Cornish. The Caisse sold 3,155,402 shares under the Prospectus; after giving effect to that sale, the Caisse held approximately 10% of Coventree's outstanding shares. Cornish testified that the Caisse required Cornish and Tai (or entities and persons related to them) to sell some portion of their shares. As a result, entities and persons related to each of Cornish and Tai sold 150,000 shares (an aggregate of 300,000 shares) under the Prospectus. After giving effect to the IPO, Cornish (or entities and persons related to Cornish) held approximately 27% of Coventree's outstanding shares and Tai (or entities and persons related to Tai) held approximately 27% of such shares.

[99] Accordingly, following the IPO, Cornish and Tai (including entities and persons related to them) together retained a controlling interest in Coventree, holding an aggregate of more than 50% of the outstanding shares.

(i) Coventree's Disclosure Committee

[100] Following the IPO, Coventree formed a disclosure committee comprised of Cornish, Tai and Child. The disclosure committee was responsible for communications with Coventree's shareholders, ensuring that all securities regulatory disclosure requirements were met and overseeing the company's disclosure practices. Coventree's disclosure policy required the committee to meet as conditions dictated (and at least quarterly) and to keep minutes of its meetings. We heard testimony that the disclosure committee often met on an informal basis and notes of meetings were not always prepared.

(j) Coventree's Relationship with DBRS

[101] DBRS is a privately-owned, Canadian domiciled, independent credit rating organization and was Coventree's sole supplier of credit rating services. For practical purposes, Coventree sponsored ABCP could not be issued on a prospectus exempt basis unless the ABCP had a designated high quality rating from DBRS. When Coventree formed a conduit and/or wished a conduit to issue ABCP, Coventree would request a rating of the ABCP from DBRS, and DBRS would produce an initial ratings report. When the transaction proceeded, DBRS would provide a letter confirming DBRS's rating of the ABCP. Assets could not be transferred between Coventree sponsored conduits unless DBRS confirmed its ratings with respect to the affected ABCP after giving effect to the transfer.

(k) Investments in Other Companies

[102] During the period relevant to these reasons, Coventree held equity interests in Nereus and Xceed.

(i) Nereus

[103] Nereus commenced business in 2004 and focused principally on credit arbitrage transactions. Coventree owned 75.5% of the shares of Nereus at incorporation and, on May 10, 2007, Coventree purchased the remaining shares and Nereus became a wholly-owned subsidiary of Coventree. Coventree financial statements consolidated Nereus' financial results from its inception.

(ii) Xceed

[104] In April 2002, Coventree invested in Xceed, a non-prime residential mortgage lender that was previously owned by the Bank of Montreal. Xceed sold mortgage assets almost exclusively to Coventree sponsored conduits. By the time of the IPO, Coventree owned less than 10% of Xceed.

2. Chapter One Business and Chapter Two Initiatives

(a) Chapter One Business

[105] At the time of the IPO, Coventree's business was as described in these reasons commencing at paragraph 76. That business focused on arranging traditional securitization transactions and credit arbitrage transactions for its sponsored conduits, administering conduits sponsored by third parties and investing in other issuers. Coventree referred to its existing business as of the date of the IPO as "Chapter One".

(b) Chapter Two Initiatives

[106] By the time of the IPO, Coventree was changing its strategic objective to becoming a financial services company "focused on niches" (see paragraph 253 of these reasons for the description in the Prospectus of this expanded focus). There were three principal growth experiments that Coventree planned to pursue to achieve this corporate objective: (i) establishing a U.S. conduit, (ii) establishing a Canadian retail bank, and (iii) establishing an asset management business. Coventree referred to these new initiatives as "Chapter Two". Coventree hired Allan to head Coventree's Capital Markets Group, which was to be

more focused on traditional securitizations rather than credit arbitrage transactions. Allan joined Coventree on January 22, 2007. As a result, Cornish was able to focus on advancing Coventree's U.S. expansion. Cornish moved to Denver, Colorado for that purpose.

U.S. Conduit

[107] In 2006, Coventree approached DBRS regarding the possibility of Coventree establishing a U.S. based conduit, with Deutsche Bank acting as asset originator. Towards the end of 2006, DBRS decided that it would not rate ABCP issued by the proposed conduit.

[108] As a result, Coventree made a proposal to Bank of America in May 2007 to establish a securities arbitrage conduit to issue E notes in the U.S. Coventree was also working on creating a conduit to fund traditional assets that would be rated by a U.S. rating agency.

[109] No U.S. conduit was established by Coventree prior to the market disruption that occurred on August 13, 2007.

Retail Bank

[110] Coventree filed an application with the Office of the Superintendent of Financial Institutions in October 2006 to establish a retail bank. That application was never approved and the process did not come to a conclusion prior to the market disruption that occurred on August 13, 2007.

Asset Management Business

[111] In May 2007, Coventree authorized the formation of Coventree U.S. Securities Inc. to carry on an asset management business and to be registered as a broker/dealer with the United States National Association of Securities Dealers. On July 27, 2007, Coventree also submitted an application to the Commission for registration in the category of investment counsel and portfolio manager. At the time of the hearing, Coventree had not obtained any of those registrations.

VII. ISSUES

[112] The issues we must determine in this matter are:

(a) Was the November 10, 2006 DBRS letter set out in Schedule C to these reasons (the "**DBRS November Letter**") a material fact that was required to be disclosed in Coventree's Prospectus in accordance with section 56 of the Act?

(b) Was the January 19, 2007 DBRS press release set out in Schedule D to these reasons (the "**DBRS January Release**") a material change with respect to Coventree that was required to be disclosed by Coventree in accordance with section 75 of the Act? If so, when did that material change occur?

(c) Did Coventree make a misleading statement when it stated at its April 25 and 26, 2007 presentations to ABCP investors (the "**April Investor Presentations**") that Coventree sponsored conduits had overall exposure to U.S. subprime mortgages of 7.4% (referred to in these reasons as the "subprime statement")? If so, did that statement contravene subsection 126.2(1) of the Act?

(d) Did a material change occur with respect to Coventree on August 1, 2007 or thereafter, and prior to the August 13, 2007 market disruption, that was required to be disclosed by Coventree in accordance with section 75 of the Act? If so, when did that material change occur?

(e) Did Cornish or Tai authorize, permit or acquiesce in the alleged non-compliance by Coventree with its disclosure obligations referred to in sub-paragraphs (a), (b) and/or (d) above? If so, are Cornish or Tai deemed also to have not complied with the Act in accordance with section 129.2 of the Act?

(f) In the circumstances, was the conduct of Coventree, Cornish or Tai contrary to the public interest?

(g) Does the release of "ABCP Market Claims" contained in the plan of arrangement under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") related to the ABCP market, prevent Staff from bringing this proceeding and the Commission from making any sanction order against Coventree, Cornish or Tai?

VIII. PRELIMINARY MATTERS

1. Mandate of the Commission

[113] The mandate of the Commission is: (i) to provide protection to investors from unfair, improper or fraudulent practices, and (ii) to foster fair and efficient capital markets and confidence in the capital markets (Act, *supra*, section 1.1).

[114] The Commission is guided by certain fundamental principles expressly reflected in the Act in fulfilling its mandate. One of these principles is that the primary means for achieving the purposes of the Act are: (i) requirements for timely, accurate and efficient disclosure of information; (ii) restrictions on fraudulent and unfair market practices and procedures; and (iii) requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants (Act, *supra*, section 2.1).

2. Standard of Proof

[115] The civil standard of proof and the nature of the evidence that is required to meet that standard are integral to the duty of an administrative tribunal to provide a fair hearing. It is well established that the standard of proof that must be met in an administrative proceeding such as this is the civil standard of the balance of probabilities (*Re ATI Technologies* (2005), 28 OSCB 8558 at paras. 13-14 ("***Re ATI***"); *Re Sunwide Finance Inc.* (2009), 32 OSCB 4671 at paras. 26-28; *Re Al-Tar Energy Corp.* (2010), 33 OSCB 5535 at paras. 32-34; *Re White* (2010), 33 OSCB 1569 at paras. 22-25; and *Re Biovail Corporation* (2010), 33 OSCB 8914 at paras. 58-62 ("***Re Biovail***")).

[116] The Supreme Court of Canada has considered the nature of the civil standard of proof. The Court has confirmed that there is only one civil standard of proof, which is proof on a balance of probabilities:

> Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.
>
> (*F.H. v. McDougall*, [2008] 3 S.C.R. 41, at para. 40 ("***McDougall***"))

[117] The Court noted in *McDougall* that the "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test". However, this requirement for clear, convincing and cogent evidence does not elevate the civil standard of proof above a balance of probabilities (*McDougall*, *supra,* at para. 46).

[118] The balance of probabilities standard requires a trier of fact to decide "whether it is more likely than not that the event occurred" (*McDougall*, *supra,* at para. 44).

[119] We will apply this standard of proof in addressing the matters before us.

3. Evidence

(a) General Comment on the Evidence

[120] We heard testimony in this matter from a number of witnesses and received and reviewed a large number of e-mails, presentation materials, handwritten notes, transcripts of audio tapes of telephone conversations among representatives of Coventree and its dealers and other documents.

[121] Generally, we consider Cornish's testimony, and that of the other employees or former employees of Coventree, to be honest and credible. However, where the testimony of, or characterization of events by, a witness was inconsistent with contemporaneous documents tendered in evidence, we placed more reliance on that documentary evidence.

[122] We have based our findings on the preponderance of evidence before us and have concluded that, overall, the evidence is clear, convincing and cogent. This is not a matter in which there were what we considered to be inconsistencies in the testimony of witnesses that affected our decisions.

[123] In considering the evidence, we have attributed to Coventree the knowledge of, and information known by, any of Cornish, Tai, Allan or Child. We have done so on the basis that each of those individuals was a senior officer of Coventree at the relevant time.

(b) Audio Tapes and Call Transcripts as Evidence

[124] We heard a number of audio tapes of telephone conversations among representatives of Coventree and its dealers and reviewed a number of transcripts of those conversations. We are entitled to determine the weight that should be accorded to those audio tapes and transcripts (*R. v. Nikolovski,* [1996] 3 S.C.R. 1197 at para. 16) ("***Nikolovski***").

[125] Audio tapes are considered "real evidence" and have many of the characteristics of testimonial evidence. "Real evidence" is defined in *The Law of Evidence in Canada* as follows:

> The term is used in a number of different ways, but in its widest meaning includes any evidence where the court acts as a witness, using its own senses to make observations and draw conclusions rather than relying on the testimony of a witness.
>
> (Alan W. Bryant, Sidney N. Lederman & Michelle K. Fuerst, *Sopinka, Lederman & Bryant, The Law of Evidence in Canada*, 3rd ed., (Markham: LexisNexis, 2009) at 43-44, §2.13)

[126] Audio tapes can be valuable evidence in that they accurately convey the content of the recorded conversations as well as the actual sound and tone of the speakers' voices and the emphasis given to particular words and phrases. It has been noted that:

> … A tape, particularly if it is not challenged as to its accuracy or continuity, can provide the most cogent evidence not only of the actual words used but in the manner in which they were spoken. A tape will very often have a better and more accurate recollection of the words used and the manner in which they were spoken than a witness who was a party to the conversation or overheard the words.
>
> (*Nikolovski*, *supra*, at para. 16. See also *R. v. Pleich*, [1980] 55 C.C.C. (2d) 13 (Ont. C.A.) at para. 57 and *R. v. Rowbotham*, [1988] 41 C.C.C. (3d) 1 (Ont. C.A.) at 30)

[127] Staff and the Respondents agreed that the audio tapes that we heard are authentic and are evidence that the relevant conversations took place and of the words used, but not necessarily of the truth of the statements made.

[128] Staff submits that the audio tapes are strong evidence of market and other information that Coventree was aware of during late July and early August 2007. We do not, however, have a full record of all of the conversations and discussions that took place between Coventree and market participants during that period. Only certain of the phone lines of the dealers were taped.

[129] We have been sensitive to the limitations imposed by a less than full record of all of the telephone calls between Coventree and other market participants that occurred during the relevant period.

(c) Hearsay Evidence

[130] The Commission is entitled to receive as evidence and rely on relevant hearsay evidence. Subsection 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. s.22 ("**SPPA**") provides as follows:

> 15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[131] The Ontario Divisional Court has held that "the Commission is expressly entitled by statute to consider hearsay evidence" and that "hearsay evidence is not, in law, necessarily less reliable than direct evidence" (*Rex Diamond Mining Corp. v. Ontario Securities Commission*, 2010 ONSC 3926 (Div. Ct.) at para. 4 ("***Rex Diamond (Div. Ct.)***").

[132] As noted above, a large number of e-mails and other documents were submitted as evidence in this hearing. Many of those e-mails and documents were corroborated by the testimony of those who sent or received the e-mails or documents. Because Tai did not testify, we did not hear testimony from him with respect to the many e-mails he sent. Those e-mails constituted hearsay evidence. That being said, pursuant to section 15 of the SPPA, we are entitled to accept the e-mails, and

other documents that constituted hearsay, as evidence and we have used our discretion as to the weight to be accorded to them. We have placed significant weight on contemporaneous e-mails and other documentary evidence.

(d) Respondents' Submissions

[133] We have not summarised in these reasons all of the submissions made by each of the Respondents. Those submissions necessarily overlapped and none of them was inconsistent with the submissions made by any other Respondent. Generally, where a submission was made by Coventree, we have not repeated that submission as a specific submission made by Cornish or Tai. We have taken the same approach to the submissions of Cornish and Tai.

4. The Law as to Material Fact and Material Change

(a) "Material Fact" and "Material Change"

[134] One of Staff's allegations is that the DBRS November Letter constituted a "material fact" that was required to be disclosed in the Prospectus in accordance with section 56 of the Act.

[135] The Act defines "material fact" in subsection 1(1) as follows:

> "material fact", when used in relation to securities issued or proposed to be issued, means a fact that would reasonably be expected to have a significant effect on the market price or value of the securities.

[136] Accordingly, for purposes of this proceeding, to be a "material fact", the DBRS November Letter by its terms must be a fact that would reasonably be expected to have a significant effect on the market price or value of Coventree shares. That is an objective test for materiality and is generally referred to as the market impact test.

[137] Staff also alleges that Coventree failed to publicly disclose the terms of the DBRS January Release as required under section 75 of the Act. That allegation turns on the question whether the DBRS January Release constituted a "material change" with respect to Coventree within the meaning of the Act. Staff also alleges that Coventree failed to publicly disclose a material change on August 1, 2007, or thereafter, in the days leading up to the market disruption that occurred on August 13, 2007.

[138] The Act defines "material change" in subsection 1(1), which, as relevant for purposes of this proceeding, provides as follows:

> "material change",
>
> > (a) when used in relation to an issuer other than an investment fund, means,
> >
> > > (i) a change in the business, operations or capital of the issuer that would reasonably be expected to have a significant effect on the market price or value of any of the securities of the issuer, or
> > >
> > > …

[139] Accordingly, in order for a "material change" to have occurred, there must be "a change in the business, operations or capital" of the issuer and that change must reasonably be expected to have a significant effect on the market price or value of the relevant securities. The latter element of that definition is the same objective test for materiality contained in the definition of "material fact".

[140] In *Kerr v. Danier Leather Inc.,* [2007] 3 S.C.R. 331 ("***Danier***"), the Supreme Court of Canada held that a change only in an issuer's intra-quarterly results of operations did not, by itself, constitute a change in its business, operations or capital for purposes of the definition of "material change" in the Act. In coming to that conclusion, the Court stated that:

> It almost goes without saying that poor intra-quarterly results may *reflect* a material change in business operations. A company that has, for example, restructured its operations may experience poor intra-quarterly results because of this restructuring, but it is the restructuring and not the results themselves that would amount to a material change and thus trigger the disclosure obligation. Additionally, poor intra-quarterly results may motivate a company to implement a change in its business, operations or capital in an effort to improve performance. Again, though, the disclosure obligation would be triggered by the change in the business, operations or capital, and not by the results themselves.

> In the present case, there is no evidence that Danier made a change in its business, operations or capital during the period of distribution. It is not disputed that the revenue shortfall as of May 16 was caused by the unusually hot weather, a factor external to the issuer. Consequently, Danier experienced no material change that required disclosure and did not breach s. 57(1).
>
> (*Danier*, *supra*, at paras. 47 and 48)

See the further comment on *Danier* in paragraph 588 of these reasons.

[141] If there is no change in an issuer's business, operations or capital, no "material change" has occurred, even if an event or development would reasonably be expected to have a significant effect on the market price or value of an issuer's securities. In contrast, a "material fact" requires only that a fact reasonably be expected to have a significant effect on the market price or value of an issuer's securities.

[142] Subsection 75(1) of the Act states that "where a material change occurs in the affairs of a reporting issuer, it shall forthwith issue and file a news release authorized by a senior officer disclosing the nature and substance of the change". Subsection 75(2) of the Act requires a reporting issuer to file a report of a material change "as soon as practicable and in any event within ten days of the date on which the change occurs".

[143] Subsection 75(1) of the Act requires that disclosure of a material change be made "forthwith". Accordingly, the obligation to publicly disclose a material change arises at the time the change occurs.

[144] The Commission recognized in *Re YBM Magnex International Inc.* (2003), 26 OSCB 5285 ("***Re YBM Magnex***") that timely disclosure of material changes enhances the fairness and efficiency of capital markets. Other decisions that have accepted that principle include *Pezim v. British Columbia (Superintendent of Brokers)* [1994] 2 S.C.R. 557 ("***Re Pezim***"), *Re Philip Services Corp*. (2006), 29 OSCB 3971 ("***Philip Services Corp.***"), *Re AiT Advanced Information Technologies Corp*. (2008), 31 OSCB 712 ("***Re AiT***"), and *Re Rex Diamond Corp.* (2008), 31 OSCB 8337 (OSC) ("***Re Rex Diamond***").

[145] Determining whether a material change has occurred involves an exercise of judgement in assessing the particular circumstances facing the reporting issuer.

[146] We do not believe that one should take a supercritical or technical approach to the interpretation of the term "material change". The Commission stated in *Re YBM Magnex* that:

> In our opinion, a supercritical interpretation of the meaning of material change does not support the goal of promoting disclosure or protecting the investing public …
>
> (*Re YBM Magnex, supra,* at para. 518)

(b) The Distinction between "Material Fact" and "Material Change"

[147] As noted above, the Act differentiates between "material facts" and "material changes" and the legal consequences of their occurrence.

[148] The definition of "material fact" is broader than that of "material change". Not all material facts will arise from a "change in the business, operations or capital of the issuer". This distinction is fundamental to the application of section 75 of the Act, which applies only to material changes, and is a key consideration in this proceeding.

(c) Materiality

[149] The standard of materiality for both a material fact and material change is the same. A fact or change is considered to be material if it "would reasonably be expected to have a significant effect on the market price or value" of an issuer's securities. When we refer to "**materiality**" in these reasons, we are referring to the application of that test. Clearly, such a fact or change would be important to a reasonable investor in making an investment decision with respect to the relevant securities.

[150] The interpretation of the disclosure provisions of the Act are also informed by National Policy 51-201 – *Disclosure Standards* (2002), 25 OSCB 4492 ("**NP 51-201**"), which provides guidance on best disclosure practices.

[151] In general, the concept of materiality in the Act is a broad one that varies with the characteristics of the reporting issuer and the particular circumstances involved. NP 51-201 states that:

> In making materiality judgements, it is necessary to take into account a number of factors that cannot be captured in a simple bright-line standard or test. These include the nature of the

information itself, the volatility of the company's securities and prevailing market conditions. The materiality of a particular event or piece of information may vary between companies according to their size, the nature of their operations and many other factors.

[152] Section 4.4 of NP 51-201 also provides as follows:

> Companies are not generally required to interpret the impact of external political, economic and social developments on their affairs. However, *if an external development will have or has had a direct effect on the business and affairs of a company that is both material and uncharacteristic of the effect generally experienced by other companies engaged in the same business or industry, the company is urged to explain, where practical, the particular impact on them.* For example, a change in government policy that affects most companies in a particular industry does not require an announcement, but if it affects only one or a few companies in a material way, such companies should make an announcement. [emphasis added]

[153] The Commission concluded in *Re YBM Magnex* that:

> Materiality is a question of mixed law and fact, i.e. do the facts satisfy the legal test? Some facts are material on their own. When one or more facts do not appear to be material on their own, materiality must also be considered in light of all the facts available to the persons responsible for the assessment.
>
> (*Re YBM Magnex, supra,* at para. 94)

[154] In *Re Rex Diamond*, the Commission found, among other things, that a final notice from the Government of Sierra Leone that it would terminate key mining leases held by Rex Diamond Mining Corporation ("**Rex Diamond**"), if Rex Diamond did not bring those leases into compliance by commencing mining operations, constituted a material change in Rex Diamond's business. The Commission concluded that the loss of the leases "affected Rex's operations because it would no longer have legal entitlement to access the land and extract diamonds" (*Re Rex Diamond, supra,* para. 218) (see also the discussion of *Re Rex Diamond* beginning at paragraph 612 of these reasons).

[155] On appeal of *Re Rex Diamond*, the Ontario Divisional Court confirmed that the test for materiality is objective in nature and is not affected by the subjective assessment or optimistic views of company executives that a different outcome could be negotiated (see paragraphs 368 and 369 of these reasons) (*Rex Diamond (Div. Ct.), supra,* at para. 6).

[156] Accordingly, the assessment of the materiality of an event or development is a question of mixed fact and law that requires a contextual determination that takes into account all of the relevant circumstances, including the size and nature of the issuer and its business, the nature of the event or development and the consequences to the issuer's business, operations or capital. That assessment requires the application of judgement and common sense. In assessing whether a fact is a "material fact" or whether a "material change" has occurred, one must take into account both quantitative and qualitative considerations or factors.

(d) The Commission is a Specialized Tribunal

[157] The materiality standard applicable in this case is an objective test based on reasonable expectation. Determining questions such as whether a fact is a material fact, whether a material change has occurred, the effect of events or developments on the market price or value of securities and the adequacy of disclosure made, are matters squarely within our expertise as a specialized tribunal. While the evidence of experts, shareholders or investors may be relevant or useful, we do not need such evidence in order to make these decisions (see *Re Donnini* (2002), 25 OSCB 6225 at para. 123, *Rex Diamond (Div. Ct.), supra,* at para. 3 and *Re Biovail, supra,* at para. 80). No evidence of experts or of Coventree public shareholders was introduced. We did hear evidence from a number of individuals involved in the purchase of ABCP by investors.

[158] In *Rex Diamond (Div. Ct.)* (*supra,* at para. 3), the Court recognized the Commission's expertise when it stated that "whether a material change occurred is a matter that is central to the expertise of the Commission". The same principle applies to the Commission's determination of whether a fact constitutes a "material fact".

(e) Hindsight

[159] The Commission has made clear that assessments of materiality are not to be made with the benefit of hindsight. The Commission stated in *Re AiT* that:

> Instead, we must objectively assess the facts that were available to the AiT Board during the Relevant Period, to determine in all the circumstances whether the three events constituted a material change in the business, operations or capital of AiT that triggered its disclosure obligation under section 75. It is important therefore, to recognize the dangers of hindsight in coming to this conclusion and to be careful not to look at the situation based on what subsequently happened.
>
> (*Re AiT*, *supra,* at para. 228)

[160] Further, in *Re YBM Magnex* (*supra,* at para. 90), the Commission stated that "[a]ssessments of materiality are not to be judged against the standard of perfection or with the benefit of hindsight. It is not a science and involves the exercise of judgement and common sense".

[161] Coventree should not be held to a standard of perfection and must not be judged with the benefit of hindsight. In particular, we must not judge the Respondents with the benefit of the hindsight that a market disruption in the ABCP market occurred on August 13, 2007. In our view, we have not so judged the Respondents.

(f) The Business Judgement Rule

[162] The Supreme Court of Canada held in *Danier* that the business judgement rule does not apply to decisions regarding disclosure under the Act. The Supreme Court stated that:

> … while forecasting is a matter of business judgment, disclosure is a matter of legal obligation. The Business Judgment Rule is a concept well-developed in the context of *business* decisions but should not be used to qualify or undermine the duty of disclosure.
>
> (*Danier*, *supra,* at para. 54)

This principle was adopted by the Commission in both *Re AiT* and *Re Rex Diamond* (see *Re Rex Diamond, supra,* at para. 238 and *Re AiT, supra,* at para. 228).

[163] Accordingly, the business judgement rule does not apply to the determination of whether the Prospectus failed to disclose a "material fact" or whether a "material change" occurred within the meaning of section 75 of the Act. Disclosure decisions under the Act are not sheltered by the business judgement rule.

IX. DISCLOSURE IN COVENTREE'S PROSPECTUS

1. Background

(a) Staff Allegation

[164] Staff alleges that Coventree failed to make full, true and plain disclosure of all material facts in its Prospectus by failing to disclose that DBRS had adopted more restrictive credit rating criteria for new credit arbitrage transactions in November 2006. In particular, Staff alleges that Coventree failed to disclose the DBRS November Letter. The key provisions of the DBRS November Letter are summarized below and the full DBRS November Letter is set out in Schedule C to these reasons.

(b) Coventree Submissions

[165] Coventree submits that Staff's allegation concerning the failure to refer to the DBRS November Letter in the Prospectus is without merit for at least three reasons. First, although the Prospectus did not refer specifically to the DBRS November Letter, or to each of the other policy initiatives DBRS had undertaken in 2005 and 2006, the Prospectus disclosed fairly and accurately the more restrictive approach that DBRS had taken at the time and might take in the future.

[166] Second, Coventree submits that the DBRS November Letter was not material to Coventree for a host of reasons. These include the fact that the letter was largely confirmatory of the more restrictive approach DBRS had already taken in considering credit arbitrage transactions and contained no specifics whatsoever concerning any new or different criteria DBRS might apply to credit arbitrage transactions in the future. Coventree submits that DBRS had a history of announcing changes and then significantly modifying those changes as a result of comments from market participants. Moreover, Coventree submits that well before the DBRS November Letter, Coventree had concluded that credit arbitrage transactions would not constitute a significant source of future growth or revenue for Coventree.

[167] Finally, Coventree submits that this case is unlike any other enforcement case the Commission has brought in the past concerning allegedly misleading disclosure in a prospectus. Coventree submits that there have been only two such cases of any significance in the past ten years, namely *Re YBM Magnex* and a very recent settlement involving BMO Nesbitt Burns arising

out of an initial public offering of FMF Capital Group Ltd. (see *Re BMO Nesbitt Burns Inc.* (2010), 33 OSCB 10715). In both cases, the non-disclosure in question was egregious and went to the heart of the existence of the companies in question. Indeed, the undisclosed matters caused both companies to collapse shortly after the offerings in question were completed. By contrast, in this case, Coventree submits that it is obvious that the alleged non-disclosure in the Prospectus is trivial by any reasonable measure and mattered to no one.

(c) Cornish Submissions

[168] Cornish submits that, at the time the Prospectus was being prepared, he believed that Coventree's reliance on credit arbitrage transactions as a primary source of revenue would decrease for a number of reasons including that: (i) market conditions were making such transactions funded with ABCP less profitable, and (ii) the rapid growth of the ABCP market was curtailing the ability of the market to absorb future ABCP.

[169] Cornish submits that he therefore made a point of ensuring that the Prospectus reflected Coventree's view of the risks associated with the growth in the ABCP market and the fact that Coventree would pursue only a limited number of one-off credit arbitrage transactions in the future, with the result that these types of transactions would not be a significant source of future growth for Coventree. Cornish submits that the Prospectus clearly discloses this as well as the risk that Coventree's revenues could be negatively affected by a number of factors, including narrowing spreads in its credit arbitrage business.

[170] Cornish submits that he specifically turned his mind to including language in the Prospectus disclosing that DBRS had been pursuing more restrictive measures in the period leading up to the IPO. Indeed, the Prospectus expressly states that:

> With the increase in competition, DBRS has undertaken a number of new initiatives relating to the Canadian ABCP markets that are intended to protect or enhance the stability of that market. While Coventree supports those initiatives, many of them will also have the effect of reducing the profitability of future transactions.
>
> (Prospectus, at p. 32)

[171] Cornish submits that he and Tai both concluded that DBRS's more restrictive approach had already been disclosed and discussed at length in the Prospectus, such that no change to the Prospectus was required as a result of the DBRS November Letter.

[172] Cornish also adopts Coventree's and Tai's submissions with respect to this issue.

(d) Tai Submissions

[173] Tai submits that Coventree did not include reference to the DBRS November Letter in the Prospectus because the general spirit and intent of the DBRS November Letter had already been addressed in the Prospectus. Further, a reader of the Prospectus would know that Coventree was heavily dependent on DBRS as its sole provider of rating services and that DBRS had recently adopted a more stringent approach to various matters affecting the ABCP market.

[174] Tai submits that while he and Cornish may have had somewhat different interpretations of the meaning and impact of the DBRS November Letter, they both reached the same conclusion that it was not a material fact that was required to be disclosed in the Prospectus.

[175] Tai specifically objects to and denies Staff's suggestion that Coventree had a "preference for non-disclosure" or that he was attempting to keep secret his view that the credit arbitrage business was dying. To the contrary, Tai submits that very extensive risk factor disclosure was made in the Prospectus.

[176] Tai also adopts Coventree's and Cornish's submissions with respect to this issue.

(e) Summary of the DBRS November Letter

[177] The DBRS November Letter (attached as Schedule C to these reasons) set out DBRS's observations and conclusions about recent trends in the ABCP market including (i) the "extraordinary growth (in excess of 50%)" in the ABCP market over the previous two years, largely attributed to the growth of SFA transactions; (ii) that LSS transactions had been the most popular type of Canadian ABCP transaction; and (iii) that the structured credit market was providing less attractive returns for credit protection sellers (that is to say, ABCP conduits).

[178] After "considerable contemplation" and "a detailed review of existing SFA transactions", DBRS concluded in the DBRS November Letter that:

1. the quality of assets in SFA transactions was very high and future performance of those assets would be strong;

2. should growth rates in SFA-backed transactions continue at the pace previously experienced, DBRS believed that certain concerns would arise with respect to:

   (a) the "continued and near exclusive use of LSS technology resulting in contingent funding obligations embedded in an increasingly larger portion of the market"; and

   (b) SFA transactions potentially incorporating economic and risk characteristics that were quite different from previously structured transactions.

[179] These concerns prompted DBRS to advise market participants (through the DBRS November Letter) that DBRS would be taking a "measured approach" to "managing the future growth of SFA-backed transactions funded in the Canadian ABCP market", that "market participants should only expect transactions that clear the minimum rating requirements by an ample margin to be approved by DBRS" and that "consistent with DBRS's new approach to SFA transactions, market participants should also expect that the types of SFA transactions that will be approved going forward will be more restrictive than those approved in the past."

[180] The DBRS November Letter indicated that it was effective immediately and that it was DBRS's expectation that no existing Canadian ABCP ratings would be affected. Transactions then under review by DBRS would be "reviewed on a case by case basis" to determine whether they could be approved.

[181] It is not disputed that Coventree received the DBRS November Letter prior to filing the final Prospectus and that no express reference was made to it in the Prospectus.

(f) Relevant Considerations

[182] The Prospectus contains a discussion of a risk factor under the heading "Dependent Supplier Risk" related to the fact that "[t]he one key supplier that the Company is heavily dependent on as a sole provider of services is DBRS". It was also stated that:

> Further, DBRS has recently adopted a more stringent approach to various matters affecting the ABCP marketplace, such as new minimum requirements (including minimum equity) for new conduit sponsors, new market-disruption liquidity definitions and new disclosure requirements. While the Company supports these new changes as being positive developments for the industry, *there is no assurance that DBRS will not adopt additional requirements in the future that may adversely affect the Company's ability to carry on business or to execute transactions through its conduits on the same basis as in the past*. [emphasis added]
>
> (Prospectus, at p. 64)

[183] While he responded "good note" to DBRS in an e-mail regarding the DBRS November Letter, Tai stated in his examination by Staff that he interpreted the DBRS November Letter as "a very harsh letter" that meant that DBRS was "not going to do these [SFA transactions] anymore". On November 17, 2006, Tai sent an e-mail to the Nereus board of directors that included the statement that "[g]iven DBRS [*sic*] more recent letter regarding leverage [*sic*] super senior transactions, and CDO [*sic*] more generally, we are very uncertain about the long-term prospects of Nereus as a going concern." On December 23, 2006, Tai further communicated to the Nereus board that:

> Given that DBRS has now explicitly declared that they will be restricting these types of transactions [LSS transactions] to the point where they may be uneconomical, we would like to know why the Board has NOT insisted on Nereus diversifying away from these transactions or this business model in an aggressive fashion, despite warning at the inception and repeated warning by Coventree that this would occur.

[184] Cornish testified, however, that he did not agree with Tai's assessment of the DBRS November Letter. Cornish testified that it was difficult to determine exactly what DBRS intended by the DBRS November Letter, but that it appeared to be a continuation of DBRS's existing approach. He testified that DBRS had a history of making such announcements and then changing or modifying its approach based on feedback from market participants. In this respect, Loke testified that DBRS had not established the criteria it intended to apply in connection with rating transactions that were subject to the DBRS November Letter. Loke testified that the letter was simply trying to communicate that DBRS was concerned with the overall quality of transactions.

[185] Ken Toten ("**Toten**"), a Coventree employee, sent an e-mail to Cornish on November 16, 2006 in which he commented on the effect of the DBRS November Letter. He stated that:

> So, it is my belief that we will not be able to achieve our funding goals for FY07 based upon the user-unfriendly posture adopted by our primary rating agency. As such, I believe that the financial goals set in good faith 6 months ago will only serve to demotivate staff …

[186] Cornish testified that he felt Toten was attempting to use the DBRS November Letter as an excuse for renegotiating personal and employee objectives. Accordingly, Cornish discounted the significance of the concerns expressed by Toten. Notwithstanding, Cornish responded to Tai in respect of the e-mail from Toten that "we are going to have to get another rating agency in Canada or a US conduit or both".

[187] Cornish testified, however, that he did not consider the DBRS November Letter to constitute a material fact with respect to Coventree.

[188] Loke told McCloskey about the DBRS November Letter in a telephone call a few days prior to the filing of the final Prospectus. Loke was aware of the IPO and McCloskey referred him to the risk factors described in the Prospectus. Loke apparently confirmed the accuracy of references in the Prospectus to DBRS and that the risk factors were accurate.

[189] McCloskey obtained a copy of the DBRS November Letter before the final Prospectus was filed although he testified that he did not have a clear recollection of reading the letter. No express reference was made to the DBRS November Letter in the questions prepared for the final due diligence meeting held to finalise the Prospectus on November 15, 2006.

[190] In reviewing the DBRS November Letter in connection with this proceeding, McCloskey testified that it did not appear to him to be particularly important and, in any event, seemed to be a continuation of DBRS's approach referred to in the Prospectus.

Coventree Transactions Completed After the DBRS November Letter

[191] Based on Cornish's testimony, there was one Coventree sponsored securitization transaction for approximately $68 million completed on November 14, 2006 to which the DBRS November Letter did not apply. Cornish also testified that there were three Coventree or Nereus sponsored LSS transactions that Cornish believed were grandfathered under the DBRS November Letter that were closed in November and December 2006. Those transactions were in an aggregate principal amount of approximately $665 million. The only other credit arbitrage transactions that were completed by Coventree after the DBRS November Letter were four relatively small non-CDO related transactions completed in March and April 2007 in an aggregate amount of $169 million.

2. Law related to Prospectus Disclosure

[192] In order for capital markets to function fairly and efficiently, public companies must provide accurate and truthful disclosure to investors about their business and affairs. The importance of public disclosure cannot be underestimated. The Commission has emphasized the importance of disclosure to investors and capital markets in a number of decisions. In *Philip Services Corp.*, the Commission stated that:

> Disclosure is the cornerstone principle of securities regulation. All persons investing in securities should have equal access to information that may affect their investment decisions.
>
> (*Philip Services Corp., supra,* at para. 7)

[193] Information that is publicly disclosed must be accurate and not misleading or untrue in order to accomplish the goals of Ontario's securities regulatory regime to protect investors from unfair or improper practices and to foster fair and efficient capital markets and confidence in those markets (*Re Rex Diamond, supra,* at para. 205).

[194] A prospectus is an important means for ensuring that investors receive the information that permits them to make an informed decision when investing in the securities offered.

Full, True and Plain Disclosure

[195] The Act requires that a preliminary prospectus and a final prospectus be filed, and receipts be obtained, where a distribution of securities is made (Act, *supra,* subsection 53(1)).

[196] The Act provides that a prospectus shall contain full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed and shall comply with the requirements of Ontario securities law (Act, *supra,* subsection 56(1)).

[197] The Act requires that where a prospectus is filed, the issuer's chief executive officer, chief financial officer and any two of its directors, on behalf of the board of directors, must certify that the prospectus contains full, true and plain disclosure of all material facts relating to the securities offered (Act, *supra*, subsection 58(1) and section 37.2 of Form 41-101F1 – *Information Required in a Prospectus* (the "**Prospectus Form**")). Underwriters in a prospectus distribution are required to certify that, to the best of their knowledge, information and belief, the prospectus constitutes full, true and plain disclosure of all material facts relating to the securities offered (Act, *supra*, subsection 59(1) and section 37.3 of the Prospectus Form).

[198] "Full" disclosure is achieved when disclosure is made of facts sufficient to permit investors to make an informed investment decision. "True" disclosure is achieved if the disclosure is accurate and not misleading and does not omit a fact that is either material itself or is necessary to understand the facts that have been disclosed. "Plain" disclosure must be understandable to investors and in plain language.

[199] Disclosure in the Prospectus is governed by National Instrument 41-101 – *General Prospectus Requirements* (2002), 23 OSCB 761. The Prospectus Form provides detailed instructions for the preparation of a prospectus and sets out 37 separate matters or "items" that must be disclosed. Item 29 requires issuers to disclose any other material fact not covered by any of the other items that is "necessary in order for the prospectus to contain full, true and plain disclosure of all material facts". Section 4.1 of Companion Policy 41-101CP provides that "[i]ssuers should apply plain language principles" when preparing a prospectus.

3. Analysis

[200] In considering the allegations of misleading or inadequate disclosure in the Prospectus, we have read the entire Prospectus with some care. We recognise that statements in the Prospectus can be taken out of context. While we quote selectively from the Prospectus in these reasons, we are mindful of that caution.

[201] It is clear that the DBRS November Letter contained information that was important to Coventree and its business. On its face, DBRS was proposing in the DBRS November Letter to take a more measured or restrictive approach to approving SFA transactions, a form of transaction that generated a substantial portion of Coventree's revenues. The DBRS November Letter was raising concerns about the large number of LSS transactions being carried out in the market and the contingent funding risks being created as a result. These issues were of much more importance to Coventree than a number of the earlier initiatives undertaken by DBRS and referred to in the Prospectus. Coventree was very active in the SFA market and its business could have been significantly and adversely affected by the DBRS November Letter. Both Tai and Toten appear to have viewed the DBRS November Letter as having a material and adverse effect on Coventree's credit arbitrage business (see paragraphs 183 and 185 of these reasons).

[202] Accordingly, we are surprised that specific reference to the DBRS November Letter was not included in the Prospectus. For the same reason, it is also surprising to us that McCloskey did not recall reviewing the DBRS November Letter at the time and that no express reference to it was included in the due diligence questions for the final Prospectus due diligence session. We would expect the underwriters to have had concerns or questions with respect to the DBRS November Letter, given that it was issued only a few days prior to the filing of the final Prospectus and related to a very important portion of Coventree's business.

[203] We note that Cornish did not immediately follow up with Loke at the time the DBRS November Letter was issued. It appears that he did not ultimately discuss it with Loke until approximately the end of November 2006.

[204] We would add that, in our view, disclosure of the DBRS November Letter and the concerns raised by DBRS would not have resulted in extensive or complex disclosure in the Prospectus that would have been unhelpful to investors. To the contrary, the nature of the concerns raised by DBRS could have been disclosed quite easily by the addition of one or two sentences to the disclosure referred to in paragraph 182 of these reasons. DBRS was worried about the large number of LSS transactions being carried out in the market and the contingent funding risks to which those transactions were giving rise. Expressing those concerns in the Prospectus would not have been difficult and that information would have been clearly relevant to a purchaser of shares under the Prospectus.

DBRS November Letter Not a Material Fact

[205] On balance, however, we have concluded that the DBRS November Letter did not constitute a material fact with respect to Coventree at the date of the Prospectus. We come to that conclusion for three reasons.

[206] First, it appears that the DBRS November Letter was primarily focused on "managing the future growth of SFA-backed transactions" and ensuring that only high quality transactions were approved.

[207] It is at best unclear exactly what DBRS was saying in the DBRS November Letter and what criteria it would apply in reviewing future SFA transactions. Loke agreed with that assessment in his testimony. He testified that DBRS had not established the criteria it would apply pursuant to the DBRS November Letter. Coventree submits that the only way to determine what the DBRS November Letter really meant was to submit proposed transactions to DBRS to see how DBRS responded. In an e-mail to Toten dated November 30, 2006, Cornish stated "… my vote is that we should submit [to DBRS] every deal that we want to do as per usual in CDOs … it is only once we get into this new process that we will find out how it will really apply to us and others".

[208] Based on Loke's testimony, it appears that other market participants also had concerns as to exactly what the DBRS November Letter meant.

[209] With that uncertainty as to its meaning and application, it was difficult to assess, at the time the Prospectus was filed, the likely impact of the DBRS November Letter on Coventree and its business. To the extent that DBRS was simply saying that it would in the future approve only higher quality SFA transactions, Coventree may well have concluded that the letter was not addressed to the transactions it typically carried out, and that it would have a limited adverse effect on its business.

[210] Secondly, the DBRS November Letter does appear to be a continuation of DBRS's existing "measured approach" to approving SFA transactions. A measured approach is quite different than saying that no future LSS transactions would be approved. Further, the DBRS November Letter seems to be captured by the statement in the Prospectus that "there is no assurance that DBRS will not adopt additional requirements in the future that may adversely affect the Company's ability to carry on business or to execute transactions through its conduits on the same basis as in the past" (Prospectus, at p. 64; see paragraph 182 of these reasons). That disclosure does not relieve Coventree of its legal obligation to disclose material facts in the Prospectus *as they existed on the date of the Prospectus*, but it does alert a reader to the possibility that DBRS could take future action that would adversely affect Coventree's ability to complete future securitization transactions.

[211] Finally, the DBRS November Letter did not affect outstanding transactions or transactions that were then being reviewed by DBRS, although the letter indicates that the latter transactions would be reviewed on a case by case basis.

[212] We note that Loke testified that DBRS did not approve any new CDO related SFA transactions after the DBRS November Letter, other than grandfathered transactions and transactions that had the benefit of global style liquidity. It also appears that Coventree did not propose any new CDO related transactions to DBRS after the DBRS November Letter. However, if those were consequences of the DBRS November Letter (rather than the DBRS January Release), they were apparent only with the benefit of hindsight. We do not believe that those consequences of the DBRS November Letter were reasonably apparent to Coventree at the date of the Prospectus.

[213] We would add that we do not view the fact that no change was made to the disclosure in the Prospectus in response to the DBRS November Letter as a relevant factor in our analysis of this issue.

4. Conclusions

[214] One way of asking whether the DBRS November Letter was a material fact is to ask whether, if disclosure of the DBRS November Letter had been made in the Prospectus, that disclosure would have significantly affected the price investors would have paid to purchase Coventree shares under the Prospectus. We consider that unlikely.

[215] Based on the foregoing, we have concluded, on balance, that the DBRS November Letter would not reasonably be expected to have had a significant effect on the market price or value of Coventree shares. Accordingly, the DBRS November Letter did not constitute a "material fact" at the date of the Prospectus within the meaning of the Act. We therefore find that Coventree did not contravene section 56 of the Act by failing to disclose the DBRS November Letter in the Prospectus.

5. Other Prospectus Disclosure Issues

[216] The allegation referred to in paragraph 164 of these reasons is Staff's only allegation that Coventree contravened section 56 of the Act. There are, however, two other issues with respect to the disclosure in the Prospectus that are relevant to other allegations we must address in these reasons.

(a) Importance of Credit Arbitrage to Coventree's Business

Staff Allegation

[217] Staff alleges that the Prospectus did not disclose that approximately 80% of Coventree's revenues were derived from credit arbitrage transactions. Staff has conceded, however, that the failure to make that disclosure did not contravene section 56 of the Act. Staff submits that allegation is relevant only in considering whether the DBRS January Release gave rise to a material change in Coventree's business. We discuss that issue later in these reasons.

Coventree Submissions

[218] Coventree submits that Staff's allegation in this respect is completely without merit for at least two reasons.

[219] First, Coventree submits that the Prospectus made it abundantly clear that a significant portion of Coventree's business was attributable to credit arbitrage transactions, including CDO related credit arbitrage transactions.

[220] Second, Coventree submits that the precise percentage of Coventree's future business or revenues attributable to credit arbitrage transactions was irrelevant. Coventree had no expectation that credit arbitrage transactions would continue to be a significant source of future growth or new revenues and this fact was disclosed in the Prospectus.

[221] Coventree also submits that information as to its separate revenues derived from traditional securitizations and from credit arbitrage transactions was commercially sensitive and that it did not track its revenues from transactions, and did not manage its business, on that basis (see the concluding sentence of the quotation set out in paragraph 222 of these reasons). Coventree says that the portion of its revenues derived from credit arbitrage transactions was not a financial number generated by its accounting control systems.

[222] With respect to the proportion of Coventree's revenues derived from or attributable to credit arbitrage transactions, Coventree acknowledged in its letter to Staff dated September 14, 2007, that:

> The Company's estimated revenue attributable to the Conduits' credit arbitrage transactions for the three-month periods ending December 31, 2006, March 31, 2007 and June 30, 2007 is set out below:

Three-Month Periods Ending	**Total Credit Arbitrage Transactions Approx. Revenue (in millions)**	**Company Total Revenue Excluding VIEs (in millions)**	**Total Credit Arbitrage Transactions as % of Total Revenue Excluding VIEs**
December 31, 2006	$17.3	$21.8	80%
March 31, 2007	$16.4	$20.7	79%
June 30, 2007	$15.2	$18.8	81%

> The amounts in the second column are estimates of revenue attributable to the Conduits' credit arbitrage transactions as the Company's reporting systems do not capture revenue attributable to the Conduits' credit arbitrage transactions separately from revenue attributable to the Conduits' traditional securitization programs.

[223] Coventree does not dispute that approximately 80% of its revenues were derived from credit arbitrage transactions as of the date of the Prospectus. Coventree also acknowledges that no express statement as to the proportion of its revenues derived from credit arbitrage transactions was made in the Prospectus.

[224] Coventree submits, however, that the Prospectus is clear that a significant portion of Coventree's business was attributable to credit arbitrage transactions including CDO related credit arbitrage transactions. Coventree comes to that conclusion based on the following analysis of the disclosure in the Prospectus.

[225] Coventree refers to the list of asset classes that are included in the description of traditional securitizations and credit arbitrage securitizations set out on page 12 of the Prospectus. The list of asset classes in the description of credit arbitrage transactions includes "corporate bonds, middle market loans, small business loans and asset-backed securities". The table on page 22 of the Prospectus indicates that "Asset-Backed Securities" and "Corporate Loans & Bonds" comprise an aggregate of approximately 44% of the assets held by Coventree sponsored conduits. Although the table on page 22 of the Prospectus

includes other asset classes, Coventree submits that a reader would conclude from the table that credit arbitrage transactions constituted a significant portion of the assets held by Coventree sponsored conduits.

[226] In addition, Coventree submits that note 13(a) to the financial statements contained in the Prospectus discloses that the conduits' investments include approximately $8.0 billion of collateralized debt obligations and credit linked notes ("**CLNs**"). Coventree submits that CDOs and CLNs are forms of investments related to credit arbitrage transactions. Note 13(a) also states that the total principal amount of the investments held by Coventree and Nereus sponsored conduits was about $14.9 billion, which means that CDOs and CLNs alone represented about 54% of those investments. Coventree also notes that CDOs and CLNs do not constitute all of the investments related to credit arbitrage transactions held by the conduits. Accordingly, Coventree submits that a reader of the Prospectus would conclude from this information that credit arbitrage transactions constituted a significant portion of the investments of Coventree and Nereus sponsored conduits.

[227] Further, on page 26 of the Prospectus, it is stated that Nereus is focused "principally on structured credit arbitrage". Nereus' financial results are included in the "Coventree Investments" business segment. Nereus' recurring revenue from credit arbitrage transactions is $10.1 million (shown on page F-9 of the Prospectus, note 3, in the "Revenue" line item under "Coventree Investments"). In addition, $4.9 million of revenue (line item for "Sale/termination of transaction fees") also relates to Nereus' credit arbitrage business. In other words, Nereus' credit arbitrage revenue alone accounted for approximately $15 million of Coventree's total revenue (excluding CICA Accounting Guideline 15, Consolidation of Variable Interest Entities ("**AcG-15**")) of about $60.7 million, representing approximately 25% of Coventree's total revenues.

[228] The Prospectus also states on page 26 under "Nereus Financial Inc. ("*Nereus*")" that Nereus had close to $3 billion in fundings outstanding. If that $3 billion is deducted from the $8 billion figure set out in note 13(a) referred to above, that means that Coventree sponsored conduits held about $5 billion in CDOs and CLNs. Coventree submits that if one assumes that Coventree earned proportionally the same amount of revenue from CDOs and CLNs held by the Coventree sponsored conduits as Nereus did from the CDOs and CLNs held by Nereus sponsored conduits, that would mean that Coventree earned about $25 million in revenue from those transactions. Coventree submits that would mean that the total revenue earned by both Coventree and Nereus from CDOs and CLNs was about $40 million, or about 2/3 of Coventree's total revenues (excluding AcG-15).

[229] Based on the analyses set out above, Coventree submits that it was clear in the Prospectus that a significant portion of its revenues were derived from credit arbitrage transactions.

Cornish and Tai Submissions

[230] Cornish and Tai adopt Coventree's submissions with respect to the disclosure in the Prospectus of the importance of credit arbitrage to Coventree's business.

Discussion

[231] Coventree does not dispute that, at the time of the Prospectus, approximately 80% of its revenues were derived from credit arbitrage transactions. That conclusion is consistent with the statements in the letter to Staff referred to in paragraph 222 of these reasons (although those statements relate to periods ending subsequent to the date of the Prospectus).

[232] The Prospectus does not disclose the proportion of Coventree's revenues derived from credit arbitrage transactions. Coventree knew that the underwriters involved in the IPO considered that information to be relevant to investors. Two of the underwriters involved in the IPO requested Coventree to disclose that information in the Prospectus, but Tai successfully resisted disclosure on the basis that the information was confidential and proprietary. In an e-mail to Tai dated August 21, 2006, McCloskey stated: "[a]lso surprised that you won't disclose in the prospectus the breakdown of revenue and profit that come from your programs vs. "Proprietary/arb trading". The latter will command a lower valuation multiple. I would think that a proposed investor would want to know. Too sensitive from a business perspective?" McCloskey testified that he discussed this disclosure question with his legal counsel and they ultimately concluded that additional disclosure was not required.

[233] We have difficulty seeing how the proportion of Coventree's revenues or business derived from credit arbitrage transactions was commercially sensitive. Child appeared to agree with that in her testimony. It is also clear to us on the evidence that Coventree tracked transactions on a deal by deal basis and characterized those transactions as either funding transactions (traditional securitizations) or investment transactions (credit arbitrage). It does not appear to us that it would have been difficult for Coventree to determine its revenue derived from credit arbitrage transactions and there is nothing preventing the disclosure of that information in the Prospectus. It also appears to us to be information that an investor reading the Prospectus would want to know.

[234] Accordingly, we do not accept the submissions set out in paragraph 221 of these reasons as valid grounds for not making clear in the Prospectus the importance of credit arbitrage transactions to Coventree's business.

Disclosure in the Prospectus

[235] Having said that, it is clear from the Prospectus that Coventree was engaged through its sponsored conduits in both traditional securitization transactions and credit arbitrage transactions. We accept that a reader of the Prospectus could determine, based on a careful reading, that credit arbitrage assets represented approximately 44% of the assets held by Coventree sponsored conduits (see paragraph 225 of these reasons) and that credit arbitrage transactions represented approximately 54% of Coventree's total investments (see paragraph 226 of these reasons).

[236] We also note that the Prospectus discloses that Nereus, Coventree's 75.5% owned subsidiary at the time, "focuses principally on structured credit arbitrage" and that "Nereus has close to $3 billion in fundings outstanding" (Prospectus, at p. 26). The total combined fundings of Coventree and Nereus conduits were $14.9 billion at the time. Accordingly, a reader would know from the Prospectus that Nereus focused principally on credit arbitrage and that it had fundings outstanding of close to $3 billion, representing approximately 20% of Coventree's total fundings.

[237] At the same time, the Prospectus gives much less emphasis to Coventree's direct involvement in the credit arbitrage business. For instance, the Prospectus states that:

> Coventree establishes multi-seller, multi-asset securitization conduits which are funded principally with ABCP, including ECP [extendible commercial paper]. Currently, the fundings outstanding in Coventree sponsored conduits are approximately $12 billion. Coventree engages in similar activities through its credit arbitrage securitization and asset management activities.
>
> (Prospectus, at p. 18)

That statement could be read as suggesting that credit arbitrage transactions were not included in the $12 billion of outstanding fundings, but the statement at least suggests that credit arbitrage is a secondary activity.

[238] Coventree also states in the section of the Prospectus describing Nereus that:

> Currently, Nereus focuses principally on structured credit arbitrage. Coventree's business is more diversified in nature, but some similarities exist between the business of Coventree and Nereus.
>
> (Prospectus, at p. 26)

That statement seems misleading when one realizes that approximately 80% of Coventree's revenues at the time were derived from credit arbitrage transactions.

[239] It is not up to investors reading the Prospectus to have to follow the somewhat convoluted and less than clear trail through the disclosure in the Prospectus, and through the disclosure in Coventree's financial statements contained in the Prospectus, to determine what proportion of Coventree's revenues or conduit assets were derived from credit arbitrage transactions. That information was important to investors given the competitive and other pressures that the credit arbitrage business was under (as described in the Prospectus). We also note in this respect that, in connection with the IPO, the underwriters applied different earnings multiples in valuing the credit arbitrage business and the traditional securitization business.

[240] *The Prospectus does not disclose that 80% of Coventree's revenues, or any other proportion of its revenues or conduit assets, were derived from credit arbitrage transactions as of the date of the Prospectus.*

[241] Accordingly, in our view, based on a fair reading of the Prospectus, the disclosure in the Prospectus on this subject was less than full, true and plain disclosure. We believe that a reader of the Prospectus would have been rightly surprised to be told that approximately 80% of Coventree's revenues were derived from credit arbitrage transactions.

[242] Mowat does not appear to have been aware until late June 2007 of the importance of credit arbitrage to Coventree's business. She sent an e-mail on June 27, 2007 to another Board member that stated, in part:

> … the Board meeting was awesome. Now the light bulb is going on for me and I wish we could get that into our disclosure … I had no idea that over half the profit is from CDOs as opposed to traditional securitization and that the traditional business from an origination side had "dried up so much". David Allan's presence is timely. …

Mowat was Chair of the Coventree Audit Committee and signed the Prospectus on behalf of the Board.

[243] That statement is relevant because it suggests that investors would not have known how important credit arbitrage was to Coventree's business based on a review of the Prospectus. We do not accept Mowat's testimony that her statement related only to her understanding of the nature or structure of CDO transactions.

Conclusion

[244] We have concluded that the disclosure in the Prospectus relating to the proportion of Coventree's business derived from credit arbitrage was less than full, true and plain disclosure. There was less than full disclosure of the proportion of Coventree's revenues or conduit assets that were derived from credit arbitrage transactions and the information on that topic was not plain to a reader of the Prospectus. However, we have concluded that one would fairly conclude based on a careful reading of the Prospectus that a significant portion of Coventree's business, measured by revenues or conduit assets, was derived from credit arbitrage transactions. One would not know that the proportion of Coventree's revenues derived from credit arbitrage transactions was approximately 80%, but one would know the proportion was substantial.

[245] We have not concluded that the Prospectus failed for this reason to provide full, true and plain disclosure of all *material facts*. Staff did not make that allegation and we have not addressed it.

(b) The Credit Arbitrage Business Was Dying

Coventree Submissions

[246] Coventree also submits that it was disclosed in the Prospectus that the credit arbitrage business was "dead or dying" and that Coventree expected in the future to do only the occasional, one-off credit arbitrage transaction. Coventree submits, based in part on the disclosure in the Prospectus referred to in paragraphs 247 to 249 of these reasons, that an investor would expect that Coventree's future growth would come from its investment in new businesses such as its efforts as part of the Chapter Two initiatives to establish a U.S. conduit, a Canadian retail bank, and an asset management business. Coventree also submits that an investor would expect that, while Coventree built these new businesses over the ensuing years, its net income could be flat or declining. Coventree submits that is the result of combining the expectation that revenues from the credit arbitrage business were not likely to grow significantly in the future with the expectation that Coventree would be incurring significant costs associated with its planned diversification.

Relevant Disclosure in the Prospectus

[247] The Prospectus discloses that:

> Past accomplishments don't guarantee future successes. At least part of these achievements are derived from fortuitous timing, and many of the more recent years' results are derived from anomalous, one-time events. One-time events include unique up-front structuring fees, sale/termination of transactions fees and the gain on the sale of shares from certain investments.
>
> (Prospectus, at p. 32)

[248] The Prospectus discloses that there was increasing competition and a narrowing of spreads in Coventree's credit arbitrage business. The Prospectus states that the expectation of Coventree's leaders is that "potential returns on credit arbitrage [will] become further compressed due in part to competition in that market …" (page 28 of the Prospectus) and that new entrants into the market puts "additional pressures on margins in the credit arbitrage business where spreads have narrowed dramatically …" (page 32 of the Prospectus). The Prospectus states that:

> There has also been a decline in spreads in the credit arbitrage business. If this trend continues or if credit spreads remain tight, the average spread on the credit arbitrage assets will decrease in the future resulting in lower revenue.
>
> (Prospectus, at p. 38)

[249] Coventree concludes in the Overview section of Management's Discussion and Analysis of Financial Condition and Results of Operations in the Prospectus that:

> As a result of all the above, the leaders of the Company believe that *net income growth* excluding AcG-15 could be flat if not declining for the next few years and expect volatility in short term quarterly results. [emphasis added]
>
> (Prospectus, at p. 33)

[250] Accordingly, the Prospectus alerts investors to the narrowing spreads and increased competition in the credit arbitrage business and the possibility that Coventree would have flat or declining "net income growth" in the future and volatility in short term financial results.

[251] Despite the increased competition in the credit arbitrage business and the fact that credit arbitrage transactions had become less profitable, Coventree continued to enter into credit arbitrage transactions in the two month period leading up to the filing of the Prospectus, generating total revenue backlog of approximately $37 million from four transactions. In addition, Coventree's business plan, developed in May 2006, and updated in September 2006, contemplated new credit arbitrage fundings of over $4 billion. That is approximately 50% of Coventree's projected total fundings for its 2007 financial year of $9.5 billion (excluding Nereus).

Discussion

[252] In our view, while a reader of the Prospectus would conclude that there were significant challenges to the credit arbitrage business going forward, they would also conclude that credit arbitrage would continue to be a substantial portion of Coventree's business. There is no express statement in the Prospectus that Coventree even intends to shift its strategic focus from credit arbitrage to traditional securitization transactions (perhaps because of the failure to clearly disclose the importance of Coventree's credit arbitrage business in the Prospectus).

[253] We would add that the Prospectus indicates that Coventree's:

> … expanded corporate objective is to become a financial services company focused on niches. Targeted niches include structured financing using securitization technology, conduit administration outsourcing services for third parties, asset management and private equity investments in synergistic enterprises, as well as eventual entry into certain retail banking activities.
>
> (Prospectus, at p. 18)

Establishing a U.S. conduit, a Canadian retail bank and an asset management business were Coventree's so-called "Chapter Two" initiatives (see paragraphs 106 to 111 of these reasons). The Prospectus discloses that "[m]any of these initiatives are in the initial or early planning stages, and there is no assurance that all, or any, of Coventree's current growth experiments will be successful" (Prospectus, at p. 18).

[254] None of the Chapter Two initiatives had been established by the time of the Prospectus and none of them had contributed any revenue to Coventree prior to the occurrence of the market disruption on August 13, 2007. To the contrary, the Chapter Two initiatives were expected to give rise to substantial costs before they were fully implemented.

[255] Coventree submits that one of the reasons why changes in its securitization business were not material to investors is because Coventree had changed its strategic focus and was moving forward with the Chapter Two initiatives. We do not accept that submission. In our view, based on the disclosure in the Prospectus, investors in Coventree would have been focused on its successful securitization business which had generated the substantial financial results described in the Prospectus. That is confirmed by the Roadshow Presentation that highlighted, among other factors, Coventree's "solid financial performance" and "strong core business to fund growth" (see paragraph 259 of these reasons). The Chapter Two initiatives were acknowledged by Coventree to be "experiments" and, in our view, had not been sufficiently advanced to form a significant reason why investors would purchase shares under the Prospectus.

[256] Coventree was in the securitization business. Its financial results at the time of the Prospectus were primarily derived from the credit arbitrage business, although its focus going forward was shifting to the traditional securitization business, to providing third-party conduit administration and to the Chapter Two initiatives. Allan joined Coventree on January 22, 2007, in part, because of the expected shift in focus to the traditional securitization business. There is no doubt, however, that Coventree's financial success to the date of the Prospectus was based on its securitization business and, in particular, credit arbitrage.

[257] *In our view, a reader of the Prospectus would not have fully understood the significance of credit arbitrage to Coventree's business and financial success and would not have known that Coventree considered that business to be dead or dying or that Coventree expected in the future to carry out only occasional, one-off credit arbitrage transactions. The Prospectus does not say that.*

[258] Further, if that expectation was true, it would mean that Coventree was for all intents and purposes out of the credit arbitrage business. That itself raises a question whether appropriate disclosure was made in the Prospectus.

The Roadshow Presentation

[259] Coventree prepared a roadshow presentation (the "**Roadshow Presentation**") in connection with the marketing of the shares offered under the Prospectus. The Roadshow Presentation highlighted, among other factors, Coventree's "solid financial performance" and "strong core business to fund growth". The Roadshow Presentation also notes as "strengths" that Coventree has a "proven track record in growing businesses", a "stable annuity income stream from program fees" and "income from highly rated assets sold to conduits".

[260] Among the weaknesses identified in Coventree's business are "historical performance not necessarily indicator of future performance", "assets beginning to come to end of term", "maturing markets, new entrants – margin pressures", "investments in growth experiments" and "extreme leverage".

[261] New fundings are shown as $5.9 billion to June 2006 (i.e., for the three financial quarters ended on that date) compared to full 2005 prior year fundings of $5.8 billion.

[262] There is a page forming part of the Roadshow Presentation entitled "Profitability Growth". That page contains a graph showing Coventree profitability for the previous seven financial years and for the three quarters ended June 2006. Profitability shows very large increases from 2002 to 2005. Profitability for the three quarters ended June 2006 equals profitability for all of 2005. Past that date, the profitability line becomes dotted and shows a dip in profitability, characterized as "Short-Term Flat or Declining", followed by an increasing dotted line characterized as "Theoretical Chapter Two Curve". The dip falls to $15 million (which is above normalized net income for 2005 and for the period ended June 2006) before trending up. The graph is intended to represent the shift in Coventree's profitability as a result of the Chapter Two initiatives.

[263] There is no direct reference in the Roadshow Presentation to credit arbitrage transactions, although inferentially one might conclude that the dip in profitability going forward is as a result of challenges and competition in credit arbitrage. There is, however, no express distinction made between credit arbitrage transactions and traditional securitizations in the Roadshow Presentation. Further, no direct reference is made to revenue backlog, except for the comments referred to above with respect to a "stable annuity income stream from program fees" and "income from highly rated assets sold to conduits". There are no numbers associated with these statements.

[264] The overall message from the profitability graph is that there will likely be a dip in Coventree's profitability as it moves to the Chapter Two initiatives, but growth in profitability is expected thereafter.

[265] In our view, however, an investor would not have understood from the Roadshow Presentation (based only on the written material submitted in evidence) the full significance of the credit arbitrage business to Coventree's financial success and would not have known that Coventree considered that business to be dead or dying or that Coventree expected in the future to do only occasional, one-off credit arbitrage transactions.

[266] We would add that the Roadshow Presentation was not part of the Prospectus and the information in that presentation was not generally disseminated to investors. We have referred to the Roadshow Presentation simply because it represents information that was provided by Coventree to some investors as part of the distribution of shares under the Prospectus. It is evidence of what Coventree was saying to investors at the time of the Prospectus.

Risk Factor Disclosure

[267] There is no question that the Prospectus contains extensive risk factor disclosure that addresses many of the events that ultimately occurred and are relevant to this proceeding. In particular, the Prospectus discloses the following risks affecting Coventree and Coventree sponsored conduits that are relevant for our purposes:

(a) "liquidity risk (inability to sell financial instruments or other assets in the market in the ordinary course)" (Prospectus, at p. 58);

(b) "market disruption risk (the risk that difficulties affecting one or more other financial institutions causes systemic repercussions to the financial system including the inability to roll funding)" (Prospectus, at p. 58);

(c) the risk that "[i]f the supply of available ABCP exceeds the demand for such securities from investors in Canada, this market will no longer provide a reliable funding source for Coventree sponsored conduits" (Prospectus at p. 58) and the risk that "[w]ith less investor demand, the Company would have no assurances that the conduits the Company sponsors could raise funds in a timely or economical manner and would be forced to limit their ABCP issuance accordingly" (Prospectus, at p. 59);

(d) the risk of a market disruption that "would not only prevent conduits sponsored by Coventree from issuing new paper necessary to acquire new deals but also could prevent the conduits from rolling their outstanding ABCP" (Prospectus, at p. 59);

(e) the risk that "[a]lthough Coventree has no legal obligation to fund the conduits to buy back ABCP from investors in the event of a disruption, Coventree's reputation in the industry and on going ability to access the capital markets could be severely adversely impacted if it did not or could not do so" (Prospectus, at p. 59);

(f) "[t]he potentially limited size of the ECP [extendible commercial paper] market in Canada", and the fact that the issue of extendible commercial paper "has been a major driver of Coventree's growth to date" (Prospectus, at p. 59);

(g) the risk that "a relatively high percentage of the outstanding ABCP issued by its conduits has been purchased by a small number of ABCP investors", including the fact that, "at certain times, a substantial minority percentage of the securities issued by its conduits has been purchased by one investor, the Caisse" (Prospectus, at p. 60);

(h) the risk that "[i]f the spread between CDOR and the interest rates payable on the ABCP issued by the Company's conduits widens, the Company's revenues can be materially decreased" (Prospectus, at p. 60);

(i) the risk that securitization transactions executed in Coventree sponsored conduits "often involve buying long-term assets that typically pay a fixed interest rate and funding these assets with short-term floating rate ABCP" (Prospectus, at p. 62);

(j) the risk of increased reliance by investors on Coventree because the ABCP market and the assets funded by the conduits are generally opaque to investors (Prospectus, at p. 63); and

(k) the risk of reliance on DBRS as sole provider of rating services to Coventree (Prospectus, at p. 64).

[268] Clearly, the risk factor disclosure in the Prospectus is extensive and comprehensive. As a result, investors in Coventree shares offered under the Prospectus cannot validly take the position that they were unaware of the material risks to which Coventree's business was subject. At the same time, however, disclosure of a risk to which a business is subject is quite different than the actual occurrence of an event reflected in the risk factor. When an event that is material to the business actually occurs and gives rise to a material change, an issuer will have a disclosure obligation regardless of whether the risk giving rise to the material change had been previously identified and disclosed. The previous disclosure of risk factors does not affect or qualify an issuer's obligation to disclose material changes, when they occur, in accordance with section 75 of the Act.

(c) Conclusion

[269] The disclosure deficiencies discussed under "Other Prospectus Disclosure Issues" (commencing at paragraph 216 of these reasons) made it much more difficult for public shareholders and potential investors to fully understand and assess the significance to Coventree's business of the subsequent events and developments discussed in these reasons.

X. DID A MATERIAL CHANGE OCCUR AS A RESULT OF THE DBRS JANUARY RELEASE?

1. Background

(a) Staff Allegation

[270] On January 19, 2007, DBRS issued the DBRS January Release announcing changes to its rating criteria for CDO related SFA transactions entered into by commercial paper issuers. A copy of the DBRS January Release is set out in Schedule D.

[271] Staff alleges that the DBRS January Release constituted a material change with respect to Coventree that was required to be disclosed in accordance with section 75 of the Act.

(b) Coventree Submissions

[272] Coventree submits that the DBRS January Release did not change Coventree's business or operations in any way, let alone materially. Coventree reiterates its submissions with respect to the credit arbitrage business referred to in paragraph 246 of these reasons. In particular, Coventree submits that the DBRS January Release was not material because Coventree did not expect credit arbitrage to be a significant source of future growth or revenues and the release did not affect a single transaction that Coventree was then proposing.

[273] Coventree also submits that it is clear that the DBRS January Release was not material because there was no significant change in Coventree's share price after disclosure of the effect of that release on Coventree's business. Coventree submits that it made that disclosure on May 14, 2007 when it publicly filed its second quarter Management's Discussion and Analysis ("**MD&A**") for the period ending March 31, 2007 ("**Q2 MD&A**") (see paragraph 327 of these reasons).

[274] Coventree submits that because of its substantial revenue backlog at the time, the DBRS January Release was expected to have little impact on Coventree's revenues over the ensuing three years. Coventree submits that its revenue backlog gave it a "three year runway" of revenues to advance the Chapter Two initiatives.

[275] Coventree submits that the DBRS January Release applied only to CDO related SFA transactions and that Staff has failed to prove what portion of its business related to those types of transactions. Coventree submits that failure is fatal to Staff's case on this issue.

[276] Finally, Coventree submits that any changes to its business or operations as a result of the DBRS January Release were changes resulting from external events and developments in credit markets that were widely reported in the media. As a result, Coventree did not have a disclosure obligation with respect to those events or developments. In this respect, Coventree relies on the principle underlying section 4.4 of NP 51-201 (see paragraph 152 of these reasons).

(c) Cornish Submissions

[277] Cornish submits that the meaning and effect of the DBRS January Release was not clear when it was issued on January 19, 2007. Cornish questioned at the time whether DBRS intended to introduce a requirement for global style liquidity and whether the new criteria would apply to existing transactions. He therefore discussed the DBRS January Release internally at Coventree and a Coventree employee contacted DBRS to attempt to determine the meaning of the DBRS January Release with respect to those matters.

[278] Cornish submits that he viewed the DBRS January Release as a further example of DBRS's restrictive approach to the ABCP market and its attempt to address its concerns about the growth of CDO related SFA transactions and LSS transactions in particular. Among other things, the DBRS January Release reiterated DBRS's concerns about the growth of the ABCP market and the increasing number of SFA transactions, as previously expressed in the DBRS November Letter and in the year leading up to the issue of the DBRS November Letter. Cornish submits that the DBRS January Release also reconfirmed DBRS's confidence in the quality of assets backing ABCP generally.

[279] Cornish submits that Coventree's public filings already disclosed the fact that credit arbitrage transactions would not be a significant source of future growth or revenues for Coventree, particularly given the Chapter Two initiatives being pursued and limitations on the capacity of the ABCP market for future growth. As a result, Coventree public shareholders or investors could not reasonably have concluded that credit arbitrage transactions would continue to generate significant revenues for Coventree in the longer term.

[280] Further, Cornish says that he discussed the DBRS January Release with Tai and concluded that the terms of the DBRS January Release would not have an immediate impact on Coventree from a financial perspective. Given the grandfathering of existing transactions, Cornish concluded that Coventree's credit arbitrage revenue would be largely unaffected. Further, Coventree already had a substantial revenue backlog derived from credit arbitrage transactions that was unaffected.

[281] Cornish submits that Coventree approached DBRS to discuss the new global style liquidity requirement and potential consequences to the ABCP market. Based on the reports he received from Allan, Cornish submits that he reasonably formed the impression that DBRS might modify the new criteria to address Coventree's concerns with respect to the global style liquidity requirement. Cornish reiterates that DBRS had a history of announcing new restrictive criteria and then reversing or changing its position.

[282] Cornish submits that it was not until the middle of February 2007, that Coventree came to understand that DBRS would not be adopting alternative suggestions or proposals made by Allan to DBRS.

[283] Cornish submits that in preparing the Q2 MD&A, he wanted to convey to Coventree public shareholders and investors the fact that the DBRS criteria would have an impact on Coventree's credit arbitrage business. However, Cornish submits that it was difficult to determine the extent of the impact on Coventree's profitability and whether the new criteria would bring Coventree's credit arbitrage business to a halt. In any event, it would not have a material impact on Coventree because credit arbitrage transactions were not a part of Coventree's Chapter Two initiatives.

[284] Cornish submits that he discussed the DBRS January Release with Tai and others, and together they concluded that the DBRS January Release was not a material change and that no disclosure was required, other than in Coventree's quarterly MD&A filings.

[285] Cornish also adopts Coventree's and Tai's submissions on this issue.

(d) Tai Submissions

[286] Tai submits that he and Cornish discussed the materiality of the DBRS January Release. They considered whether it would affect the way shareholders viewed Coventree and concluded that it would not and was therefore not a material change with respect to Coventree.

[287] Tai also submits that the import of the DBRS January Release was not immediately apparent. Cornish and Allan both viewed it as an invitation to further discussions with DBRS. Tai submits that this was an entirely reasonable perception, given that DBRS had been open to feedback from market participants in the past.

[288] Tai also submits that Staff presented no evidence of the market impact of the DBRS January Release. Coventree's public disclosures in February and May 2007 caused little if any market reaction. Tai submits that Staff have not alleged that those disclosures were deficient or misleading in any respect. Accordingly, if the market did not react significantly to those disclosures (and it did not), it should be presumed that the market would not have reacted significantly to the news release that Staff now says Coventree should have issued.

[289] Tai also adopts Coventree's and Cornish's submissions on this issue.

(e) Summary of the DBRS January Release

[290] The DBRS January Release is attached as Schedule D to these reasons. The following is a summary of the relevant provisions of that release for our purposes.

[291] The DBRS January Release indicated that the securitization market had grown rapidly over the preceding two years with growth largely due to SFA transactions. The most common type of SFA transaction involved collateralized debt obligations that referenced corporate obligations. DBRS said that, recently, LSS transactions had been the most prevalent type of CDO transaction. SFA transactions represented approximately 30% of the ABCP market and LSS transactions represented approximately 22% of the market.

[292] DBRS also stated in the DBRS January Release that it had recently declined to approve many SFA transactions proposed by commercial paper issuers and that DBRS believed it appropriate to outline the basis upon which it would find new SFA transactions acceptable. DBRS stated that it would "*welcome the opportunity to consider*" CDO related SFA transactions that met four enumerated criteria that included resilient credit characteristics, limited exposure to one industry or non-investment grade entities and a superior level of information disclosure to ABCP investors. The key criterion for our purposes was a requirement that such transactions be:

> … supported by liquidity facilities from DBRS-approved liquidity providers that contain conditions to draw that are not limited to market disruption and are not dependent on a confirmation of the then-current ratings …

In effect, that is a statement that Canadian style liquidity would no longer be acceptable.

[293] DBRS also advised market participants in the DBRS January Release that the changes to its methodology were effective immediately and applied to all SFA transactions. The DBRS January Release stated that for non-CDO related SFA transactions that involved publicly traded instruments that were "deemed to have robust credit and liquidity characteristics, alternative mechanisms may be available to mitigate the risks" described in the release. Accordingly, DBRS would review non-CDO related SFA transactions on a case by case basis to determine whether they mitigated the risks described in the release.

[294] DBRS also stated its expectation that no existing Canadian ABCP ratings would be affected by the DBRS January Release and advised that the term "ABCP" used in the release applied to "all forms of notes issued by a CP Issuer including extendible commercial paper, fixed or floating rate notes and medium term notes".

2. Analysis

(a) DBRS's Requirement for Global Style Liquidity

[295] We find that the DBRS January Release, at the time it was issued on January 19, 2007, imposed a requirement for global style liquidity arrangements for CDO related SFA transactions. Until that time, DBRS had been prepared to rate ABCP issued in CDO related SFA transactions that had the benefit of Canadian style liquidity. As discussed in paragraphs 70 and 71 of these reasons, Canadian style liquidity imposed two conditions on the obligation of a liquidity provider to provide liquidity in support of ABCP. The first requirement was that a general disruption of the ABCP market had occurred. That meant that the

disruption had to relate to the overall ABCP market and not just to certain issuers or note series (although the specific terms of the relevant provisions contained in liquidity agreements varied). The second requirement was that DBRS had confirmed the credit rating of the relevant ABCP. That meant that there could be no material degradation in the credit quality of the assets supporting the ABCP. DBRS was the only credit rating agency that would rate ABCP with the benefit of Canadian style liquidity. DBRS stated that it did so on the basis of the credit quality of the underlying assets.

[296] *The DBRS January Release represented a continuation of DBRS's concerns with respect to developments in the credit arbitrage market expressed in the DBRS November Letter (less than three months before) and represented an escalation of DBRS's response to those concerns.* The importance of the DBRS January Release should be assessed in that context. We note, in this respect, that Tai had, in the first instance, viewed the DBRS November Letter as very negative to Coventree's business (see paragraph 183 of these reasons).

[297] Allan testified that prior to the DBRS January Release, DBRS had tried unsuccessfully to slow the credit arbitrage market but each time, to use a bicycle example, the bicycle kept on rolling. Then, in January, in Allan's words, DBRS said "… okay. Here comes the steel pipe through [the spokes]. You've got to have global style liquidity in order to do these transactions. And that stopped the bike dead in its tracks". That conclusion was represented by an image in the April Investor Presentations showing a bicycle with a pole through the spokes. In his testimony, Allan attempted to qualify the significance of that image in a manner that we did not find persuasive. The conclusion reflected in the April Investor Presentations was:

> Structured Finance assets require:
>
> - Liquidity to support extension risk (no ECP)
> - Liquidity must be "global-style"

[298] *DBRS knew the importance of Canadian style liquidity to the Canadian ABCP market and would not have required global style liquidity pursuant to the DBRS January Release without knowing the significant market impact of doing so.*

[299] Loke testified that the DBRS January Release was intended to be clearer than the DBRS November Letter, although he acknowledged in cross-examination that the DBRS January Release did not, by the language used, expressly state that global style liquidity was being required. He also acknowledged that a number of other market participants contacted DBRS for clarification on that and other issues raised by the DBRS January Release.

[300] For instance, on January 22, 2007, Terrence McCarthy (of Citibank) sent an e-mail to James Feehely (of DBRS) that stated:

> Based on our discussions with Mike B [of DBRS], it sounds like there is going to be a follow on criteria letter that may be published before the end of the month, which will expand Friday's criteria memo.

On January 23, 2007, David Reese (of Securitus Capital Corp.) sent an e-mail to Jireh Wong (of DBRS) that stated that "[a]gain, the DBRS announcement seems to have left many more questions unanswered than it answered".

[301] Because of the somewhat ambiguous language of the DBRS January Release referred to in paragraph 292 of these reasons, Coventree sought clarification from DBRS on January 22, 2007, the next business day after the issue of the DBRS January Release, with respect to whether global style liquidity was being required. DBRS confirmed that the release meant that global style liquidity was being required for all CDO related SFA transactions. We do not accept that, subsequent to that conversation, Coventree had any uncertainty that the DBRS January Release was requiring global style liquidity for CDO related SFA transactions. Market participants may have had other questions with respect to the application of the DBRS January Release, but, in our view, Coventree should have been clear that it required global style liquidity.

[302] Loke stated in his testimony that there were no new CDO related SFA transactions (other than grandfathered transactions) approved by DBRS after November 10, 2006 that did not have global style liquidity. Cornish testified that there were four relatively small Coventree or Nereus sponsored *non-CDO related SFA transactions* that were completed in March and April 2007 in an aggregate principal amount of $169 million. Those transactions were presumably approved by DBRS on a case by case basis pursuant to the terms of the DBRS November Letter and the DBRS January Release. We understand that those four transactions were all of the Coventree sponsored securitization transactions that were completed in 2007 prior to the market disruption on August 13, 2007. DBRS subsequently approved two bank-sponsored CDO related transactions, both of which were supported by global style liquidity.

[303] Cornish stated during his examination by Staff in April 2009 that he knew that the "window" for CDOs was closing but the window closed faster than he thought it would.

[304] In an e-mail to his fellow Nereus board members dated February 1, 2007, Tai stated:

> As you can imagine, given the recent DBRS letter, the entire industry is in an extremely tenuous and fragile situation with regard to the credit arbitrage business.

[305] On February 9, 2007, DBRS held a conference for investors which addressed the rating approval changes introduced by the DBRS January Release. The presentations reiterated that DBRS was requiring global style liquidity facilities for future CDO related SFA transactions and that existing ratings for SFA transactions would not be affected by the change (i.e., existing transactions would be "grandfathered" and would continue to have the benefit of general market disruption style liquidity arrangements). DBRS also confirmed that ratings for traditional securitization transactions would not be affected. Conduit sponsors were not invited to attend this presentation but Coventree was later provided with a copy of the presentation slides.

[306] Homer confirmed in his testimony that he knew, after the February 9, 2007 DBRS investor conference, that DBRS was requiring global style liquidity for "new transactions".

[307] The Coventree disclosure committee did not meet to discuss the materiality of the DBRS January Release. Cornish testified that he and Tai discussed the issue and concluded that the DBRS January Release did not constitute a material change with respect to Coventree.

(b) Change in Coventree's Business

[308] The DBRS January Release stated, in effect, that future CDO related SFA transactions would not be rated by DBRS unless they had the benefit of global style liquidity. Coventree knew that it could not obtain global style liquidity for Coventree or Nereus sponsored conduits. Tai confirmed that global style liquidity was not available to Coventree in a sworn affidavit dated March 1, 2007 filed on behalf of Coventree in its litigation with Nereus. Tai stated that:

> I know of no liquidity providers that are prepared to offer liquidity for credit arbitrage transactions on the terms required by DBRS. As a result, I believe that Nereus' current business model is no longer viable.

[309] That also means that as of March 1, 2007, Coventree knew that the CDO related credit arbitrage portion of its own business was "no longer viable" given the requirement for global style liquidity. Further, Nereus was a 75.5% subsidiary of Coventree at that time.

[310] Allan confirmed in his testimony that it was highly unlikely that Coventree could obtain global style liquidity. Loke testified that Allan told him on January 29, 2007 that global style liquidity was not available to Coventree. We accept Loke's testimony on this issue. We acknowledge that Allan testified that he did not recall that portion of their conversation.

[311] Ultimately, DBRS applied the DBRS January Release and its requirement for global style liquidity to all credit arbitrage transactions. In an e-mail to Tai and Child on May 4, 2007, Cornish stated that:

> One thing that I think we should include, maybe even highlight, in our MD&A for Q2 is the fact that, in Q2, DBRS has changed the rules for CDOs that will make it very unlikely, if not impossible, to do more CDOs in our conduits. In addition, we are discovering that DBRS is taking the view that this new policy extends to other "structured" investments too that are not CDOs. We should go back and see what we have said on this in the past but we need to be very clear on this now – although we have said something about this in the past and the potential for this to happen, it has now happened. *It is important for people to understand – it will bring that part of our business to a halt at least for a while, if not forever, within Canada*. [emphasis added]

Cornish testified that it was this conclusion as to the wider application of the DBRS January Release (never formally confirmed by DBRS) that led to the disclosure in its Q2 MD&A (referred to in paragraph 327 of these reasons) that DBRS's new criteria would "have the effect of reducing the profitability of the Company by substantially curtailing its ability to grow, if not halt in the short-term, its credit arbitrage business" (see our conclusion as to the significance of that statement in paragraph 328 of these reasons).

[312] We would add that the DBRS January Release was also applied by DBRS to extendible ABCP, or E notes, issued in SFA transactions, thereby requiring global style liquidity for that category of E notes. Coventree stated in the April Investor Presentations that "[t]his action [DBRS's revised CDO criteria] rules out the use of ECP [extendible commercial paper] to fund SFA transactions". The April Investor Presentations noted that "[i]n 2006, 77% of the $7.3 billion in new ECP [issued in the overall market] was backed by SFA". Coventree sponsored conduits had approximately $8.5 billion of E notes outstanding, representing 57% of the extendible ABCP outstanding in the overall ABCP market (see paragraph 460 of these reasons). However, only a portion of those E notes related to SFA transactions.

[313] A very substantial portion of Coventree's business was structuring and managing conduits that carried out CDO related SFA transactions. Coventree did not have access to global style liquidity arrangements. As a result of the DBRS January Release, Coventree could not carry out any new CDO related SFA transactions through its conduits, including the Nereus sponsored conduits. Non-CDO related SFA transactions were subject to case by case review by DBRS as contemplated in the DBRS January Release. *Accordingly, in our view, it is clear that the DBRS January Release resulted in a direct change to Coventree's business within the meaning of the term "material change" in the Act*. Coventree knew that on January 22, 2007.

[314] The question remains, however, whether the DBRS January Release and its effect on Coventree's business was material. If the DBRS January Release would reasonably be expected to have had a significant effect on the market price or value of Coventree shares, then it was a "material change" with respect to Coventree within the meaning of the Act.

(c) Effect of the Change on Market Price or Value

[315] In considering the materiality of the DBRS January Release, we have considered the following matters and disclosures made by Coventree.

2006 Annual Report and Letter to Owners

[316] Coventree's 2006 Annual Report was filed on SEDAR and made available to the public on February 14, 2007. The Annual Report contained a Letter to Owners (the "**Letter to Owners**") that stated, in part, as follows:

> Also, the size of the Canadian ABCP market has expanded rapidly over the past two years, with growth largely being attributed to the contemporaneous proliferation of credit-arbitrage-type transactions. As a result, Dominion Bond Rating Service Ltd. ("DBRS"), the current sole provider of rating-agency services for asset-backed commercial paper conduits, is changing their ratings methodology to become more rigid and less accommodating. *This could have a negative impact on Coventree's business, but likely will have a more serious effect on our majority-owned subsidiary Nereus, given that it is less diversified than Coventree.* The change in ratings methodology will not affect any existing transactions and thus will not alter our immediate financial results, but it will likely influence future growth prospects. [emphasis added]
>
> (Coventree 2006 Annual Report, "Letter to Owners" at p. 3)

[317] The Letter to Owners then commented on DBRS's criteria for credit arbitrage transactions:

> The one issue we would like to address here is that DBRS is increasingly concerned about the rapid growth in credit-arbitrage transactions, which now represent approximately 30% of the Canadian ABCP market. *DBRS recently issued a letter stating that they are going to dramatically increase the criteria required to execute credit-arbitrage transactions. As we have discussed in previous letters, the leveraged super senior "arbitrage" transactions are finally going away as many new participants have entered the market to eliminate the arbitrage*. [emphasis added]
>
> (Coventree 2006 Annual Report, "Letter to Owners" at p. 7, under "Industry Overview")

[318] Coventree concluded the "Industry Overview" section of the Letter to Owners by stating that it believed that DBRS's new criteria would bring stability to the ABCP market:

> We welcome this news as it will provide more stability in the capital markets that we fund. We have long foreseen these events and have actively started to diversify into areas such as conduit administration and geographies such as Denver. Although we have continued to execute this type of business, we have also insulated ourselves to a certain extent through the spin-off and creation of Nereus. Unfortunately, Nereus has not actively branched out into other financial intermediation businesses, as we further discuss in a later section. In the short-term, this will invariably slow our growth, but this will give us more time to tend to the new seeds we are planting and we continue to view our long-term prospects positively.
>
> (Coventree 2006 Annual Report, "Letter to Owners" at p. 7)

[319] Finally, in the portion of the Letter to Owners addressing Coventree's investment in Nereus, Coventree stated that:

> Although our original objective in creating Nereus was to focus on credit arbitrage transactions, our long term plan for Nereus was to diversify into other capital intermediation businesses. Our view was that the credit arbitrage business alone was not sustainable in the long term. In addition, we

> wanted to bring other business partners into Nereus. This would have provided Coventree with an opportunity to realize on a portion of its investment in Nereus and also would have provided Nereus with the opportunity to reduce its reliance upon Coventree and to build a more diversified shareholder base. *As events have unfolded, our original view of the credit arbitrage business has proven to be all too accurate. As previously discussed, DBRS has recently taken a series of steps that will likely substantially curtail the growth of the credit arbitrage business (as opposed to the traditional securitization transactions*). *However, Nereus did not diversify its business as originally intended. In our view, Nereus' current business model is not viable in the long term …* . [emphasis added]
>
> (Coventree 2006 Annual Report, "Letter to Owners" at p. 22, under "Nereus Financial Inc.")

[320] It appears that the comments reproduced in paragraphs 316 to 319 of these reasons address the DBRS November Letter, although there are references in the Letter to Owners that could be to the DBRS January Release. The Letter to Owners was publicly filed on February 14, 2007, after the issue of the DBRS January Release.

Q1 MD&A

[321] In its first quarter MD&A for the three months ended December 31, 2006 ("**Q1 MD&A**") (filed on SEDAR on February 14, 2007), Coventree made the following statement with respect to its credit arbitrage business and the effect of the DBRS initiatives:

> The leadership of Coventree continues to see increasing competition in the Company's existing markets. There are a number of new entrants that have entered or intend to enter the marketplace. This has the potential of impeding the Company's ability to grow at the same rates it has in the past. Furthermore, it places additional pressures on margins in the credit arbitrage business where spreads have narrowed dramatically compared to when Coventree first started financing this asset class through Canadian asset-backed commercial paper ("ABCP") conduits. With the increase in competition, Dominion Bond Rating Service Limited ("DBRS") has recently announced changes relating to the Canadian ABCP markets that are intended to protect or enhance the stability of that market. *While Coventree supports these initiatives, many of them will have the effect of reducing the profitability of the Company by substantially curtailing the ability to grow its credit arbitrage business*. [emphasis added]

That disclosure says essentially that the actions of DBRS will substantially curtail the ability of Coventree *to grow its credit arbitrage business*. That is quite different than saying that the credit arbitrage business is dead or dying or is no longer viable.

April Investor Presentations

[322] Allan prepared an image that was included in the April Investor Presentations (referred to in paragraph 297 of these reasons) to depict the effect of the DBRS January Release. That depiction showed a bicycle with a pole through the spokes. That meant that, at least by April 25, 2007, Allan considered the DBRS January Release to have essentially ended Coventree's credit arbitrage business including the issue of extendible ABCP in such transactions.

New Fundings

[323] New ABCP fundings were an important measure of the performance of Coventree's business. Coventree acknowledged in the Prospectus that new fundings were a "key driver for revenue" (see paragraphs 357 and 358 of these reasons).

[324] At a Coventree Board meeting held on May 11, 2007, Coventree senior management presented a "planning pyramid" document to the Board, which showed that Coventree was performing below plan in terms of new fundings and new revenue backlog. Coventree's failure to achieve the projected revenue backlog targets and fundings was attributed by management to the recent DBRS changes, namely, the DBRS January Release. Cornish testified that he did not agree with that assessment, but he agreed that "[t]he DBRS changes would have contributed to that to some degree" and that "the DBRS changes that had been occurring throughout the year in fiscal '06 is what – finishing up with or culminating in the January 19th release had an impact as well".

[325] Coventree's new fundings for the quarter ended March 31, 2007 were $0.5 billion, only half of its target for the quarter of $1 billion. With respect to new revenue backlog, Coventree had generated $2.1 million of new revenue backlog, only a fraction of its target for the quarter of $23 million. Mowat described these numbers as a "drastic fall off from plan" (see paragraph 329 of these reasons).

[326] We understand that the only Coventree sponsored CDO related SFA transaction pending at the time of the DBRS January Release was a transaction that Coventree and Nereus were working on with Merrill Lynch that was to be managed by Barclays Global Investors (the "**BGI Deal**"). The BGI Deal was negotiated in fall 2006 and was meant to close in December 2006. The transaction would have resulted in Coventree and Nereus conduits acquiring $600 million of new assets. The transaction was later lowered to $500 million (to be divided equally between a Coventree conduit and a Nereus conduit). During this time, Coventree and Nereus were involved in litigation against each other and DBRS decided that it would not rate the BGI Deal until Coventree and Nereus resolved the dispute. The dispute was settled but DBRS ultimately withdrew the grandfathered status of the BGI Deal in late April/early May 2007, just before Coventree issued its Q2 MD&A. DBRS required, in effect, global style liquidity for the BGI Deal. Cornish testified that the BGI Deal was financially significant to Coventree and that, had it closed, it would have created significant additional revenue backlog.

Q2 MD&A

[327] Coventree stated in its Q2 MD&A for the period ending March 31, 2007 that:

> … in January 2007, DBRS announced new criteria relating to transactions involving the purchase of structured credit products by Canadian ABCP conduits. The Company's view is that it will be very difficult, if not impossible, to satisfy these new criteria. *As a result, these changes will have the effect of reducing the profitability of the Company by substantially curtailing its ability to grow, if not halt in the short-term, its credit arbitrage business*. [emphasis added]

The Q2 MD&A was filed on SEDAR on May 14, 2007. Cornish testified that this disclosure was made because Coventree realized by that time that the DBRS January Release was being applied by DBRS to all credit arbitrage transactions.

[328] The statement in the Q2 MD&A set out in paragraph 327 of these reasons indicates for the first time that it will be "very difficult, if not impossible", to satisfy DBRS's new criteria and that the DBRS January Release will have the effect of "substantially curtailing its ability to grow, if not halt in the short-term," Coventree's credit arbitrage business. *In our view, that disclosure was an acknowledgement by Coventree on May 14, 2007 of the materiality of the DBRS January Release and, in effect, that it constituted a material change with respect to Coventree*. *Approximately 80% of Coventree's revenues for the quarter ended March 31, 2007, and for the previous quarter, were derived from credit arbitrage transactions* (see paragraph 222 of these reasons). The Q2 MD&A stated that this business may have been halted in the short term.

[329] On May 22, 2007, Mowat sent an e-mail to Child and the other Coventree directors, including Tai and Cornish, that stated:

> Regarding the Results of Operations there was discussion surrounding the New Backlog and the New Fundings and the drastic fall off from plan in the most recent quarter which was attributed to the recent DBRS changes? In the future plans it was discussed having these targets broken out between end user transactions vs. CDO type transactions. The recent DBRS changes have had a significant impact to the business and the MDA [*sic*] while stating this does need to make this plainer as well.

That e-mail suggests that the DBRS January Release had a significant adverse financial impact on Coventree's second quarter of 2007 (ending March 31, 2007) and that Coventree's Q2 MD&A needed to be clearer in breaking out financial targets based on whether they related to traditional securitizations or credit arbitrage transactions.

Comment on the Letter to Owners

[330] We would make the following further comments on the disclosure made by Coventree in the Letter to Owners.

[331] First, we note that the disclosure relates to credit arbitrage transactions generally, and not to any subset of such transactions such as CDO related SFA transactions or LSS transactions. Further, given Coventree's very significant involvement in credit arbitrage, it seems misleading to say that the DBRS November Letter "could have a negative impact on Coventree's business, but likely will have a more serious effect on … Nereus, given that it is less diversified than Coventree" (see paragraph 316 of these reasons). That statement is similar to the statement in the Prospectus referred to in paragraph 238 of these reasons. At the time, Nereus was a 75.5% owned subsidiary of Coventree and 80% of Coventree's revenues were derived from credit arbitrage transactions.

[332] The Letter to Owners also indicates that Nereus' current business model was not viable in the long term. In contrast, the conclusion from the Letter to Owners with respect to Coventree's business appears to be that DBRS's actions "will likely substantially curtail the *growth* of the credit arbitrage business…" [emphasis added] (see paragraph 319 of these reasons). That is quite different than saying that the credit arbitrage business will be stopped in its tracks. Further, one is left with the

impression that the DBRS initiatives will be less important to Coventree because of its traditional securitization business and its diversification. In the circumstances, we consider that to be a misleading impression.

[333] Further, the disclosure is made in a letter to owners, which suggests that the events discussed did not constitute a material change with respect to Coventree necessitating the issue of a news release.

[334] Finally, in our view, public shareholders and investors had insufficient information to be able to fully understand and assess whether a material change had occurred by reason of the DBRS actions described in the Letter to Owners. As discussed in these reasons, public shareholders and investors did not fully understand the importance of credit arbitrage transactions to Coventree's business. Further, public shareholders and investors did not know the business implications of the statement that "leveraged super senior "arbitrage" transactions are finally going away …" (see paragraph 317 of these reasons) or what substantially curtailing the "growth of the credit arbitrage business" likely meant to Coventree (see paragraph 319 of these reasons). Nor did public shareholders or potential investors know the timeframe over which such events would occur. Understanding the implications to Coventree's business of the statements made about the credit arbitrage business was also complicated by the fact that Nereus was a 75.5% subsidiary of Coventree at the time. In our view, the result is that public shareholders and investors could not fully understand or assess the materiality of the statements made in the Letter to Owners referred to above.

(d) Conclusions

[335] As we have concluded above, the DBRS January Release gave rise to a change in Coventree's business. At the time the DBRS January Release was issued, it in effect prevented Coventree from carrying out any future CDO related SFA transactions (other than any grandfathered transactions). The DBRS January Release also contemplated a case by case review by DBRS of non-CDO related SFA transactions.

[336] Cornish testified that approximately 40% of the assets of Coventree and Nereus sponsored conduits were attributable at the time to traditional securitizations, approximately 20% of assets were attributable to credit arbitrage transactions that did not involve CDOs and approximately 40% of conduit assets were attributable to CDO related SFA transactions. In our view, a reasonable shareholder or investor would consider Coventree's inability to carry out any future CDO related SFA transactions important information in making an investment decision with respect to Coventree shares. It is only common sense that a shareholder or investor would want to know that Coventree was unable to carry on in the future a business that represented 40% of conduit assets.

[337] Accordingly, in our view, the DBRS January Release constituted a change in Coventree's business that would reasonably be expected to have had a significant effect on the market price or value of Coventree shares within the meaning of the term "material change" in the Act. As a result, we conclude that Coventree was obligated to disclose that material change in accordance with section 75 of the Act on January 22, 2007, the day that Coventree confirmed with DBRS that the DBRS January Release required global style liquidity for CDO related SFA transactions.

[338] Further, by April 25, 2007, Coventree knew that DBRS was applying the DBRS January Release to all credit arbitrage transactions, not just CDO related SFA transactions. Credit arbitrage transactions represented approximately 60% of conduit assets (40% of assets attributed to CDO related SFA transactions and 20% to credit arbitrage transactions not involving CDOs (see paragraph 336 of these reasons)) and approximately 80% of Coventree's revenues for its first, second and third quarters of 2007. In our view, a reasonable shareholder or investor would consider Coventree's inability to carry out any future credit arbitrage transactions important information in making an investment decision with respect to Coventree shares. Even if the materiality of the DBRS January Release was not reasonably apparent to Coventree on January 22, 2007 (which we do not accept), the materiality of that release should have been clear to Coventree by April 25, 2007 (see paragraph 322 of these reasons).

[339] Accordingly, in our view, by April 25, 2007, it was apparent that the DBRS January Release constituted a change in Coventree's business that would reasonably be expected to have had a significant effect on the market price or value of Coventree shares. Accordingly, in our view, it is absolutely clear that Coventree had an obligation by April 25, 2007, at the latest, to disclose the material change that occurred as a result of the DBRS January Release.

[340] We would add that Coventree would have known the full implications of the DBRS January Release for its business before April 25, 2007. We have focused on the April 25, 2007 date simply because it is clear based on the evidence related to the April Investor Presentations that Coventree had that knowledge by that date.

[341] Further, in our view, Coventree acknowledged on May 14, 2007 by its statements in its Q2 MD&A, the materiality of the DBRS January Release and, in effect, that it constituted a material change (see paragraph 328 of these reasons).

[342] Because the DBRS January Release constituted a "material change" within the meaning of the Act, Coventree was required to forthwith issue a news release on January 22, 2007, and to file a material change report as soon as practicable and

in any event within 10 days following that date. Coventree failed to do so. Coventree thereby breached subsections 75(1) and (2) of the Act.

(e) Responses to Coventree's Other Submissions

CDO related SFA Transactions

[343] Coventree submits that Staff failed to prove the proportion of its revenues derived from CDO related SFA transactions at the time of the DBRS January Release and that failure was fatal to Staff's case.

[344] While there is evidence before us of the proportion of Coventree's revenues derived from credit arbitrage transactions as of the date of the DBRS January Release, there is no evidence as to the proportion of its revenues derived from CDO related SFA transactions. The latter are a subset of credit arbitrage transactions.

[345] Given our findings in paragraphs 337 and 339 of these reasons, it is not necessary for us to address this submission.

No Change in Market Price of Coventree Shares

[346] Coventree also submits that there was no change in the market price of its shares as a result of the disclosure in its Q2 MD&A related to the effect of the DBRS January Release on its credit arbitrage business (see paragraph 327 of these reasons). As a result, Coventree submits that the DBRS January Release cannot have constituted a material change.

[347] There are a number of responses to that submission.

[348] First, section 75 of the Act requires an issuer to forthwith issue and file a news release, and to file a material change report, in order to highlight to the market that a material change has occurred. Coventree's disclosure in its Q2 MD&A suggests to the market that no material change had occurred in Coventree's business. Accordingly, public shareholders and investors may have legitimately assumed that no material change had occurred as a result of the matters discussed in the Q2 MD&A.

[349] *Second, as discussed in these reasons, public shareholders and investors did not know how important credit arbitrage and CDO related SFA transactions were to Coventree's business and would likely not have known that (i) the DBRS January Release required global style liquidity for CDO related SFA transactions, or (ii) global style liquidity was not available to Coventree*. We note, in particular, that Coventree's disclosure in its Q2 MD&A does not address or disclose the importance of credit arbitrage to Coventree's business. It says that the DBRS criteria will have the effect of "reducing the profitability of the Company by substantially curtailing its ability to grow, if not halt in the short-term, its credit arbitrage business". Public shareholders and investors had insufficient information to be able to fully understand and assess the implications of that statement for Coventree and its business. Accordingly, we are not satisfied that the disclosure in respect of these matters in Coventree's Q2 MD&A (or, for that matter, in the Letter to Owners or Q1 MD&A) was adequate.

[350] Coventree submits that a conclusion that a material change occurred as a result of the DBRS January Release is, in effect, requiring Coventree to issue a Coventree news release in respect of a DBRS news release (i.e., the DBRS January Release). That is exactly what was required in order to communicate to public shareholders and investors the material impact of the DBRS January Release on Coventree and its business.

[351] We also note that the volume of trading in Coventree shares was relatively low given that a majority of its outstanding shares were owned by Cornish and Tai and related entities or persons. That meant that information with respect to Coventree and its business was less likely to be reflected in the news media and reviewed and commented upon by analysts. It appears that there were no other comparable public companies in Canada that were third-party sponsors of ABCP.

[352] Accordingly, the fact that the disclosure made in Coventree's Q2 MD&A did not affect Coventree's share price does not mean that no material change had occurred. MD&A disclosure in these circumstances is not a substitute for, and does not relieve Coventree from the legal obligation of, complying with section 75 of the Act. *Coventree made a critical error if it assumed that disclosure in its Q2 MD&A of the effects on its business of the DBRS January Release constituted adequate disclosure to public shareholders and investors and compliance with its disclosure obligations under section 75 of the Act.* The same comment applies to the disclosure contained in the Letter to Owners (referred to in paragraphs 316 to 319 of these reasons and in its Q1 MD&A (see paragraph 321) of these reasons).

[353] We note that Coventree had previously stated that its principal form of communication to public shareholders would be through Coventree's annual report and letter to shareholders. Disclosure by those means does not affect Coventree's legal obligations under section 75 of the Act.

[354] The legal question we are addressing is whether the DBRS January Release would reasonably be expected to have had a significant effect on the "market price or value" of Coventree shares. That is applying an objective test that focuses on

both the market price *and value* of Coventree shares. Clearly, if disclosure when made actually has a significant effect on the market price of securities, that is strong evidence suggesting that the test for materiality may have been satisfied at an earlier time. One cannot assume, however, that the lack of impact on market price means that the information disclosed was not material. There may be a number of different explanations why particular disclosure has no market impact (such as those referred to in paragraphs 348 to 351 of these reasons). In any event, one must also consider whether particular information would reasonably be expected to have a significant effect on the "value" of securities even if that disclosure would not, for some reason, be expected to affect the market price of the securities. We find in these circumstances that the DBRS January Release would reasonably be expected to have had a significant effect on the value of Coventree shares.

Revenue Backlog

[355] Coventree also submits that the DBRS January Release was not a material change because of Coventree's substantial revenue backlog. Coventree's revenue backlog represents the present value of estimated future revenues Coventree would receive based on total fundings then outstanding (see paragraph 81 of these reasons). As of February 14, 2007, Coventree's estimated revenue backlog for the 2007 fiscal year was approximately $34.4 million (revenue backlog for 2008 was estimated to be approximately $30.7 million and for 2009 to be approximately $30.4 million). Coventree submits that these numbers are very conservative because it used a 15% discount rate in determining the present value of its future revenues.

[356] Staff submits that all of the revenue backlog was committed to the costs related to the Chapter Two initiatives and that, in any event, possible future sales of assets by Coventree sponsored conduits, or defaults, would reduce revenue backlog.

Discussion

[357] Revenue backlog reflects estimated future revenue to Coventree from past funding transactions. Accordingly, if no fundings can be carried out by Coventree sponsored conduits in the future, the revenue backlog will reduce and ultimately reach zero over a period of years. Coventree emphasized in the Prospectus the importance of fundings:

> The Company's leaders monitor the level of fundings outstanding because it is a key driver for revenue as the Company typically earns fees calculated as a percentage of fundings outstanding. The leaders believe this is an important measure in assessing the Company's business operations.
>
> (Prospectus, at p. 35)

[358] It was also stated in the Prospectus that:

> As the maturities of assets increase, the annual volumes of new deals would need to incrementally increase in order to maintain or grow the current levels of fundings outstanding.
>
> (Prospectus, at p. 38)

[359] Coventree did not disclose the amount of its revenue backlog in the Prospectus. That may have been because such information would have been future oriented financial information, the disclosure of which was subject to various requirements and restrictions.

[360] In any event, Coventree did show year-over-year revenue backlog numbers in its 2006 Annual Report. Coventree stated in the Annual Report that:

> … We strongly recommend that our owners only use these numbers as high-level indicators of our future financial growth prospects rather than specific year-over-year forecast numbers – especially since these numbers are neither broken up [*sic*] by year nor do they include any expenses both variable and fixed including taxes, salaries, bonuses, etc. …
>
> (Coventree 2006 Annual Report, at p. 9)

That is to say that revenue backlog is not a net income number.

[361] While revenue backlog is clearly a valuable Coventree financial asset, it was created by past funding transactions. The continued execution of funding transactions was key to Coventree's ongoing business and financial performance. As noted above, the Prospectus did not disclose revenue backlog at the date of the Prospectus and we doubt that any investor purchased shares under the Prospectus because Coventree would receive future revenues from previous fundings. Ultimately, if Coventree was not able to complete future funding transactions, those revenues would run off and ultimately reach zero. Accordingly, if Coventree cannot carry out future funding transactions, the revenue backlog would represent, in effect, declining revenues from the winding down or amortizing of Coventree's securitization business.

[362] *Put another way, the value of Coventree's business had very substantially declined if that business was valued based only on revenue backlog and the relatively nascent Chapter Two initiatives*.

[363] Accordingly, the existence of revenue backlog does not detract from or negate the importance to Coventree of being able to continue to carry out credit arbitrage transactions and traditional securitizations through its sponsored conduits. To the contrary, the existence of the revenue backlog underscores the importance of future fundings to Coventree and its business. The DBRS January Release ultimately prevented Coventree from carrying out future credit arbitrage transactions, the source of more than half of its revenue backlog for 2007.

[364] We also note that future events could negatively affect revenue backlog. Any sale of assets by Coventree or Nereus sponsored conduits has the effect of eliminating the revenue backlog associated with the assets sold. In addition, any default by a Coventree or Nereus sponsored conduit that resulted in a disposition or loss of assets would also reduce revenue backlog. We are not suggesting that Coventree should have predicted, as of January 22, 2007, future asset sales or defaults. We are simply noting that future events could reduce revenue backlog.

[365] In our view, the existence of revenue backlog does not mean that significant changes in Coventree's business or operations cannot be material and a basis for concluding that a "material change" had occurred with respect to Coventree within the meaning of the Act.

Possibility of DBRS Changing its Approach in the DBRS January Release

[366] Coventree also submits that it had a reasonable expectation following the DBRS January Release that, as a result of suggestions or proposals made by Allan to Loke, DBRS might change its requirement for global style liquidity.

[367] In our view, it was clear from the DBRS January Release that DBRS was not prepared thereafter to accept Canadian style liquidity arrangements for CDO related SFA transactions. DBRS knew the impact that position would have on the Canadian market when it issued the DBRS January Release, including the negative consequences for its own business. The fact that Allan made some alternative suggestions or proposals to Loke does not mean that Coventree could assume that DBRS would change its position. The DBRS January Release, preceded as it was by the DBRS November Letter, was not a trial balloon that Coventree could reasonably expect would be changed or modified like a number of other previous DBRS policy initiatives. In the circumstances, until DBRS confirmed otherwise, Coventree had to assume that DBRS meant what it stated in the DBRS January Release with respect to the requirement for global style liquidity, and what it confirmed to Coventree on January 22, 2007.

[368] In *Rex Diamond (Div. Ct.)*, the Court stated:

> The fundamental flaw in the appellants' position is that they attempt to replace the objective requirement for the determination of a material change under the provisions of the *Securities Act* with the subjective assessment of the Rex executives regarding the status of the leases. Regardless of the optimistic view of the outcome of the dispute that appears to have been taken by the Rex executives, the Commission reasonably concluded that public disclosure of the problems with the leases ought to have been made by the company so that individual investors could reach their own conclusions regarding the state of the business affairs of Rex armed with all of the relevant information.
>
> (*Rex Diamond (Div. Ct.)*, *supra*, at para. 6)

[369] While circumstances may vary, the subjective and optimistic hope or view of senior officers that they may be able to negotiate a different outcome or solution with a third party is not generally going to be sufficient to relieve an issuer from forthwith disclosing events that would otherwise constitute a material change (see also the discussion of the "soft landing" commencing at paragraph 629 of these reasons). In making that statement, we are not suggesting that an issuer may not have to make inquiries of a third party in order to determine whether a material change has occurred (as Coventree did with respect to the DBRS January Release on January 22, 2007). That is, however, a different matter.

[370] In any event, by the middle of February 2007, it was clear to Coventree that DBRS was not going to change or modify the requirements of the DBRS January Release as they related to requiring global style liquidity.

External Events or Developments

[371] Coventree also submits that DBRS's decision to issue the DBRS January Release was an external or outside event or development that did not affect Coventree or its business or operations in a manner different than other third-party sponsors that carried out CDO related SFA transactions. Coventree says that, by analogy, this is similar to an external political, economic or social development within the meaning of section 4.4 of NP 51-201 (see paragraph 152 of these reasons). Coventree submits

that in accordance with the principle reflected in that section, there is no requirement to disclose such a development or to interpret the effect of it on its business and affairs. We address that issue below when we discuss the events of late July and early August 2007 (see the discussion commencing at paragraph 621 of these reasons). Based on the conclusions reached in that discussion, which we will not repeat here, we reject the submission that Coventree had no obligation to disclose the material change in its business arising from the DBRS January Release by reason of the principle reflected in section 4.4 of NP 51-201.

XI. COVENTREE'S DISCLOSURE OF U.S. SUBPRIME EXPOSURE IN APRIL 2007

1. Staff Allegations

[372] Staff alleges that Coventree made a materially misleading statement to the market at the April Investor Presentations by telling Coventree sponsored ABCP investors that the total U.S. subprime mortgage exposure of its conduits was 7.4% (that statement is referred to as the "subprime statement" in these reasons). Staff submits that statement was misleading because Coventree failed to provide a breakdown of that exposure by conduit and ABCP note series. Staff alleges that the subprime exposure at the time was more than 15% in three conduits and more than 40% in one note series. As a result, Staff alleges that Coventree made a statement that it knew or reasonably ought to have known was (i) in a material respect, misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statement not misleading, and (ii) that would reasonably be expected to have a significant effect on the market price or value of a security, within the meaning of subsection 126.2(1) of the Act (see paragraph 384 of these reasons for the provisions of subsection 126.2(1)). Accordingly, Staff alleges that Coventree contravened subsection 126.2(1) of the Act. That allegation is not made against Cornish or Tai.

2. Coventree Submissions

[373] Coventree submits that the subprime statement was clearly expressed as the conduits' total subprime exposure. Coventree submits that no reasonable ABCP investors could have believed that the subprime exposure of every conduit and note series was precisely 7.4%. Rather, the only reasonable conclusion that an investor could have drawn was that some conduits had more than 7.4% subprime exposure and others had less. Further, Coventree submits, and Cornish testified, that it was common industry practice to disclose information such as subprime exposure on an aggregate basis in this way. Coventree also submits that making the subprime statement went well beyond what other ABCP sponsors were then disclosing.

[374] Coventree submits that Staff led no evidence to establish the precise U.S. subprime exposure of any of the Coventree sponsored conduits, or of any of their note series, at the time of the April Investor Presentations on April 25 and 26, 2007. Coventree submits that is one of the central foundations of Staff's allegation that must be proven on the basis of clear, cogent and convincing evidence, rather than on the basis of speculation, conjecture or extrapolation. Further, Coventree submits that the actual subprime exposure of each note series can vary very significantly on a daily basis.

[375] Coventree submits that there is no evidence that the precise subprime exposure of a particular conduit or note series was important to ABCP investors in late April 2007. Coventree submits that investors were largely indifferent to the subprime issue at that time. Moreover, Staff did not identify even one investor who was allegedly misled by Coventree's disclosure.

3. Background

[376] Beginning in February 2007, Coventree began making disclosure to its dealers and ABCP investors as to the proportion of U.S. subprime mortgage assets contained in and backing Coventree sponsored ABCP. Initially, that information was provided only to those dealers or investors who requested it and was broken down by conduit but not by note series.

[377] On March 12, 2007, Cornish sent an e-mail to Allan and others at Coventree commenting on a series of articles in the New York Times discussing the "collapse of the US subprime residential mortgage lending business". Cornish noted that "ABS investors may end up getting hurt through exposures that they did not even know that they have through CDOs etc etc." Cornish stated that "if ABCP investors have not been raising this as an issue, I would expect that this will become a focus of their questions soon". Cornish concluded that "… if we have not already done so, we should do whatever analysis we need to put ourselves in a position to say to investors 'no need to worry and here's why'".

[378] In an e-mail dated March 15, 2007 sent by Dalton to NBF, Dalton attached information providing details of the subprime exposure of each Coventree sponsored conduit as of February 28, 2007 (the "**February Subprime Data**"). The February Subprime Data indicated that the Comet, Planet and Slate conduits had a subprime exposure of 15.8%, 19.1% and 21.3%, respectively. Although subprime exposure of each note series was not shown, the last page of the e-mail provided the dollar amount of subprime exposure on a combined basis in each conduit for A notes and E notes. Accordingly, a reader would have been able to determine the subprime exposure on a combined basis for the A notes and E notes issued by each conduit, but not the separate subprime exposure of A notes or E notes.

[379] When information was sent by Coventree to a dealer such as NBF, it was open to the dealer to provide that information to ABCP investors "if they saw fit". Accordingly, in providing the February Subprime Data to NBF, Coventree was potentially providing that information to investors who purchased Coventree sponsored ABCP through NBF.

[380] By April 2007, Coventree had received enquiries with respect to the subprime exposure of its conduits from approximately five investors and two dealers. We understand that Coventree provided accurate information in response to those enquiries. By that time, Coventree also knew that some investors in Coventree sponsored ABCP were aware of the subprime issue and had a preference not to invest in ABCP that was backed by subprime assets. Other investors had a preference not to invest in ABCP backed by CDOs.

[381] On April 25, 2007, Coventree gave a presentation to approximately 40 ABCP investors in Toronto entitled "Coventree Investor Update". Coventree gave the same presentation on April 26, 2007 to ABCP investors in Montreal (the Toronto and Montreal presentations are referred to in these reasons as the "April Investor Presentations"). In the portion of the presentation entitled "Demystifying the Subprime Market", Coventree stated that the total subprime exposure in its conduits was 7.4%, with 3.7% in conduits containing CDOs and 3.7% in non-CDO conduits. The April Investor Presentations also noted that there was "[n]o reason to believe that Canadian Subprime performance will follow the unfolding US experience".

[382] It does not appear that a distinction in terms of interest rate spreads or pricing was ever made by Coventree sponsored conduits between those note series with the highest subprime exposure and those with no subprime exposure. Paul testified that a distinction was made in the spreads on certain ABCP series with higher subprime exposure, but we have no other evidence of that. Further, it appears that until the market disruption on August 13, 2007, all maturing Coventree sponsored ABCP was, in fact, rolled or taken into dealer inventory at substantially the same interest rate spreads irrespective of subprime exposure (see paragraph 461 of these reasons).

[383] Cornish testified that he considered the subprime issue to be a "good news story" for Coventree because the subprime assets in Coventree sponsored conduits dated from 2004 and 2005 (Coventree submits that the credit quality of U.S. subprime mortgages began to significantly decline for mortgages entered into in 2006 and thereafter) and because the overall percentage of such assets was small. Cornish testified that:

> The point that we really wanted to convey was that there was some exposure to subprime and just kind of leave it at that in terms of the numbers.
>
> …
>
> From our perspective, it's accurate and it conveys the information that we were trying to get across to investors accurately and without more.

4. Analysis

(a) Subsection 126.2(1) of the Act

[384] Staff alleges that Coventree contravened subsection 126.2(1) of the Act by making the subprime statement. Subsection 126.2(1) of the Act provides as follows:

> 126.2(1) Misleading or untrue statements – A person or company shall not make a statement that the person or company knows or reasonably ought to know,
>
> > (a) in a material respect and at the time and in the light of the circumstances under which it is made, is misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading; and
> >
> > (b) would reasonably be expected to have a significant effect on the market price or value of a security.

[385] Clause (a) of that provision requires a determination whether the particular statement or omission is, in a material respect, misleading or untrue or does not state a fact that is required to be stated or that is necessary to make the statement not misleading. Those requirements must be assessed at the time and in the light of the circumstances under which the relevant statement was made. Even if the statement is misleading or untrue within the meaning of clause (a), clause (b) requires that the statement also "reasonably be expected to have a significant effect on the market price or value" of a security.

(b) Subprime Exposure by Note Series

[386] By making the subprime statement in the April Investor Presentations, Coventree was attempting to reassure investors that Coventree sponsored conduits had, in total, a relatively small subprime exposure. The 7.4% average disclosed was accurate as far as it went. That is to say that it was the total concentration of subprime assets across all Coventree sponsored conduits and note series.

[387] On July 24, 2007, Dalton sent an e-mail to the dealer syndicate with the following table summarizing the U.S. subprime exposure of Coventree and Nereus sponsored conduits, by conduit and note series, as of June 28, 2007 (the "**July 24 e-mail**"):

Conduit	Series A	Series E	Total ABCP	FRNs	Total ABCP and FRNs
Aurora Trust	0%	**8%**	3%	2%	3%
Comet Trust	0%	**42%**	16%	12%	16%
Planet Trust	**26%**	3%	17%	0%	15%
Slate Trust	0%	**16%**	13%	0%	13%
Apollo Trust Gemini Trust Rocket Trust Venus Trust	0%	0%	0%	0%	0%
SAT	0%	0%	0%	0%	0%
SIT III	1%	0%	1%	0%	1%
TOTAL	3%	6%	5%	2%	4%

[emphasis added]

[388] Accordingly, as of June 28, 2007, of the 16 Coventree sponsored series A notes and E notes outstanding, 11 note series had no subprime exposure and one note series had approximately 3% subprime exposure. The remaining four note series had subprime exposures of approximately 8%, 16%, 26% and 42%.

[389] Subprime exposure could change as further assets were added to the conduits. It does not appear, however, that such changes were significant during the relevant time. The number and size of transactions completed by Coventree in 2007 was not significant (see paragraph 302 of these reasons). Paul confirmed that in his testimony. We also recognise that the subprime exposure of a conduit or note series could change as a result of the amortization of transactions and assets, as well as the sale of assets. No public disclosure of these factors was made by Coventree at the time it made the subprime statement.

[390] In these circumstances, we conclude based on (i) the February Subprime Data, (ii) the subprime information set out in the July 24 e-mail, and (iii) the relatively few transactions carried out by Coventree sponsored conduits between April and July 24, 2007, that the subprime exposure of Coventree sponsored conduits by note series as of April 25 or 26, 2007 would have been substantially similar to the subprime information set out in the July 24 e-mail (see paragraph 387 of these reasons).

[391] *The subprime statement was made to existing investors in Coventree sponsored ABCP, the persons most likely to purchase or roll Coventree sponsored ABCP in the future. As such, it was a statement intended to influence investors in purchasing Coventree sponsored ABCP.* We have no doubt that an investor who purchased Comet E notes based on a representation that total subprime exposure of Coventree sponsored conduits was 7.4%, would have been shocked to learn that the Comet E notes were backed by 42% subprime assets. Miller expressed that view in his testimony.

[392] In our view, communicating an average in these circumstances was misleading. While one would expect some variation in concentrations around the average disclosed, one would not expect the distribution of subprime assets set out in the July 24 e-mail. The average was significantly skewed by the eleven note series with no subprime exposure whatsoever. In our view, the subprime exposures by note series shown in the July 24 e-mail demonstrate why the subprime statement was misleading as it related to the note series with the highest subprime exposure (i.e., the Comet E and Planet A notes).

[393] Coventree submits that industry practice was to disclose conduit assets on an aggregate basis. Whether or not that is the case, in determining whether a particular statement is misleading or untrue, it is clearly relevant to whom the statement is made and in what circumstances.

[394] Coventree also submits that purchasers of Coventree sponsored ABCP were sophisticated investors and, if they were concerned about subprime exposure, they would have inquired before making any purchase of a specific ABCP note series. There is no evidence that further inquiries as to subprime exposure were made by any investors at the time of the April Investor Presentations. Nor is there any evidence that any representation concerning total subprime exposure was ever made by Coventree to an investor in connection with the actual purchase of ABCP of one of the note series that had the highest subprime exposure. Further, we have no reason to doubt Coventree's statement that, when asked, it provided the accurate information.

(c) Subprime Statement Misleading

[395] Clause (b) of subsection 126.2(1) of the Act requires a determination of the effect of a statement on the market price or value of *a security*. The relevant securities in this case are either Coventree sponsored ABCP or Coventree shares. We note, in this respect, that the subprime statement was made to investors or potential investors in Coventree sponsored ABCP. Further, in our view, it is unlikely that the subprime statement would have had any significant effect on the market price or value of Coventree shares. The value of those shares was only indirectly affected by the subprime statement. In our view, the question is whether the subprime statement would reasonably be expected to have had a significant effect on the market price or value of any Coventree sponsored ABCP.

[396] Subsection 126.2(1) of the Act does not require that the relevant statement be made to or be relied upon by any investor. It is sufficient if a statement is made that is misleading or untrue in accordance with clause (a) of subsection 126.2(1) of the Act, and that the statement would reasonably be expected to have a significant effect on the market price or value of the relevant securities in accordance with clause (b) of subsection 126.2(1) of the Act. As noted above, there is no evidence that the subprime statement was actually relied upon by an investor in purchasing Coventree sponsored ABCP with the highest subprime exposure.

[397] On balance, in our view, by making the subprime statement in the April Investor Presentations, Coventree failed to state a fact (the actual subprime exposure of each affected note series that had the highest subprime exposure) that was necessary to make the subprime statement not misleading. Further, Coventree knew or reasonably ought to have known that statement was misleading. Accordingly, we find that the subprime statement was misleading within the meaning of clause (a) of subsection 126.2(1) of the Act.

(d) No Significant Effect on Market Price or Value

[398] At the time of the April Investor Presentations, the issue of whether ABCP was backed by subprime assets had not become a significant issue to Canadian investors in the ABCP market. It appears that in April 2007, Coventree had received enquiries with respect to the subprime exposure of its conduits from approximately five investors and two dealers. The dealers may have passed on that information to certain of their clients. Loke testified that the question of subprime exposure did not become an issue for DBRS until July 2007. Accordingly, at the time of the April Investor Presentations, while there appears to have been a few investors who preferred to avoid purchasing note series backed by subprime assets, most investors were not aware of or sensitive to that issue. Further, the credit quality of the subprime assets in Coventree sponsored conduits does not appear to have ever been an issue, in part, because those assets were acquired prior to 2006 (as noted above, Coventree submits that the credit quality of U.S. subprime mortgages began to significantly decline for mortgages entered into in 2006 and thereafter).

[399] Had Coventree disclosed in April 2007 the accurate subprime exposure in each of its sponsored note series, in our view it is unlikely that disclosure would have had a significant effect on the market price or value of the ABCP with the highest subprime exposure. Cornish viewed the subprime exposure of Coventree sponsored conduits as a positive story and Coventree made disclosure of the accurate subprime exposure of its note series to the dealer syndicate in the July 24 e-mail (see paragraph 387 of these reasons). We know that information was passed on to some investors. By then, subprime exposure had become a much more significant issue, in part, because of the very substantial downgrades of ABCP backed by subprime mortgages in the United States on July 10, 2007 (see paragraph 444 of these reasons).

[400] We have concluded in all the circumstances that the most one could say as of April 25 or 26, 2007 is that the level of subprime assets backing a note series was a relevant consideration for a few investors in deciding whether to purchase ABCP of a particular series. Most ABCP investors, and DBRS, were not sensitive to the subprime issue at that time. Further, we are not satisfied that any distinction was ever made by Coventree in the interest rates payable on ABCP backed by the highest levels of subprime assets and interest rates payable on ABCP with no subprime exposure (see paragraph 382 of these reasons). There was some discussion on July 30, 2007 between Coventree and NBF of increasing those spreads (see paragraph 461 of these reasons) but no action was taken. Nor is there any evidence that any Coventree sponsored ABCP failed to roll or be taken into dealer inventory before August 13, 2007.

[401] The foregoing analysis is relevant to determining whether an accurate subprime statement would have been important to any ABCP investors. However, the question we must determine is whether the subprime statement itself would reasonably be expected to have had a significant effect on the market price or value of any Coventree sponsored ABCP. That statement was to

the effect that the total subprime exposure of Coventree sponsored conduits was 7.4%. Even if that statement was misleading (as we have found), we do not believe that *the making of that statement* would reasonably be expected to have had a significant effect on the market price or value of any Coventree sponsored ABCP (within the meaning of clause (b) of subsection 126.2(1) of the Act). That is to say that subsection 126.2(1) of the Act does not apply to misleading statements that have no impact or effect on the market price or value of a security. The making of a misleading statement may have other regulatory consequences, but it does not contravene subsection 126.2(1) of the Act.

[402] Accordingly, we find that the subprime statement made by Coventree in the April Investor Presentations, in the circumstances in which that statement was made on April 25 and 26, 2007, would not reasonably be expected to have had a significant effect on the market price or value of any Coventree sponsored ABCP. As a result, we find that the requirements of clause (b) of subsection 126.2(1) of the Act have not been established by Staff and that, accordingly, Coventree did not contravene subsection 126.2(1) of the Act by making the subprime statement.

(e) Dissemination of Correcting Disclosure

[403] Staff also alleges in the Statement of Allegations that, by sending the July 24 e-mail, Coventree advised the dealer syndicate of the subprime exposure of Coventree and Nereus sponsored conduits, by conduit and note series, but did not generally disclose to the market the facts required to be stated or necessary to make the subprime statement not misleading.

[404] Coventree did not have a securities law obligation to make any statement as to the subprime exposure of its sponsored conduits or note series and the conduits themselves were not reporting issuers. As discussed above, however, we have concluded that the subprime statement was misleading in the circumstances in which it was made. We note that disclosure correcting that misstatement was made by Coventree in the July 24 e-mail, which was sent to all of the members of the dealer syndicate and, through them, to at least some ABCP investors. We note, for instance, that the information in the July 24 e-mail was forwarded by RBC to its clients on July 30, 2007.

[405] However, the question of the timing and the means and adequacy of dissemination of that corrective disclosure is not a question that Staff expressly addressed in its submissions. Nor does it form the basis of any Staff allegation as to the breach of any provision of the Act or as to conduct that may be contrary to the public interest (see paragraph 775 of these reasons). Accordingly, we will not address those questions.

XII. DID A MATERIAL CHANGE OCCUR PRIOR TO AUGUST 13, 2007?

1. Staff Allegations

[406] Staff alleges that Coventree failed to comply with its continuous disclosure obligations by failing to publicly disclose the liquidity and liquidity-related events, and the increasing risk of a market disruption, in the days leading up to the disruption in the ABCP market that occurred on August 13, 2007. Staff alleges that those events and that change in risk constituted a "material change", within the meaning of section 75 of the Act, that was required to be disclosed by Coventree on August 1, 2007 or thereafter, in accordance with that section.

[407] Staff submits that by early August 2007, a number of material risks that Coventree had identified and disclosed in its Prospectus had occurred, in particular:

(a) Coventree was experiencing a sharp and substantial loss of demand for Coventree sponsored ABCP, which Coventree expected to continue;

(b) by July 31, 2007, Coventree had begun selling assets from its conduits to accumulate cash so that the conduits would be able to honour anticipated collateral calls. Coventree continued to sell assets of the conduits thereafter for that purpose; and

(c) by August 7, 2007, Coventree was unable to purchase new assets from its asset suppliers. Staff submits that Coventree continued to be unable to fund purchases of assets after that date until the market disruption on August 13, 2007.

[408] Staff submits that the evidence shows that these events and developments, individually and collectively, constituted a material change in Coventree's business or operations (as opposed to its "capital", within the meaning of the definition of "material change" in the Act). In addition, in Staff's submission, Coventree's liquidity and liquidity related problems and the risk of a market disruption continued after August 1, 2007 and, in fact, became more severe.

[409] Staff alleges that the sharp and substantial loss of demand for Coventree sponsored ABCP, which had occurred by early August, 2007, and worsened thereafter, manifested itself in several ways:

(a) Coventree's dealer syndicate was reporting difficulties selling Coventree sponsored ABCP, especially ABCP with subprime exposure and E notes. The maturity dates for ABCP became shorter and a substantial amount of ABCP was rolling only on an overnight basis;

(b) members of Coventree's dealer syndicate had substantially reduced their participation in the market for Coventree sponsored ABCP (by turning back unsold ABCP to NBF, by declining to bid on Coventree sponsored ABCP in the secondary market and by reducing their market-making lines);

(c) RBC resigned from Coventree's dealer syndicate on July 27, 2007, further contributing to the liquidity issues that Coventree sponsored ABCP was facing;

(d) Coventree had been advised by the Caisse, and by its dealers, that the Caisse was reducing its holdings of Coventree sponsored ABCP with subprime exposure and, if it continued to do so, Coventree knew that would cause a market disruption; and

(e) by August 1, 2007, spreads on Coventree sponsored E notes had widened to above 25 basis points over CDOR. The spreads on A notes had widened to above 10 basis points. Spread widening to these levels was well beyond historical levels.

2. Coventree Submissions

[410] Coventree submits that none of the "liquidity and liquidity-related issues" identified by Staff in the Statement of Allegations or in its opening submissions constituted a change in Coventree's "business, operations or capital", either individually or collectively. Accordingly, Coventree submits that it had no obligation to issue any news release or file a material change report as a result of those events, considered either individually or collectively. The events that Staff alleges constituted material changes were the effect of an unprecedented and unexpected global liquidity crisis that was entirely external to the business and operations of Coventree and was well reported in the news media. Accordingly, Coventree submits that no material change within the meaning of the Act occurred as a result of those events.

[411] Coventree submits that it acted prudently and responsibly in not issuing a news release in these circumstances because any such release would have been based on rumour, speculation, misinformation and conjecture and would have potentially exposed Coventree to liability for what was said.

[412] Coventree also submits that Staff would not have made these allegations if the market disruption had not occurred on August 13, 2007. Accordingly, Coventree submits that Staff is improperly applying hindsight in making these allegations.

3. Cornish Submissions

[413] Cornish adopts Coventree's and Tai's submissions with respect to Staff's allegations on this issue and makes the following additional submissions.

Spread Widening

[414] Cornish submits that he participated in a telephone call with Tai and Allan on July 30, 2007, in which they concluded that spread widening would have to continue for a considerable period of time to have any material impact on Coventree's business or financial performance.

[415] Given that the credit quality of the underlying assets in Coventree sponsored conduits was unchanged, Cornish submits that he, Tai and Allan appropriately concluded that the spread widening was the result of an imbalance in supply and demand in the ABCP market and was not related to Coventree sponsored conduits or their assets.

Uncertainty as to Investor Concerns

[416] Cornish submits that, as of July 30, 2007, Coventree had incomplete information about what was happening in the ABCP market from an investor perspective. Coventree had been given different reasons by its dealers why some investors were not rolling Coventree sponsored ABCP, including concerns as to subprime exposure, resistance to investing in CDOs, "corporate window dressing", investor preference for money market alternatives, and the need to fund margin calls on equity investments.

RBC Resignation

[417] Cornish submits that he turned his mind to the question of whether Coventree should issue a news release in connection with RBC's resignation from the dealer syndicate. Coventree's management team ultimately concluded that RBC's

resignation did not warrant issuing a news release. Cornish submits that it was not material from either an ABCP investor perspective or a Coventree shareholder perspective.

Taking Prudent Actions

[418] Cornish submits that, as a prudent and diligent business person, he recognized the importance of (i) identifying potential risks and ensuring that Coventree was prepared for all eventualities, and (ii) making certain that Coventree was properly carrying out all of its obligations and responsibilities as a conduit manager.

[419] This led Coventree by late July and early August to generate cash in its conduits by selling assets, to monitor the amounts of maturing ABCP and the status of collateral call triggers, and to take steps to prepare for a possible market disruption, including preparing notices for liquidity calls and extensions of extendible ABCP. Cornish submits that Staff's reliance on Coventree's risk management strategies as evidence that a material change had occurred is misguided. Cornish submits that if Staff's argument is accepted, then anytime a company implements prudent risk management strategies, Staff can draw the inference that a material change has occurred. This would result in an inevitable chilling effect on prudent risk management efforts that would otherwise be undertaken for the benefit of shareholders.

The Disclosure Committee Deliberations

[420] Cornish submits that throughout late July and early August 2007 members of the disclosure committee were considering Coventree's disclosure obligations on a continuous basis.

[421] Cornish submits that the disclosure committee met prior to the August Board Meeting (referred to in paragraph 550) and on the following day, August 2, 2007, and concluded that no material change had occurred.

[422] Cornish also submits that the disclosure committee held a meeting on August 7, 2007, which was attended by Cornish, Tai and Child. Together, they considered the issue of disclosure and materiality in light of the information then available and the circumstances that existed that day. The disclosure committee concluded that the events and developments that had occurred up to August 7, 2007 had no material impact on Coventree's business or operations. Cornish submits that it was right not to draw conclusions based on incomplete and unreliable information.

[423] Thereafter, Cornish and others at Coventree continued to monitor on a day-to-day basis developments in the credit markets and spread widening, and the financial implications for Coventree's business. At each point, Coventree's management team collectively considered issues of disclosure and materiality and concluded that, provided the Caisse continued to support the market for Coventree sponsored ABCP, Coventree's disclosure obligation under section 75 of the Act was not triggered.

Outside Legal Advice

[424] Given the legal background of Cornish and Allan, the expertise of members of the Board, and the fact that Coventree's management knew its business better than any outside lawyer would, Cornish submits that he reasonably believed that Coventree was in a better position than outside legal counsel to make judgements regarding disclosure and materiality in the circumstances.

The "Soft Landing"

[425] Cornish submits that he had a reasonable belief that the supply/demand imbalance in the ABCP market would be resolved by market participants through a negotiated reduction in the amount of ABCP outstanding (the so-called "soft landing"). Based on Tai's report from the Montreal meeting on August 10, 2007 (referred to in paragraph 749 of these reasons), Cornish submits that he understood that the meeting had achieved a consensus around a solution to move forward, which involved an overall reduction in the amount of outstanding ABCP sponsored by all independent sponsors and the banks. He understood that, in turn, the dealers would step back into the market and resume their typical market-making activities.

[426] Accordingly, Cornish submits that he reasonably formed the conclusion that the Montreal meeting was a positive step and that, as testified by Allan, Coventree could participate in the solution with "virtually … no impact on Coventree".

4. Tai Submissions

[427] Tai adopts Coventree's and Cornish's submissions on this issue.

[428] Tai also submits that having clearly disclosed the risks of its business in its public filings, Coventree was under no obligation to make further disclosure unless and until those risks actually occurred *and* the occurrence of them resulted in a material change to Coventree's business, operations or capital, such that disclosure was required. Tai submits those conditions were not satisfied.

[429] Tai submits that Staff is incorrect in arguing that the risks identified by Coventree "had occurred" by early August 2007. Many of those events were in a state of flux and Coventree was unable to decipher clear facts in the circumstances.

Risk of a Market Disruption

[430] Tai submits that Staff is arguing with respect to its other disclosure allegations that the risks Coventree had disclosed in the Prospectus had become facts and resulted in a material change. Yet, with respect to the allegation that the increased risk of a market disruption had to be disclosed, Staff appears to argue that the risk does not need to become a fact in order to constitute a material change. Tai submits that there is no rational basis for this inconsistency in Staff's position.

[431] Tai submits that what Staff has ignored in making this allegation is that the risk of a market disruption *had* already been fully and fairly disclosed in the Prospectus. Tai submits that Coventree was not obligated to disclose to its public shareholders on each and every day after the Prospectus filing that the risk of a market disruption remained a risk.

Coventree Decision Not to Issue a News Release

[432] Tai notes that Staff alleges that "[t]he decision by Coventree not to disclose the material change was substantially influenced by its perception that disclosure would have an adverse market impact." Tai submits this allegation is untrue and unfair for three reasons.

[433] First, it assumes what Staff must prove: that there *was*, in fact, a material change. Tai submits that all of the evidence is that Coventree and its senior officers (including but not limited to Tai) did *not* believe there was a material change prior to August 13, 2007. Tai objects to Staff's suggestion that Coventree believed that a material change had occurred and intentionally refused to disclose that material change because of a concern about the market impact of that disclosure.

[434] Second, the question of whether to issue a news release was considered thoroughly at the August Board Meeting and only one director expressed the concern that issuing a news release might "generate a run on the bank" (see paragraph 564 of these reasons).

[435] Third, Tai submits that when he raised concerns about the impact that a news release might have on the "market", he clearly was not talking about the stock market. He was talking about the ABCP market. This was not a self-interested concern on Tai's part about what might happen to Coventree's share price if it disclosed bad news. This was an honest and reasonable concern that Coventree's shareholders would benefit from stability in the ABCP market and that disseminating speculative information about what might or might not happen would only create more uncertainty. Tai submits that recommending against issuing a news release when there were not enough "observable data points" was a decision made in accordance with good practice and consistent with the Act's objective of ensuring that the capital markets are not inundated with information that falls short of being plain and true.

5. Summary of Events Leading Up to August 1, 2007

[436] In order to address Staff's allegation that Coventree failed to disclose a material change on August 1, 2007, or thereafter and prior to the market disruption that occurred on August 13, 2007, we will summarize the events and developments that occurred during the period from late July to August 1, 2007, and thereafter leading up to the market disruption on August 13, 2007. In providing those summaries, we recognise that they are summaries and are necessarily incomplete. They do not include all of the events and developments referred to us during the hearing or all of the documents and evidence that were submitted to and reviewed by us.

[437] With respect to the recorded telephone calls between representatives of Coventree and the various dealers, Staff and the Respondents agreed that those recordings are authentic and accurately represent what was said, but are not necessarily evidence of the truth of the statements made. We acknowledge that only a limited number of conversations among representatives of Coventree and members of the dealer syndicate during the relevant period were recorded and introduced as evidence.

[438] Further, there is no question that the participants on the recorded calls all had their own agendas and financial interests and wanted to hold their cards as close to the vest as possible. For example, it was in the interests of the dealers not to disclose to Coventree who their clients were or the amounts of their market-making lines available to purchase Coventree sponsored ABCP. To the contrary, the interest of each dealer during the period from late July to August 13, 2007 was to encourage others, including Coventree, to provide liquidity by purchasing Coventree sponsored ABCP that was maturing. Each dealer wanted to preserve its market-making lines and to take into inventory as little Coventree sponsored ABCP as possible. As a result, we do not take at face value all of the statements made on the various recorded calls. At the same time, we believe that it is clear from those conversations that there were very serious concerns being expressed by the dealers by late July and early August 2007 as to the liquidity in the ABCP market and their ability to roll Coventree sponsored ABCP during that period (see our conclusions in paragraph 570 of these reasons as to general market conditions by the close of business on August 1, 2007).

[439] During this period, Coventree was struggling in its conversations with dealers to determine what was happening in the ABCP market and what was causing the illiquidity in Coventree sponsored ABCP. It is clear that Coventree did not know the amounts of the market-making lines available to the dealers at any particular time to purchase maturing Coventree sponsored ABCP. Nor could Coventree predict whether, and to what extent, the dealers would on any day purchase Coventree sponsored ABCP into inventory. Similarly, Coventree could not predict at any time what the Caisse would do in terms of rolling its maturing Coventree sponsored ABCP and Coventree could not predict whether a market disruption would occur on August 13, 2007 or any other date.

[440] We have organised the following summary of events and developments leading up to August 1, 2007 around specific topics and issues we must consider. In some cases, we have referred to events that occurred shortly after August 1, 2007, because they have some relevance to assessing the circumstances as they existed on August 1, 2007. We believe that this is a more useful approach than simply providing a chronology of all of the relevant events and developments as they occurred. We have provided a separate summary of events and developments after August 1, 2007, leading up to the market disruption that occurred on August 13, 2007, beginning at paragraph 655 of these reasons. We have also provided an overall chronology of significant events relevant to this proceeding in Schedule E.

(a) Difficulty Selling ABCP Prior to July 2007

[441] Prior to late July 2007, members of the syndicate infrequently reported to Coventree's funding group that they were experiencing difficulty selling or "rolling" Coventree sponsored ABCP. However, such difficulties had sometimes occurred in the past, such as leading up to December 31 of a particular year or at bank quarter ends.

(b) U.S. Subprime Exposure

[442] One of Staff's allegations is that, by late July 2007, Coventree was experiencing significant difficulties in rolling Coventree sponsored ABCP that had the highest levels of subprime exposure. Staff alleges that is a liquidity concern related specifically to Coventree sponsored ABCP.

[443] We have discussed some of the circumstances related to the subprime exposure of Coventree sponsored conduits in addressing whether the subprime statement made by Coventree in April 2007 was misleading. We must now consider the extent to which that subprime exposure contributed to the illiquidity of Coventree sponsored ABCP in late July and early August 2007. Staff alleges that the Caisse began substantially reducing its holdings of Coventree sponsored ABCP with subprime exposure on July 23, 2007 after receiving information with respect to that exposure by conduit and note series. Staff also submits that certain dealers reduced or temporarily eliminated their market-making lines and adjusted their inventory holdings of Coventree sponsored ABCP when they learned of that information on July 24, 2007. The discussion below provides further background related to the alleged illiquidity of Coventree sponsored ABCP that had significant subprime exposure.

Disclosure of Subprime Exposure

[444] Cornish attended a Standard & Poor's Financial Services LLC ("**S&P**") conference in the U.S. on July 11, 2007 where he heard S&P's public announcement of hundreds of downgrades of notes backed by U.S. subprime assets. (Those downgrades did not directly affect Coventree sponsored ABCP.) In an e-mail dated July 11, 2007 to Dalton, Allan and others at Coventree (copied to Tai), Cornish noted that U.S. investors were demanding that conduit sponsors provide information about subprime exposure and that if the information was not furnished, investors would "vote with their feet and will not buy their ABCP". He suggested that Coventree should get in front of this issue "by preparing information that Coventree could either issue as a press release or give as an info sheet to our CP dealers on where we are at – clearly investors are going to be asking a lot of detailed questions on what we have in our conduits in this asset class in the near future".

[445] On July 11, 2007, Paul sent an e-mail to Christian Gaucher ("**Gaucher**") at NBF disclosing subprime exposure by conduit and note series, as of June 29, 2007 (the "**June Subprime Data**"). The June Subprime Data indicated that subprime exposure in Comet E notes was 41%, in Planet A notes was 30% and in Slate E notes was 22%. Coventree indicated that NBF was free to provide the June Subprime Data to ABCP investors as it saw fit. We note that the June Subprime Data is somewhat different than the subprime information set out in the July 24 e-mail and determined as of June 28, 2007 (see paragraph 387 of these reasons).

[446] On July 12, 2007, Dalton responded to Cornish's e-mail referred to in paragraph 444 of these reasons and commented that Coventree had begun to receive inquiries about subprime assets. She noted that Coventree could respond by disseminating information about U.S. subprime exposure in Coventree sponsored conduits by (i) issuing a press release, (ii) sending a summary and "talking points" to dealers so they could respond, or (iii) dealing with investor inquiries on a case-by-case basis. Because Coventree did not know who all of the investors in Coventree sponsored ABCP were, it could not do a direct distribution of information to all investors. Any such distribution to investors would have to be effected through Coventree's dealer syndicate or by means of a news release. Dalton listed the "pros and cons" of each alternative and concluded in her e-mail:

> I am sure there are many other pros and cons and as a public company we may not have the luxury to go anywhere but option 1, but we need to send this out tomorrow at the latest…

[447] Mavrix received a copy of the June Subprime Data from Coventree on July 6, 2007. Gaucher forwarded it to the Caisse on July 20, 2007.

[448] In the days prior to July 23, 2007, Paul testified that he was advised by dealers that some investors were not rolling Coventree sponsored ABCP or were rolling ABCP for shorter durations including only overnight. When investors did not roll their maturing ABCP, the options were that (i) the ABCP be sold to another ABCP investor, (ii) a dealer purchase the ABCP and take it into inventory for a short period, or (iii) the conduit buy back the ABCP.

[449] On July 23, 2007, Dalton sent subprime data by conduit and note series to the members of Coventree's strategic council, which met that day and discussed how to distribute the information based on the three options that Dalton had outlined in her e-mail of July 12, 2007 (referred to in paragraph 446 of these reasons). The strategic council decided to distribute the subprime information to investors through the members of Coventree's dealer syndicate.

[450] Accordingly, on July 24, 2007, Dalton sent the July 24 e-mail to the dealer syndicate with subprime exposure shown by conduit and note series (see paragraph 387 of these reasons).

[451] In the July 24 e-mail, Dalton commented:

> We have given this to everyone in our Dealer group so they can use their own judgement to send it to clients with the sophistication to use the information (we figure you have the best read on this). Otherwise, the Dealers are armed with enough information to provide timely and accurate replies when asked …

[452] Shortly after sending the July 24 e-mail to members of its dealer syndicate, Coventree also forwarded it to DBRS stating that Coventree "wanted to ensure that both DBRS and our dealer syndicate are informed and able to answer direct enquiries from investors with a consistent set of information."

[453] In response to the July 24 e-mail, James Feehely (of DBRS) enquired whether Coventree "had any plans to reduce its subprime exposure by selling off some of the old transactions". Dalton replied that Coventree did not have any intention of selling off its subprime investments because the transactions were performing well and there would not be strong bids in the market for the subprime assets.

[454] Homer testified that the risk related to subprime exposure was low in March but became an issue for him by July. Citibank received the June Subprime Data on July 12, 2007 and responded by selling Comet E notes the following day. Citibank had sold all of its holdings of Comet and Slate ABCP by July 24, 2007 (Comet E notes had 41% subprime exposure and Slate E notes had 22%, based on the June Subprime Data). On the other hand, Miller testified that knowledge of the subprime exposure did not change his trading of Coventree sponsored ABCP. He also testified, however, that when he learned after the market disruption on August 13, 2007 that Comet E notes had 42% subprime exposure, he considered that a "rather shocking figure".

[455] In response to a question about whether the July 24 e-mail had any effect on the dealers' sale of Coventree sponsored ABCP, Paul testified that "in the grand scheme of things it looks like, you know, things do get a bit – a bit tougher after this".

(c) Liquidity for Coventree Sponsored ABCP

[456] Coventree's dealers began reporting "stickiness", that is, difficulties in the market in rolling some Coventree sponsored ABCP by July 23, 2007. On July 25, 2007, in response to a question from Paul about market conditions for selling or rolling ABCP that day, Gaucher responded that "it's very tough. Very, very, very, very, very tough, even at the level we have been posting".

[457] The same day, dealers reported difficulties selling Comet E notes and Cornish first reviewed the July 24 e-mail that had been sent to the dealer syndicate. Cornish noted that the subprime exposure for Comet E notes was 42% and that it "stands out like a sore thumb". Cornish told Tai and others that Coventree was likely to also experience issues in rolling Planet A notes because of the 26% subprime exposure of that note series.

[458] On a taped call on July 25, 2007, Gaucher stated to Paul that "Slate E is very tough to sell right now, and Rocket E". Both those series were extendible ABCP; Slate E had subprime exposure of 16% but Rocket E had no subprime exposure. Gaucher also stated that some clients did not want to purchase ABCP with exposure to subprime assets of more than 5%. On the same day, Coventree learned that CIBC had purchased, pursuant to its market-making line, $67.8 million of Coventree sponsored ABCP overnight, including $30.7 million of Slate E notes.

[459] The dealers continued to report difficulties selling Coventree sponsored ABCP backed by subprime assets on July 26, 27 and 30, 2007.

[460] Approximately $8.5 billion of Coventree sponsored ABCP outstanding consisted of extendible E notes representing approximately 57% of the total outstanding E notes in the market. By July 30, 2007, Coventree was advised by its dealer syndicate that investors were moving away from E notes, and towards bank-sponsored ABCP, because bank-sponsored ABCP was viewed as a safer investment. This was described by dealers as a "flight to quality". Allardyce testified that by late July and early August there was pressure on spreads and a flight to quality, by which he meant investment in bank-sponsored ABCP and government debt. Allan stated in a conference call on July 30 with Coventree's three largest dealers (the "**July 30 Conference Call**") that "some of the nervousness around the E notes is that in this market, people are migrating to what they consider to be safer programs, and liquidity-based programs are viewed as being safer programs". On that call, Greg Smith of Scotia ("**Smith**") said "… it is reality that the investor treats bank-sponsored conduits as more quality".

[461] At this time, Coventree was attempting to determine whether the liquidity issues around rolling Coventree sponsored ABCP were related to subprime exposure (a cause specific to Coventree sponsored ABCP) or reflected a general lack of liquidity in the market. In the July 30 Conference Call, Allan raised the possibility of increasing spreads on Coventree sponsored ABCP backed by subprime assets. Smith concluded, however, that this was not a good strategy, because "whether there's a problem or not, you are highlighting it as a problem …".

[462] During the July 30 Conference Call, the dealers gave Coventree feedback on what they thought was happening in the ABCP market. The dealers commented that there was spread widening and a lack of cash available in the market and that Coventree was feeling the pressure more than other third-party sponsors. Smith said they were in "uncharted territory" and there was a lot of headline risk from the media and ratings agencies. They discussed a number of issues including the possibility of DBRS issuing a public statement with respect to subprime assets generally, RBC's resignation from the dealer syndicate (see the discussion beginning at paragraph 541 of these reasons), and the possibility of market participants taking co-ordinated steps to shrink the overall ABCP outstanding in the market. The July 30 Conference Call ended with Coventree and the dealers concluding that they would have to increase spreads on Coventree sponsored ABCP. Coventree also proposed to reduce the subprime exposure of each conduit and note series to below 15% by transferring assets among conduits and note series.

[463] Loke testified that within a week of receiving the July 24 e-mail from Coventree, he received a call from Luc Verville ("**Verville**") of the Caisse. Verville stated that he was concerned about subprime exposure and wanted to know from Loke generally how the affected transactions were performing. Dalton received a call from Verville on July 25, 2007 and she recalled speaking with him about the subprime exposure in Coventree sponsored conduits.

[464] Paul testified that, in the period leading up to Friday, August 3, 2007, it seemed to be taking longer each morning for the dealers to sell Coventree sponsored ABCP. Sales were historically completed by approximately 9:00 a.m. The audio taped calls submitted in evidence also indicated that it was taking longer for dealers to complete sales of Coventree ABCP each day: on July 25, 2007, NBF reported to Coventree at 9:05 a.m. that Scotia had just returned unsold Coventree sponsored ABCP to NBF; on July 26, 2007, NBF reported at 10:19 a.m. that Coventree sponsored ABCP remained unsold; on July 27, 2007, NBF reported at 11:00 a.m. that CIBC had returned unsold ABCP; and on July 30, 2007, Bob Courchesne ("**Courchesne**") of NBF reported to Dalton at 10:35 a.m. that CIBC still had not sold all of its allocation.

[465] During the period from late July 2007 to Friday, August 3, 2007 (the day before the August long weekend), Paul observed that Coventree sponsored ABCP was often just rolling overnight. Paul testified that by August, "I was starting to see large numbers. I'm not sure we ever got into the billions across a series but we may have and if we didn't I think it was getting close on certain days, which in my mind was a lot." Paul testified that having dealers take ABCP into inventory overnight was a concern because it meant that they were having difficulty selling Coventree sponsored ABCP. In addition, increasing amounts of overnight "rolls" of Coventree sponsored ABCP resulted in larger amounts of ABCP that needed to be sold the next day or thereafter.

[466] Paul testified that liquidity agreements related to specific series of Coventree sponsored ABCP generally had provisions that restricted the overall percentage of ABCP that could mature within a five-day period. In the usual course, Coventree's back office would monitor the maturities and, prior to July 2007, Paul would "occasionally" have to contact a dealer and request that they "move" a maturity date in order to remain onside the relevant liquidity agreements. Paul testified that as July progressed and overnight rolls increased, compliance with those provisions became a bigger issue.

[467] Accordingly, Coventree attempted each day to allocate the ABCP that matured so that the conduits would remain onside the liquidity agreements. Cornish testified that Coventree's administration group was "… struggling with the allocation or – we called it splitting, but same concept of the ABCP that had been sold on any given day, and how to divide it up amongst the various agreements to make sure that we were still within the rules provided for by each agreement." Allan later expressed concern that non-compliance with liquidity agreements could preclude the exercise of liquidity draw rights for the benefit of holders of a note series even if a general market disruption had occurred.

[468] On July 25, 2007, Natalie Davidson of CIBC ("**Davidson**") reported to Allan that market concerns were specific to Coventree sponsored ABCP and were also focused on extendible E notes, with Comet E notes being singled out (Comet E notes had subprime exposure of 42%). Allan testified that Verville told him on the same day that the Caisse had sold some third-party sponsored ABCP (including Coventree sponsored ABCP) and purchased bank-sponsored ABCP instead, and that the Caisse had the same overall holdings of ABCP that it had had two weeks earlier.

[469] On July 26, 2007, Dymott sent an e-mail to another RBC employee in response to a question about how the ABCP issued by non-bank conduits was doing in the market. Dymott replied that:

> Calmer than you'd expect, I'm on holidays but have been on the phone about Coventry [*sic*]. They have sub-prime exposure which they've told Caisse and the dealers about but not other clients! Also Caisse, which has 50% of the 8 billion [*sic*] outstanding, isn't rolling all of their maturities. Now that the model is dead for Coventry [*sic*] I want out …

This e-mail is relevant for our purposes for two reasons. First, it indicates that a further complicating factor for the liquidity of Coventree sponsored ABCP was the decision by the Caisse not to roll all of its Coventree sponsored ABCP as it matured. Second, it indicates that as a result of market developments, "the model is dead for Coventry [*sic*]". That suggests a significant change had occurred in Coventree's business. In making these comments, we recognise that this e-mail was not sent to Coventree and, accordingly, Coventree had no opportunity at the time to respond to it. Further, the e-mail reflects only the personal views of Dymott. Having said that, however, the e-mail does reflect the views of a very experienced market participant who was familiar with what was happening in the ABCP market at the time.

[470] On July 30, 2007, Paul sent an e-mail to a representative of Swiss Re with an update on market conditions. Paul stated:

> The market continues to be shaky this week, particularly among independent conduits. The spread versus bank sponsored ABCP has widened to 5 to 7 bps this morning, as the credit spread headlines going around the market, in addition to the Canadian bank quarter end tomorrow, has brought on this heavy tone. Even if someone had an overfunding initiative already set up with DBRS, there is no appetite for new funding in the Canadian marketplace right now. Once things settle down, hopefully in a couple of weeks, it will be better to have a more fulsome discussion of overfunding.

[471] On the July 30 Conference Call, Smith speculated that the Caisse had sold Comet E notes (that had 42% subprime exposure) to Scotia the day before the July 24 e-mail was sent. Smith told Coventree on that call that Scotia had Comet E notes in inventory "that's pretty much not saleable". Scotia said that the liquidity issue "is specific to subprime and it's specific to Coventree".

[472] Davidson also stated on the July 30 Conference Call that:

> … if anybody is going to feel any pain, it's going to be you guys first because you have the largest E notes outstanding. And the biggest supporter of the E note market [the Caisse] has probably paid down a billion dollars in E notes.

[473] On July 30, 2007, Allan sent an e-mail to Cornish that "… our funding situation continues to deteriorate. I will definitely need to brief you and Dean [Tai] at the end of the day".

[474] By July 31, 2007, Cornish, Tai and Allan were aware that DBRS thought the liquidity issue was limited to Coventree sponsored ABCP, rather than the ABCP market generally. In an e-mail Cornish sent to Allan that day regarding the Caisse, he stated:

> David, as I keep thinking about this, if this issue is really limited to Coventree, as suggested by DBRS, that fact may actually help us with Luc [Verville of the Caisse]. …
>
> Anyway, I am wondering if that piece of info i.e. that DBRS has advised us that the issue is not widespread in the industry is one that we should pass on to him. …

[475] Beginning on or around Wednesday, August 1, 2007, Paul began running a "maturity report" on a daily basis so that Coventree would know the relative size of Coventree sponsored ABCP maturities each day.

[476] Deutsche Bank published a report dated August 2, 2007, commenting on developments in global credit markets as follows:

> By any meaningful definition, subprime contagion finally arrived on Thursday, July 26th. The potent combination of continued subprime collateral deterioration, enormous expected losses in ABS [Asset Backed Securities] CDOs and accelerating dislocation in leveraged loans broke the back of the global credit market, sending investors running for the proverbial hills. Credit spreads widened dramatically across the globe. By the following day, almost all new issue markets were shuttered. Since that time, markets have shown some signs of life, but have largely been unable to get moving again, as investors prefer to sit on the sidelines amidst the global downdraft.

That report was not commenting specifically on the Canadian credit market and was characterized by a Coventree employee in an e-mail to Cornish on August 3, 2007 as representing some of the "doom and gloom" in the media at that time.

[477] At 7:43 p.m. on August 2, 2007, Allan sent an e-mail to Dalton saying "I felt terrible seeing how this situation is wearing on you this evening" and that Coventree was "operating with little room to manuveur [*sic*] and few tools at our disposal", and "[i]n truth, our future is in the hands of the market". Allan went on to state that "[w]e are making small adjustments in the hope that the little that we can do might make a difference in the outcome. We cannot make anything happen here. Know that you have done your best, and that what will be, will be." In response to Allan's e-mail, Dalton e-mailed at 10:05 p.m. that she could sense the "desparation [*sic*] and frustration" that Paul was feeling at that time, which added to her own, and she stated that Coventree needed to be "insulated from the credit requests we are getting buried with". She said that she needed the "long weekend to rejuvinate [*sic*]".

(d) ABCP Turned Back to NBF

[478] During the week of July 23, 2007, dealers were turning back Coventree sponsored ABCP to NBF as leader of the dealer syndicate. That meant that the dealers were unable to roll all of the maturing ABCP held by their clients and were unwilling or unable to take that ABCP into inventory. As a result, dealers were returning unsold ABCP to NBF. It was difficult for NBF to immediately sell the ABCP turned back because most sales are made by 9:00 a.m. on each trading day and NBF would often have to take the unsold ABCP into its inventory using its market-making lines.

[479] Coventree was aware, on July 23, 2007, that RBC had turned back $25 million of Slate E notes that NBF took into inventory overnight. Dymott testified that, during that week, RBC did not sell any Coventree sponsored ABCP with subprime exposure. He testified that RBC turned back its allocation of Coventree sponsored ABCP with subprime exposure to NBF because it had reached its maximum capacity on its market-making lines and could not inventory any more Coventree sponsored ABCP. Coventree believed that RBC was not actively attempting to sell Coventree sponsored ABCP.

[480] On July 25, 2007, Paul was advised by Gaucher that Scotia had turned back some Coventree sponsored ABCP to NBF. Paul testified that in his experience, Scotia had never turned back ABCP to NBF. Allan later spoke to representatives of Scotia and was reassured that Scotia would continue to make its market-making lines available to support Coventree sponsored ABCP. Coventree submits that Scotia turned back a relatively small amount of Coventree sponsored ABCP during a short period in late July because it was involved in distributing a significant amount of ABCP in a transaction not involving Coventree.

[481] On July 26, 2007, Allan sent an e-mail to RBC saying NBF was "fed up" with RBC's lack of support and demanded that Coventree drop RBC from the dealer syndicate.

[482] On a call with Paul on July 26, 2007, Courchesne complained that NBF had had to take back a large amount of Planet A notes from other dealers. He said that Coventree was not receiving support in the market from other members of the dealer syndicate. Courchesne concluded, "I can't buy all the Planet A on earth here" and that Coventree did not "seem to have a dealer group here".

[483] On that call, Paul asked whether NBF had reached its limits on its market-making lines and Courchesne stated that NBF was close to its limits. Cornish testified that he was aware that NBF had approximately $500 million in market-making lines available for Coventree sponsored ABCP. Paul testified that Coventree could not do much in terms of taking action against dealers that were refusing to support Coventree sponsored ABCP, other than calling them to discuss it.

[484] On July 30, 2007, NBF advised Coventree that NBF was reaching the limits of its market-making lines and that Scotia was "close to falling off the cliff". By July 31, 2007, Cornish was aware that Scotia wanted to reduce the amount of its market-making lines for Coventree sponsored ABCP.

[485] Allan acknowledged in his testimony that he knew that all of the dealers "had issues" with the availability of their market-making lines by July 30, 2007.

(e) The Caisse Reduced its Holdings

[486] Coventree also knew that the Caisse held approximately one-third to one-half of all outstanding Coventree sponsored ABCP as of the first half of July 2007. As a result, the Caisse's decision whether to roll maturing Coventree sponsored ABCP would have a very significant impact on Coventree and the ABCP market. No one disputed that if the Caisse did not support Coventree sponsored ABCP by rolling its ABCP as it matured, a default and a market disruption could occur.

[487] On July 20, 2007, NBF forwarded to the Caisse the June Subprime Data (which Coventree had provided to NBF on July 11, 2007). On Monday, July 23, 2007, the Caisse began reducing its holdings of Coventree ABCP with subprime exposure.

[488] By July 27, 2007, Coventree was aware from the dealers that Verville was attempting to reduce the Caisse's overall ABCP holdings by $1 billion, starting with ABCP issued by third-party sponsors and ABCP that had subprime exposure. On the July 30 Conference Call, Davidson advised Allan that when the Caisse became "squeamish" about subprime, that started a chain reaction with the dealer syndicate. Davidson stated that:

> David, you know, getting back to your question, is it the market or is it us, there's both because, you know, generally, you know, there's not a lot of cash in the market right now but unfortunately your largest investor decided to get squeamish about subprime and that started a chain – chain reaction with the dealer group because the dealers only have so much market making liquidity line[s] available to these sorts of products. We don't typically bid back on, you know, 200 million or 100 million or whatever it is, right.

[489] In a telephone conversation with Allan during the week ending July 27, 2007, Verville indicated that the Caisse had to shrink its overall portfolio and that Verville's strategy for doing so was to switch from Coventree sponsored ABCP to bank-sponsored ABCP. Verville said he was doing this because he thought there would be more market-making support for bank-sponsored ABCP.

[490] According to Allan, when Verville explained to him how he was "lightening up" on Coventree sponsored ABCP, Verville said that, from an optics standpoint, "well, if you have to lighten up, lighten up from those that have more subprime exposure".

[491] This prompted Allan to ask Verville whether it would help if Coventree reduced the subprime exposure in the note series with the highest subprime exposure by shifting assets to other Coventree conduits or note series. According to Allan, Verville thought that might improve the optics and allow him to lighten his holdings of Coventree sponsored ABCP on a pro rata basis by note series.

[492] Allan testified that this rebalancing of conduit assets appeared to be important to Verville only on the day they discussed it. After that, when Allan raised the rebalancing plan, Verville did not seem interested. (Nevertheless, Coventree continued to work on a rebalancing plan into early August (see the discussion below and Tai's report to the Board on August 3, 2007 referred to in paragraph 667 of these reasons)).

[493] Cornish testified that Coventree expected that the Caisse would eventually agree to "manage their exposure down" in a way that did not create problems for the market. He noted that, if the Caisse's actions led to a market disruption, the Caisse would itself suffer a substantial loss on its ABCP investments. That was something the Caisse would want to avoid.

(f) Dealers Declined to Bid in the Secondary Market

[494] By July 28, 2007, Coventree was aware that there were dealers in the syndicate who had not been providing bids to purchase Coventree sponsored ABCP in the secondary market during the previous week. Paul testified that, particularly in the latter half of July 2007, Coventree was receiving feedback from dealers that some holders of Coventree sponsored ABCP were seeking bids in the secondary market. Paul testified that was a "red flag" because ABCP, by its very nature, is a short-term investment. In an e-mail from Allan to Cornish and others at Coventree on July 28, 2007, Allan stated that the dealers were repeatedly "no bid" on Coventree sponsored ABCP the previous week. RBC was among the dealers that were not bidding on Coventree sponsored ABCP in the secondary market.

(g) Spread Widening

[495] "Spread widening" means that the interest rates payable on newly issued or rolled ABCP are increased, as measured by the number of basis points (one one-hundredth of 1%) that such rates are above the CDOR reference rate. Spread widening encourages investors to purchase ABCP by making the purchase of ABCP more financially attractive. Spread widening can occur for a number of reasons including an increase in the credit risk of the ABCP or because the supply of ABCP exceeds investor demand for it. Spread widening has an adverse effect on Coventree's revenues and net income as Coventree sponsored ABCP matures and is rolled at higher interest rates. Spread widening can also affect the economics and viability of

Coventree's securitization business because that business relies on the difference between the cost of funds (represented by ABCP) and the returns on conduit assets.

[496] Cornish testified that the usual spread for A notes was in the range of one to three basis points over CDOR, and for E notes was 11 to 13 basis points over CDOR. In its response to a continuous disclosure request by Staff, Coventree advised that the usual spread for A notes was two to four basis points over CDOR and the usual spread for E notes was 11 to 13 basis points over CDOR.

[497] Coventree first observed spread widening in the market on Monday, July 30, 2007. That day, spreads widened modestly across the market for all third-party sponsored ABCP. Quoted spreads for A notes were approximately 3.7 basis points over CDOR and quoted spreads for E notes were approximately 15 basis points over CDOR. At these levels, Coventree viewed the spreads as still being within a normal range.

[498] At the end of the July 30 Conference Call, a decision was made to increase spreads on Coventree sponsored E notes. Scotia noted that this would result in the spreads on all Coventree sponsored ABCP increasing and that Coventree's competitors would likely all move to the same spreads. Tai acknowledged on the July 30 Conference Call that the spread widening would likely remain in place for three to six months.

[499] On August 1, 2007, spreads on A notes widened substantially to approximately 12.8 basis points over CDOR and spreads on Coventree sponsored E notes widened to approximately 26.8 basis points over CDOR. At those levels, spreads on the A notes had increased approximately four times the usual spread, and spreads on E notes had approximately doubled. These were large and unprecedented increases in interest rate spreads for Coventree sponsored ABCP.

[500] Paul testified that banks and their controlled dealers would generally want to reduce the assets on their balance sheets at quarter or year end and have relatively less ABCP in inventory. This was colloquially known as "window dressing". Paul stated that during these periods, spreads on Coventree sponsored ABCP would increase in order to encourage investors to purchase Coventree sponsored ABCP.

[501] Dalton testified that she could not recall spreads ever widening to the levels they did on either August 1 or August 7, 2007 (for the latter, see paragraph 707 of these reasons).

[502] Paul testified that prior to July 2007, the spread between bank-sponsored and third-party sponsored ABCP rarely, if ever, changed and was usually in the range of two to three basis points. In an e-mail dated August 2, 2007 from Paul to a representative of the Bank of Canada, Paul stated that:

> The spreads of the independents versus the banks has widened about 12 bps over the past week. … Bank ABCP funding has widened only marginally versus CDOR, maybe by a bp. …The independents have suffered spread widening due to some exposure to US subprime lending, a large reliance on funding CDO's through ABCP, and the lack of a big bank perceived as a backstop to the ABCP.

[503] Allan testified that in the period beginning with the week of July 30, 2007, he was aware from the dealers that the interest rate on bank-sponsored ABCP did not widen as much as Coventree sponsored paper: "when we moved 2, they probably moved 1, when we moved 5, they moved 2, when we moved 10, they moved 4, that sort of relationship".

[504] For purposes of comparison, on August 22, 2007, after the market disruption, Coventree issued a news release that stated, among other things, as follows:

> As a result of the market disruption, spreads on the A notes and E notes issued by Coventree sponsored conduits have widened to approximately 50 and 110 basis points above CDOR, respectively, for ABCP that is rated R-1 (high). At these spread levels, Coventree's revenues from credit arbitrage transactions will in the short-term be reduced to zero.
>
> (*Coventree Provides Update on ABCP Market Disruption*, August 22, 2007)

(h) Concerns about Potential Collateral Calls

[505] In an LSS transaction, Coventree sponsored conduits sold credit protection against a default in, or loss in value of, the reference portfolio and were required to post collateral in support of their obligations in certain circumstances (upon a collateral call). This contingent liability is referred to as "contingent funding risk". When a collateral call occurred, there were two options available to the conduit receiving the collateral call (i) issue new ABCP to fund the collateral call, or (ii) use available cash in the conduit, or from the sale of assets, to fund the collateral call. If a collateral call occurred and the conduit was unable to satisfy it, a default would occur.

[506] On July 30, 2007, Citibank made collateral calls with respect to two Coventree sponsored transactions, but withdrew those collateral calls the next day after Coventree persuaded Citibank that its calculations were incorrect.

[507] On August 8, 2007, Coventree voluntarily posted collateral of $25 million for each of two Citibank transactions in order to provide an additional cushion before a collateral call would be triggered.

[508] Coventree typically monitored the potential for collateral calls on a monthly basis by performing various calculations based on Coventree financial models. Beginning on August 1, 2007, Coventree's risk management group performed daily calculations for leveraged transactions that appeared to be close to triggering a collateral call. On August 1, 2007, Coventree's models indicated that it had gone through the collateral call trigger for one transaction, but the counterparty advised that it would not be making a collateral call that day. By August 7, 2007, Coventree's models indicated that four transactions were close to or had crossed collateral call triggers.

[509] Allan testified that the collateral call triggers were affected by two things: a change in spreads for credit default swaps and a change in the risk correlation among the relevant assets. By August 1, 2007, the risk of collateral calls was increasing in LSS structures because of unprecedented spread widening in credit default swaps and large increases in risk correlation.

[510] In her notes of the August Board Meeting, Child recorded that Coventree was "perched on triggers" for collateral calls (see paragraph 559 of these reasons).

[511] Allan stated to Davidson during a call on August 4, 2007 that, while he had anticipated when he joined Coventree that Coventree sponsored conduits would be highly leveraged to the credit cycle, they were much more highly leveraged than he had expected. He noted that Coventree was developing a strategy to step back from "the abyss", but that strategy could not be implemented in two months, more likely in two years; but only if the credit cycle stayed reasonably benign.

(i) Coventree Sponsored Conduits Sell Assets

[512] Coventree stated in its third quarter MD&A for the period ending June 30, 2007 that it was its "practice to explore all available options before selling and unwinding a transaction for risk management reasons".

[513] By late July 2007, Coventree had begun selling conduit assets in order to accumulate cash or so-called "dry powder". Based on evidence submitted by Staff, it appears that the first significant asset sale by a Coventree or Nereus sponsored conduit occurred on July 20, 2007 and generated cash of approximately $173 million. By August 1, 2007, asset sales aggregating approximately $188 million had been completed. Tai's e-mail to the Board on August 3, 3007 indicated that Coventree had accumulated by that time approximately $610 million of cash in its conduits. By August 8, 2007, the aggregate amount of cash was approximately $625 million. Cornish stated in his testimony that approximately $225 million of that amount arose from asset sales in January and February 2007, and not sales in August 2007 as submitted by Staff. From our perspective, nothing turns on that particular question. Cornish testified that, as of the market disruption on August 13, 2007, Coventree and Nereus sponsored conduits had accumulated approximately $1 billion of cash.

[514] Coventree's initial objective in generating cash in its conduits was to be able to fund the possible repurchase of maturing ABCP or to fund collateral calls. Approximately $60 million of available cash was used to purchase Planet A notes over the August 3rd long weekend (see paragraph 678 of these reasons). Tai was not happy with the use of cash for that purpose and instructed that no further cash should be used to purchase Coventree sponsored ABCP without the approval of the strategic council. Cash was to be preserved exclusively to fund collateral calls.

[515] This was a potentially significant decision by Coventree not to support the rolling of ABCP by its conduits. (See paragraph 584 of these reasons for the relevant disclosure in the Prospectus of the potential effect on Coventree's business if it did not support the rolling of Coventree sponsored ABCP.)

[516] As discussed below, by July 30, 2007, there was no capacity for Coventree or Nereus sponsored conduits to issue any new ABCP. As a result, any collateral call had to be funded from cash in the conduits or the sale of conduit assets to generate cash.

[517] Allan testified that there were two problems associated with selling CDO assets in late July and early August 2007:

(a) the assets would likely be sold at a loss and Coventree might have to cover those losses itself; and

(b) selling assets in that environment could cause credit default swap spreads to widen further, leading to further increased risk of collateral calls for Coventree sponsored conduits.

[518] In addition, as a result of asset sales:

(a) Coventree permanently lost the revenue backlog associated with the assets sold; and

(b) conduits experienced "negative carry" on the reinvestment of the proceeds of sale (see paragraph 520 below).

Further, conduits could not replace any CDO assets sold with new CDO assets because the DBRS January Release prevented Coventree sponsored conduits from carrying out such transactions.

[519] As noted above, the sale of assets by Coventree sponsored conduits would have the effect of eliminating the revenue backlog associated with the assets sold. The evidence is that the actual sales of assets by conduits for this purpose did not significantly reduce revenue backlog (backlog was actually reduced by less than approximately $1.0 million).

[520] The accumulated cash from asset sales was invested in short-term highly liquid investments which earned a lower rate of return than the interest rate paid to investors on the outstanding ABCP, giving rise to "negative carry".

(j) Inability to Fund Purchases of New Assets

[521] Xceed sold mortgages to Coventree sponsored conduits in connection with traditional securitization transactions approximately every two weeks during the period from 2006 to mid-July 2007. Xceed had been an asset supplier of traditional mortgage assets to Coventree sponsored conduits since 2002.

[522] On July 31, 2007, Coventree was scheduled to close a purchase of approximately $66 million of mortgages from Xceed. On July 30, 2007, Allan advised Jones that the transaction was not going to be funded by Coventree. Allan said that the transaction was being postponed because of "turbulent market conditions" at the time. Allan also referred to widening interest rate spreads, investor rebalancing of portfolios and contagion from the collapse of the U.S. subprime mortgage market as reasons for the postponement.

[523] Jones testified that some asset sales to Coventree sponsored conduits had been postponed or delayed in the past, usually for administrative reasons, and only for a day or two. He testified that Xceed had never before had a sale delayed for the reasons stated by Allan. After being advised that the sale would not proceed, Xceed sought information confirming Allan's characterization of market conditions from various sources, including CIBC and Deutsche Bank, each of whom confirmed Coventree's assessment.

[524] In an e-mail dated July 30, 2007 to Tai and Cornish, Toten recounted the "uncomfortable call" with Xceed that day, advising Xceed that Coventree was not able to fund the transaction the next day. He noted that "the liquidity in the markets is very, very bad, particularly in the ECP [extendible commercial paper] market. We are struggling to have our existing ECP roll over and are simply not in a position to add new issuance".

[525] Coventree did not have a legal obligation to complete the Xceed purchase and, accordingly, the deferral was not a default under the arrangements with Xceed. Jones testified that he considered the delay in the transaction to be temporary.

[526] Dalton testified that deferring funding for a long-term client like Xceed was a serious matter. During a call on July 30, Allan and Dalton commented to Courchesne on Coventree's failure to fund the asset purchase from Xceed as follows:

> DAVID ALLAN: Well, when you say dangerous, I mean we – we've just deferred a funding for a client that – that is – that's pretty – I mean, in the hierarchy of – of – of notches we have fallen down to, obviously, uh, drawing upon a liquidity line or extending an ABCP holder is – is obviously the – the most draconian thing we can do in this situation. But, you know, certainly deferring funding for the long term clients is – is –
>
> JUDI DALTON: Is the next.

[527] Allan testified that "if we were uniquely unable to fund clients, it would be a huge problem for Coventree's franchise, absolutely". The concern was that clients would turn to bank-sponsored transactions for funding. We do not have any evidence that Coventree was "uniquely" unable to fund transactions. Further, not all Coventree clients would have been able to access bank sponsored transactions in any event. Nonetheless, this was a very significant event for Coventree and its ongoing business.

[528] In her handwritten notes of a meeting held on July 31, 2007, Child wrote "if it gets in market that we're not a reliable funder we won't have business … right now with our spreads widening, there is a huge premium to do business with us". Child testified that she was referring to a statement made to her by someone else at Coventree, but she could not recall which meeting the notes were from, or who made the statement.

(k) Rebalancing Conduit Assets

[529] The assets of Coventree sponsored conduits were "siloed" or "ring-fenced", meaning that the assets backing each note series were segregated from assets backing other note series or held by other conduits. For example, the assets supporting Planet E notes were completely separate from those supporting Planet A notes.

[530] The Caisse's actions in reducing its holdings of Coventree sponsored ABCP with subprime exposure was of sufficient concern to Coventree that Coventree proposed to transfer or reallocate subprime assets among its conduits and note series to attempt to satisfy the Caisse's concerns (this was referred to as "**rebalancing**" the assets of the conduits). Because of the size of the Caisse's holding of Coventree sponsored ABCP, it was critically important to Coventree that the Caisse be comfortable with, and support, Coventree sponsored ABCP. Based on feedback Allan received from the Caisse, Coventree proposed to reduce the subprime exposure in each of its conduits or note series to a maximum of 15% by transferring subprime assets from one conduit or note series to another.

[531] Coventree contacted DBRS in order to begin the process of rebalancing assets, which required DBRS to confirm, after any asset transfer, the credit rating of all note series affected.

[532] On or around July 30, 2007, assets supporting Comet E notes totalling $58 million were transferred to support Planet E notes. This had the effect of reducing the subprime exposure of Comet E notes from approximately 42% to 38% and increasing the subprime exposure of Planet E notes from approximately 3% to 11%. This was the only transaction that Coventree actually implemented in which assets were reallocated as a part of the rebalancing plan.

[533] On July 31, 2007, Dalton sent an e-mail to NBF, Scotia and CIBC, copied to Allan and Paul, commenting on the increased subprime exposure in Planet E notes. She stated that "[t]he investor who bought the Planet E is aware of this small increase in % US residential subprime and our intention to continue to reduce the Comet E US subprime levels".

[534] In any event, Coventree abandoned its plan to rebalance the subprime exposure of its conduits by August 6, 2007.

535] Any reallocation of subprime assets that increased the subprime exposure of another note series raises an obvious question of fairness to investors. However, except for the transaction referred to in paragraph 532 of these reasons, no further rebalancing transactions were carried out. The question of the fairness of the rebalancing of assets is not an issue raised by Staff in the Statement of Allegations. Accordingly, we will not address it.

(l) Dealer Information Requests

[536] After the July 24 e-mail was sent, Coventree began receiving numerous information requests from the credit departments of the various dealers asking for information with respect to the assets backing Coventree sponsored ABCP. Dalton stated in the August 2, 2007 e-mail referred to in paragraph 477 of these reasons that Coventree was "getting buried" with credit requests.

[537] From July 25, 2007 to July 27, 2007, Allan communicated frequently with CIBC risk management, providing information both on subprime and CDO exposure.

[538] Paul proposed to Child on July 28, 2007 that Coventree "set up a data room and invite the credit department[s] of all our dealers". During his testimony, Paul characterized the requests for information from dealers as "overwhelming" and he suggested a data room be established so Coventree was not "trying to push a large amount of information through a small pipe".

[539] On July 29, 2007, Dalton e-mailed Allan advising him that NBF was seeking more information with respect to subprime assets, LSS transactions and all other assets backing Coventree sponsored ABCP. She also recommended that they agree on a plan and call their three "top" dealers, NBF, CIBC and Scotia, to address specific days that might have high maturities. In responding to her e-mail and the data room suggestion, Allan noted "[b]elieve me, I do understand the peril of our current situation."

[540] Paul testified that he cancelled his vacation scheduled for the week of July 30, 2007.

(m) RBC's Resignation

[541] RBC resigned as a member of the Coventree dealer syndicate on July 27, 2007.

[542] Dymott testified that, after receiving the July 24 e-mail (setting out the subprime exposure of Coventree sponsored conduits and note series), RBC expressed concern about Coventree's direction that dealers should use their discretion in selectively sending out that information to clients "with the sophistication to use it". Dymott testified that RBC believed that the

information should have been posted publicly on Coventree's website so that investors would have direct access to it. Dymott testified, however, that RBC had not specifically requested that Coventree do that.

[543] Dymott testified that:

> Well, again, you know, we just received this document [the July 24 e-mail]. We felt that it should be posted on a web site, and we had seen activity the previous week with several large institutional investors that suggested to me that they'd had the document ahead of when I was sent it. So I believed that there were problems at this point ...

[544] Dymott testified that in the week prior to RBC receiving the July 24 e-mail, the Caisse had failed to roll some Coventree sponsored ABCP that had been purchased from RBC. Dymott stated that during this time, Citibank had requested a bid on Coventree sponsored ABCP that RBC had declined to provide because of limits on its market-making lines. Dymott characterized both of these occurrences as "unusual". Dymott stated that he was unaware of the extent of the subprime exposure underlying Coventree sponsored ABCP prior to receiving the July 24 e-mail. RBC forwarded the July 24 e-mail directly to its clients on July 30, 2007.

[545] On July 30, 2007, RBC also contacted its clients holding Coventree sponsored ABCP and advised that it had resigned from the Coventree dealer syndicate. RBC indicated that its resignation was because of RBC's small role in the distribution of Coventree sponsored ABCP relative to the overall size of the market. RBC advised its clients that it would no longer provide bids on Coventree sponsored ABCP. With respect to maturing Coventree sponsored ABCP, RBC directed its clients to NBF. At the time, RBC had approximately $880 million, or approximately 8.3%, of Coventree sponsored ABCP outstanding with its clients.

[546] Coventree recognized that RBC was the largest dealer in the commercial paper markets in Canada and that its actions influenced investors. Cornish commented that RBC's resignation had the potential to "spook the market further at a critical time". Coventree was also aware that problems with RBC's trading desk (i.e., the RBC employees involved in selling Coventree sponsored ABCP) could also affect the renewal of liquidity agreements entered into between Coventree sponsored conduits and RBC.

[547] Upon learning of RBC's resignation for the first time during the July 30 Conference Call, Smith commented that "every hundred million counts here" and upon being told that RBC's share of Coventree sponsored ABCP sales was "less than a billion", he said "that's a serious amount of funding". Davidson added that "it's at the worst possible time as well".

[548] During an early morning call with Courchesne on July 30, 2007, Dalton expressed concern about investor reaction to the RBC resignation. She speculated that a large portion of the estimated $880 million of Coventree sponsored ABCP held by RBC clients was held by clients that NBF covered as well. She thought there might be a couple of hundred million dollars that did not involve NBF clients.

[549] Cornish testified that he did not speak to anyone at Coventree about the possibility of issuing a news release about the RBC resignation. Cornish concluded that RBC was a relatively small player in Coventree's dealer syndicate and he was confident that the other dealers could "pick up the slack". Nonetheless, Cornish acknowledged that RBC's refusal to offer Coventree sponsored ABCP for sale "exacerbated the liquidity difficulties that had started at that stage".

(n) August 1, 2007 Board Meeting

[550] Coventree's management convened a Board meeting on August 1, 2007, on only a few hours' notice, to discuss deteriorating market conditions (the "**August Board Meeting**"). In an e-mail to the Board setting up the meeting, Child stated that "as the markets are going crazy, we would like to convene an emergency board meeting today". Cornish testified that senior management began to consider calling the Board meeting on the morning of August 1, 2007 as a result of events that had occurred to that point. Cornish testified that "this is not a case of business as usual. That's for sure. The markets aren't settled". At the Board meeting, at least five issues or developments respecting Coventree's business were discussed. The minutes of the August Board Meeting provide as follows:

> The meeting was convened by management of the Corporation to allow it to update the Board on recent developments in the Canadian asset-backed commercial paper ("ABCP") market and their potential impact on the Corporation's business operations and assets, including the financing activities of the conduits (the "Conduits") sponsored by the Corporation. Geoff [Cornish] and David [Allan] presented this update to the Board which include, among other things, a summary of the following:
>
> 1. spread widening (that is, increasing financing rates) in the issue discount rate of liquidity backed ABCP ("A notes") and extendible ABCP ("E notes") issued on a daily basis by the Conduits;

> 2. the Conduits' ability to place new issuances of their A notes and E notes;
>
> 3. the Corporation's sense of a decreased market making capacity of the Conduits' syndicate of dealers for the Conduits' A notes and E notes;
>
> 4. movement in both international credit spreads and risk correlation, and the resulting in [*sic*] increased probability of collateral calls being issued by the conduits' counterparties in respect of their leveraged super senior transactions; and
>
> 5. the Corporation's possible responses to the recent developments in the ABCP market.
>
> Following a lengthy discussion which included numerous questions and answers, the Board instructed management of the Corporation to continue to monitor and update the Board by email and/or other means on developments in the ABCP market and their impact on the Corporation's business operations and assets. The Board further instructed Management to convene a Board meeting for an update on and possible considerations of any event(s) or occurrence(s) in the ABCP market which is significant to the Corporation's business operations or assets.

That excerpt represents the entire minutes addressing the substantive business at the meeting.

[551] In an e-mail the previous day to Tai, Cornish suggested that legal counsel should be retained for the Board meeting. The legal advice that Cornish wished to obtain related to balancing Coventree's fiduciary duties as securitization agent owed to ABCP investors and Coventree's obligations to its own shareholders. There was no evidence tendered that such legal advice was obtained.

[552] Cornish testified that, in his comments to directors at the August Board Meeting, he conveyed that:

(a) there seemed to be a retracting in the ABCP marketplace in Canada, in that it seemed like investors were taking their cash and putting it elsewhere, and that was causing difficulty in placing Coventree sponsored ABCP;

(b) the dealers' risk management groups were reviewing in detail the assets in Coventree sponsored conduits, and it was Coventree's impression that some of the dealers' market-making lines had been reduced or eliminated;

(c) there was a lot of volatility in the marketplace and the spreads on Coventree sponsored ABCP had been widened in order to induce investors to stay in the market and continue to roll Coventree sponsored ABCP, or to induce new money to come in;

(d) there was an increased probability of receiving collateral calls as a result of increased volatility, changes in the marketplace and spread widening with respect to credit default swaps, and there had been a collateral call from Citibank that had been withdrawn;

(e) one of the possibilities that Coventree was considering was selling some transactions held by the conduits, even if the sale produced a loss from the conduits' perspective, in order to provide funds to meet potential collateral calls;

(f) if the situation continued, the Board might have to make a choice between selling assets at a loss and using Coventree's equity to make the conduits whole, or letting the conduits default and preserving Coventree's equity; and

(g) he thought that the situation could last to the end of October, but he thought it would be resolved considerably sooner than that.

[553] At the August Board Meeting, Tai commented that if the circumstances were an industry-wide problem, there was likely very little Coventree could do. He noted management "to-do's" from the board meeting as (i) announce something to the public and send a draft to the Board for a quick look, and (ii) lay out some options or ideas about what Coventree should do in the future. After briefing the Board, Coventree management was asked to keep the Board advised of further developments and to provide a daily update on market conditions and the rolling of Coventree sponsored ABCP. Tai thereafter provided daily updates to the Board (see, for instance, the first e-mail update to the Board at paragraph 657 of these reasons).

[554] Tai's daily updates to the Board attempted to provide directors with a high-level assessment of events in the market related to the rolling of Coventree sponsored ABCP. Clearly, there continued to be concerns about whether Coventree sponsored ABCP would roll each day. Generally, Tai characterized a day as a "good day for Coventree" if its ABCP was rolled, whether or not the ABCP was taken into inventory by the dealers.

[555] Management and the directors of Coventree appear to have been acting responsibly in monitoring events as they unfolded with a view to Coventree complying with its disclosure obligations.

[556] The question whether or not a news release should be issued immediately was discussed at the August Board Meeting. At the meeting, Mowat went through a list of items that she speculated a Coventree shareholder might want to hear about. Those items included: (i) RBC's resignation from the dealer syndicate, (ii) collateral calls, (iii) the selling of assets that affected a material amount of backlog, and (iv) whether any agreement was breached by Coventree's failure to fund the Xceed transaction (referred to in paragraph 522 of these reasons). Cornish and Mowat testified that the outcome of the discussion was a preference by directors for Coventree to issue a news release the next day, but that was not conclusively decided. Child's notes of the August Board Meeting (referred to in paragraph 558 below) indicate that there was an "intention of releasing it before the markets open tomorrow morning …".

[557] At the August Board Meeting, Mowat asked for management's assessment of the level of concern. Tai commented that in the last 48 hours it had gone from 10 to a 7 or 6. Cornish commented that if 10 is "very, very concerned", he was high on that scale and at 7. Cornish testified that the reason he was at 7 was that Coventree still did not have a good read on exactly what the Caisse was intending to do. Mowat asked for an indication in the daily Board updates of management's level of concern.

[558] Child made handwritten notes of what we believe was the August Board Meeting, in which she listed seven issues for possible disclosure:

1. No new issue capacity
2. LSS triggers proximity
3. spread widening – growth
4. selling deals – impact on backlog
5. RBC terminated
6. Xceed funding
7. Negative carry on overfunding

[559] Child's notes also attribute to Allan the statement that "before today hadn't communicated that we don't have any new issue capacity, we're only able to roll paper". Those notes also state that "we've had unprecedented movement with both spreads + correlation". With respect to collateral calls, the notes state that "what started as US subprime caution has migrated to LSS trades + we're perched on triggers".

(o) The Draft Press Release

[560] As requested by the Board, Cornish prepared a draft news release immediately after the August Board Meeting. He decided to focus only on the issue of spread widening. He did not consult external legal counsel in preparing the draft release, but he testified that he considered the advice that Coventree had received previously from Davis & Co. to the effect that there was a rule-of-thumb that a financial impact of 5% of net income was considered material. The strategic council met first thing in the morning on August 2, 2007 to review Cornish's draft news release and their meeting focused on the question of what impact spread widening would have on Coventree's financial performance.

[561] After the strategic council meeting, Coventree management circulated a draft press release (the "**Draft Press Release**") to the Coventree Board for review. The Draft Press Release did not mention any of the other items identified in the Board minutes (referred to in paragraph 550 of these reasons), conveyed by Cornish at the meeting (see paragraph 552 of these reasons), raised by Mowat at the meeting (see paragraph 556 of these reasons) or in Child's notes of the meeting (see paragraph 558 of these reasons). The Draft Press Release provided substantially as follows:

> … [Coventree] today announced that current conditions in the Canadian ABCP market are adversely affecting current revenues and will adversely affect future revenues of Coventree if those conditions continue.

> Coventree sponsors and administers asset-backed commercial paper ("ABCP") conduits that in the aggregate have approximately [$16 billion] in fundings outstanding. Pricing for ABCP generally is typically based on a spread between the Canadian Deposit Offering Rate ("CDOR") or bankers' acceptance rates and the ABCP. Spreads on liquidity-backed ABCP and extendible ABCP issued by Coventree sponsored conduits have typically been in the range of [x to y] and [a to b] basis points above CDOR, respectively, for 30 day maturities. These spreads have historically been relatively stable.
>
> However, in recent weeks, spreads on ABCP issued by conduits sponsored by independent (or non-bank) conduit sponsors, like Coventree, have widened from historical levels. For example, spreads on 30-day liquidity-backed ABCP and extendible ABCP issued by Coventree sponsored conduits during the last two weeks have ranged from [x to y] and [a to b] basis points above CDOR, respectively. Because many of the investments held by Coventree's conduits earn a fixed spread above CDOR, this spread widening has decreased the current revenues of Coventree and, if it were to continue, will result in a material decrease in the future revenues of the Company and therefore its profitability.
>
> Coventree believes that the current spread widening was initially triggered by investors' concerns about exposure in asset-backed securities to U.S. subprime mortgages. Coventree's conduits have limited exposure to this asset class – less than 4% of the total assets in Coventree's conduits are backed by assets related to U.S. subprime mortgages, and those assets continue to perform [as expected]. However, those initial concerns appear to have lead [*sic*] to broader concerns relating to credit markets generally, including the Canadian ABCP markets. As a result, the Company is unable to predict whether ABCP spreads will return to historic levels and, if so, when, or whether Canadian ABCP spreads will continue to widen and further reduce Coventree's revenues and profitability.
>
> …

Cornish confirmed in his testimony that Coventree was unable to predict whether spreads would return to historic levels and, if so, when.

[562] On August 2, 2007, Tai circulated the Draft Press Release to members of the Board by e-mail. The e-mail included a recommendation that the press release not be issued, but that it be held for possible future release. That e-mail put the onus on the directors to advise Coventree if they disagreed with that recommendation. Ultimately, no press release was issued. The reasons for not issuing a press release on August 2, 2007 were set out in the e-mail as follows:

> 1. We just don't feel we have enough observable data points. We just don't know what is going to happen tomorrow.
>
> 2. We are currently doing the analysis on the materiality of spread widening over the last 48 hours. At this point, we don't believe things have reached that level although if things persist at this level they will shortly cross the materiality threshold.
>
> 3. In the context of Khalil [*sic*] comments [Khalil Barsoum was a member of the Board], we feel that a press release of this nature could contribute to the uneasiness of the ABCP markets.
>
> Our recommendation is to hold off on the press release, but have it ready if the uneasiness in the markets persist. Given the board decision was to consider issuing a press release, what I suggest we do is call an emergency board meeting if anyone feels strongly that we absolutely have to issue a press release today.

We comment on those reasons for not issuing a news release in paragraph 756 of these reasons.

[563] Cornish testified that from Coventree's perspective, issuing a press release of this nature "could do more harm than good".

[564] According to Child's notes of the August Board Meeting, Khalil Barsoum, a director, commented during the meeting that "at the same time, we don't want to generate a run on the bank".

[565] He also commented that "I do not feel strongly yet about issuing the press release. I do feel however, that it is a good idea to issue one; it should reflect the facts and reality as we all see it, without raising alarm beyond what is appropriate".

[566] Mowat's feedback on the Draft Press Release was that if "the world can stay as it is today", the proper place for the disclosure of these events would be in Coventree's MD&A. The Board was scheduled to review and approve third quarter MD&A at a Board meeting on August 13, 2007. Brendan Calder, another board member, responded that "the situation isn't clear enough or material enough yet". Another board member, John Rogers, stated that "I suspect we may have a few more bad days…".

(p) Preparations for a Market Disruption

[567] If a market disruption occurred, there were protocols that had to be followed by Coventree as securitization agent, and notices that were required to be given, in order for a conduit to access the liquidity provisions backing the ABCP issued by that conduit or to extend the term of extendible ABCP.

[568] On July 25, 2007, Coventree called an internal meeting to discuss and review market disruption procedures. By that date, dealers had been asking Coventree for details respecting liquidity agreements and the liquidity drawdown protocols. Paul testified that the meeting on July 25, 2007 was called because Coventree had observed enough days in a row that gave them cause for concern and that "it was certainly conceivable at some point that the market disruption protocols might be required".

[569] Scotia, Nereus's lead dealer, also recognized that a market disruption was a possibility. On July 27, 2007, Scotia asked for the drawdown protocols for each transaction in the Nereus conduits. Morley Conn of Scotia said, "don't want to alarm, but I should have this at my fingertips".

(q) Summary of Market Conditions as of August 1, 2007

[570] In summary, after the July 24 e-mail was circulated to dealers, and over the period leading up to and including Wednesday, August 1, 2007, the evidence leads us to conclude that there were the following changes in market conditions applicable to Coventree sponsored ABCP:

(a) there was no new issue capacity for Coventree sponsored ABCP;

(b) there was a significant reduction in demand for ABCP issued by Coventree sponsored conduits including, in particular, extendible E notes and those note series with the highest subprime exposure;

(c) dealers reported difficulty in rolling ABCP issued by Coventree sponsored conduits;

(d) the term for which some investors "rolled" their ABCP became shorter and there was a significant increase in overnight rolls;

(e) it took longer each morning for the dealers to complete sales of Coventree sponsored ABCP and more ABCP was being returned to NBF as leader of the syndicate;

(f) there appeared to be some flight to quality, meaning some investors were trading out of third-party sponsored ABCP to bank-sponsored ABCP or government debt;

(g) dealers were reporting that their market-making lines for Coventree sponsored ABCP were fully or close to fully extended; and

(h) dealers were not providing bids for Coventree sponsored ABCP in the secondary market.

All of these developments and changes in market conditions also applied to and affected Nereus sponsored conduits.

(r) Public Information as to Interest Rate Spreads

[571] We understand that there is no publicly available source of historical interest rate data for the Canadian ABCP market. At the hearing, Cornish provided information with respect to spread widening in the July and August 2007 time period, based on the trading of ABCP issued by its Rocket Trust. Staff submits that the Rocket Trust was the largest and most liquid of Coventree's conduits with the most ABCP outstanding. Neither Rocket A nor Rocket E notes had any subprime exposure and would therefore not have been affected by the same liquidity issues experienced by Comet E and Planet A notes, which had the highest subprime exposure (42% and 26% subprime exposure, respectively, based on the July 24 e-mail).

[572] In contrast, Staff relied upon the spread widening shown in Coventree's daily data summaries which were prepared by Coventree at the end of each trading day. However, there is not a great deal of difference between the interest rate spreads relied on by Coventree and those relied upon by Staff.

[573] Cornish also testified that there were occurrences in the past of significant spread widening in Canadian credit markets. These included:

(a) in 1992 and 1993, spread widening associated with credit concerns relating to the solvency of Olympia & York;

(b) in 1995, spread widening around the time of the Quebec referendum;

(c) in 1998, spread widening associated with the collapse of Long-term Capital Management and with the Russian debt crisis;

(d) in 1999, spread widening associated with Y2K; and

(e) in 2005, spread widening associated with General Motors Acceptance Corporation ("**GMAC**") credit rating downgrades.

Allan testified that Coventree was not selling ABCP prior to the fall of 1998 and that Coventree sponsored ABCP was not directly affected by the spread widening associated with the GMAC downgrades.

[574] Clearly, all of these examples relate to extraordinary outside events or developments and are quite different from the circumstances facing Coventree in 2007. During the July 30 Conference Call, Smith noted, "I mean, we have to remind ourselves, we are in uncharted territory". Allan testified that he agreed with this statement. In the same call, Allan noted "in 1998, we didn't have extendables [*sic*]. We didn't have CDO assets. … The contagion didn't really touch as closely as it does to the actual assets that are in the conduits as what we are talking about now … the subprime explosion is going to be felt through the whole CDO market throughout the globe this time".

[575] Allan testified that, in previous periods of illiquidity which affected the bank-sponsored ABCP market, banks used their market-making lines to support the market. Allan indicated, for example, that there was an oversupply of ABCP in the winter of 1998 and again in 1999 when issuances of ABCP outpaced the absorption rate of the market; these challenges were buffered by the purchases of ABCP by the banks. Allan testified that in those two time periods, the banks simply increased their inventories of ABCP. In connection with the GMAC-related liquidity issues in 2005, Allan testified that bank market-making lines were used to take ABCP into inventory until investor confidence returned.

[576] Both Cornish and Allan testified that past crises involving spread widening gave them some comfort that spreads would eventually narrow again. But in the "Frequently Asked Questions" speaking notes prepared on August 7, 2007, it was stated that:

> There have been credit events that have occurred throughout the history of the credit markets; however, we believe that this current situation is unique and we are not able to use the past to predict the future of the current situation with which we are faced.

(See paragraph 712 of these reasons.)

[577] It appears to us that, by the close of business on August 1, 2007, spread widening was at an unprecedented level with respect to Coventree sponsored ABCP.

6. Analysis and Conclusions

[578] The question we must determine is whether a material change occurred with respect to Coventree on August 1, 2007, or thereafter and prior to the market disruption that occurred on August 13, 2007. Because of our conclusion below that material changes occurred with respect to Coventree by the close of business on August 1, 2007, we will first address the events and developments as they existed by the close of business on August 1, 2007. We summarise the events and developments in the period after August 1, 2007 commencing at paragraph 655 of these reasons.

[579] The first question we must address is whether a change in Coventree's business or operations occurred as a result of events and developments during the period leading up to and including August 1, 2007.

(a) Did a Change Occur in Coventree's Business or Operations?

Coventree's Business

[580] The definition of "material change" in the Act requires us to determine whether there was a change in the "business, operations or capital" of Coventree during the relevant period. There is no evidence to suggest that there was any change in Coventree's "capital" for this purpose.

[581] We have described Coventree's business beginning at paragraph 76 of these reasons. Coventree was in a capital markets business focused principally on carrying out through its sponsored conduits traditional securitizations and credit arbitrage transactions. That business includes the business of Nereus, its wholly owned subsidiary as of May 10, 2007, and the conduits sponsored by Nereus.

[582] In our view, one should not take a supercritical or technical approach to the interpretation of what constitutes a change in the business or operations of an issuer for purposes of the definition of "material change" in the Act (see paragraph 146 of these reasons). It is clear in this case that actions taken by DBRS and other external events and developments that were affecting the ABCP credit market had direct effects on and changed Coventree's business. Coventree's principal business involved acting as securitization agent in sponsoring and managing conduits that issued ABCP. At the date of the Prospectus, Coventree sponsored conduits had fundings outstanding of more than $12 billion (not including Nereus fundings) (see the excerpt from the Prospectus set out in paragraph 584 of these reasons). Coventree received fees and other revenue based on the funding transactions carried out by Coventree sponsored conduits and its revenue backlog was derived from the fundings outstanding (see paragraph 355 of these reasons). Accordingly, the ability of Coventree sponsored conduits to carry out securitization transactions, to issue ABCP and to "roll" ABCP as it matured, was a crucial part of Coventree's business. That is clear from the disclosure in the Prospectus.

[583] We discussed earlier in these reasons the Commission's conclusion in *Re Rex Diamond* that a change occurred in Rex Diamond's business and operations when it became legally unable to access its mining properties in order to extract diamonds (see paragraph 154 of these reasons). We note, in this respect, that the inability of Coventree sponsored conduits to issue ABCP is analogous to the inability of Rex Diamond to access the relevant mining properties and to extract diamonds. In both cases, the result is that the relevant issuer became unable to carry on its principal business.

[584] Accordingly, any substantial disruption in the business activities of a Coventree or Nereus sponsored conduit directly affected and changed Coventree's business. The Prospectus notes the potential consequences to Coventree of a disruption in the ABCP market:

> If the Canadian ABCP marketplace were to encounter a circumstance of crisis proportions resulting in a cessation or fundamental adverse shift in the normally highly liquid market, such a disruption would pose a serious funding problem for Coventree. The disruption could be a general market disruption or one focused on ABCP issued by Coventree's conduits, where investors no longer purchase ABCP issued by the Company's sponsored conduits. *In either case, such a market disruption would not only prevent conduits sponsored by Coventree from issuing new paper necessary to acquire new deals, but also could prevent the conduits from rolling their outstanding ABCP*. With more than $12 billion[1] of ABCP outstanding, which ordinarily matures over varying durations ranging from overnight to more than 90 days, Coventree's conduits rely on their ability to issue new ABCP to finance the payout on the maturing ABCP on a daily basis. Given that conduits sponsored by the Company typically roll over a quarter of a billion dollars of commercial paper per day, if a disruption were to occur, Coventree's sponsored conduits could be exposed to a demand for payment well in excess of the Company's cash reserves. *Although Coventree has no legal obligation to fund the conduits to buy back ABCP from investors in the event of a disruption, Coventree's reputation in the industry and ongoing ability to access the capital markets could be severely adversely impacted if it did not or could not do so.*
>
> Further, if Coventree did not support a conduit that was unable to roll its outstanding ABCP as a result of a market disruption, it is likely that this circumstance would lead to an event of default, as defined in the constating documents that established the conduit. *Such an event of default could result in the termination of the contractual arrangements between Coventree and the conduit pursuant to which Coventree acts as the securitization agent of that conduit and which are the primary source of Coventree's revenues*. As noted above, a market disruption is, in effect, a severe imbalance between the supply and demand for the ABCP issued by Coventree-sponsored conduits and could be caused by factors that relate to the ABCP market generally … or factors that relate solely to the ABCP issued by Coventree-sponsored conduits … [emphasis added]
>
> (Prospectus, p. 59)

[1] As of June 30, 2006, excluding Nereus.

That is a fair summary of the circumstances Coventree was facing in the days leading up to the market disruption on August 13, 2007.

[585] Further, Coventree did not dispute that when Coventree sponsored conduits became unable to roll a portion of their maturing ABCP on Monday, August 13, 2007, that event constituted a material change with respect to Coventree. Coventree immediately issued a news release as a result of that material change.

[586] The fact that Coventree sponsored conduits are separate legal entities and that Coventree is not legally liable to repay the ABCP issued by those conduits does not affect our conclusion in paragraph 582 of these reasons.

[587] We discuss below the specific changes in Coventree's business or operations that occurred as a result of the events and developments during the period leading up to August 1, 2007 (see paragraph 590 of these reasons).

[588] In *Danier*, the Supreme Court of Canada held that changes in the intra-quarterly results of operations of an issuer as a result of an external factor or event such as the weather, does not, by itself, constitute a change in the business, operations or capital of an issuer for purposes of the definition of "material change" in the Act. The Court noted, however, that changes made by an issuer to its business *in response to an external event or development* can give rise to a material change. We also consider it clear that where an external event or development has a direct effect on, and changes or interferes with, the business or operations of an issuer, that external event or development can give rise to a change in the issuer's business or operations for purposes of the definition of "material change" in the Act. The changes in Coventree's business and operations discussed below are not limited to changes in financial results caused by external events or developments.

[589] Further, we interpret Child's notes from the telephone call with legal counsel on August 6, 2007 as suggesting that substantially similar legal advice was given to Child (see paragraph 698 of these reasons). Child's notes indicate that events "whether market forces" or not that are "likely to impact" the business must be disclosed. Accordingly, at least by August 6, 2007, Coventree was aware of the possibility that changes to its business as a result of external events or developments were required to be publicly disclosed.

(b) Changes in Coventree's Business by the Close of Business on August 1, 2007

[590] In our view, the following changes in Coventree's business or operations had occurred by the close of business on August 1, 2007:

(i) Inability to Issue New ABCP

By August 1, 2007, Coventree sponsored conduits were unable to issue any new ABCP because of the lack of liquidity in the market. As a result, Coventree could not, through those conduits, carry out any traditional securitization transactions and could not purchase assets from its traditional asset providers. That resulted in Coventree being unable to fund the purchase of mortgages from Xceed, one of its important asset providers, on July 30, 2007. Further, Coventree sponsored conduits could not enter into new credit arbitrage transactions because of the lack of liquidity in the market and because of the DBRS January Release. (We recognise, in this respect, that we have previously concluded that the DBRS January Release itself constituted a material change with respect to Coventree.)

That meant that by August 1, 2007, Coventree was unable to carry out through Coventree or Nereus sponsored conduits either traditional securitizations or credit arbitrage transactions. Those transactions represented approximately 90% of Coventree's revenues for the period ending June 30, 2007.

Further, because Coventree was unable to issue any new ABCP, it could not fund the purchase of maturing ABCP or potential collateral calls, or replace assets that were sold by the conduits to generate cash.

In effect, Coventree could not carry on its securitization business because its sponsored conduits could not do any new fundings.

(ii) Difficulty Rolling Outstanding ABCP

By August 1, 2007, Coventree sponsored conduits were having difficulty rolling outstanding ABCP as it matured because of the lack of liquidity in the ABCP market. Coventree knew from conversations with its dealers that the dealers were finding it increasingly difficult to roll Coventree sponsored ABCP and were having to purchase Coventree sponsored ABCP into inventory pursuant to their market-making lines. By August 1, 2007, those dealers were expressing high levels of concern that their market-making lines were fully or close to fully extended. The lack of liquidity in the market also meant that a substantial amount of ABCP was being rolled on an overnight basis. That increased the amount of maturing ABCP on the following days. Coventree knew that if any maturing ABCP did not roll, there would be a default.

Increased overnight rolls also required Coventree to monitor the liquidity agreements related to A notes, on a daily basis, to ensure compliance with those agreements (see paragraphs 466 and 467 of these reasons). Overnight rolls increased the risk that holders of A notes might lose the benefit of the liquidity agreements.

Coventree also knew that the Caisse wished to reduce its holdings of Coventree sponsored ABCP as well as its overall exposure to the ABCP market. While the Caisse supported the ABCP market for the short-term after the August 4, 2007 long weekend, the decision by the Caisse to reduce its holdings had the potential to significantly and adversely affect the ABCP market as a whole, and Coventree's business in particular. By saying that, we are not suggesting that the Caisse's decision to reduce its overall holdings of ABCP constituted a change in Coventree's business. Rather, that was an important factor, known by Coventree, affecting market liquidity for Coventree sponsored ABCP.

The ability of Coventree sponsored conduits to roll maturing ABCP was a critical element of Coventree's business. If there were no purchasers of Coventree sponsored ABCP, there would be a default by its conduits in repaying maturing ABCP regardless of the credit quality of the assets backing that ABCP. Adequate market liquidity and the ability to roll ABCP were essential to a business model that used short-term borrowings (in the form of ABCP) to finance longer-term assets (held by Coventree sponsored conduits or to which those conduits had exposure).

(iii) ABCP Spread Widening

There was a very substantial widening of interest rate spreads for Coventree sponsored ABCP on August 1, 2007 (see paragraph 499 of these reasons). That spread widening was, at least in part, the reason for Coventree calling the August Board Meeting and led Cornish to prepare the Draft Press Release describing the impact of spread widening on Coventree's revenues. While we recognise that by August 1, 2007, spread widening had occurred over only a relatively few days, nonetheless we believe, based on the evidence, that Coventree viewed that spread widening as unprecedented with respect to Coventree sponsored ABCP. Child's e-mail to the Board calling the August Board Meeting indicated that "the markets are going crazy". In addition, spreads on Coventree sponsored ABCP relative to the spreads on bank sponsored ABCP had widened dramatically.

Spread widening affected Coventree's revenues and net income as ABCP matured and was rolled at higher interest rates. It also affected the viability of Coventree's securitization business. If spread widening made the cost of funds from issuing ABCP too high, then the return on the underlying assets of a conduit would not be able to support the payment of interest on the ABCP. That meant that Coventree had to also consider whether spread widening had reached a level at which Coventree would not be able to compete for the business of its traditional asset originators (see paragraphs 526 and 527 of these reasons).

While significant spread widening had occurred in the past based on extraordinary events such as the Russian debt crisis (see paragraph 573 of these reasons), there is no question that the spread widening that occurred in the ABCP market by the close of business on August 1, 2007 was unprecedented with respect to Coventree sponsored ABCP and reflected very significant changes in the level of liquidity available in the market.

We reach that conclusion notwithstanding the fact that Coventree concluded that the immediate financial impact of increased interest rate spreads was negligible and had not reached a level of materiality by August 1, 2007. We recognise that increased spreads only affect ABCP as it matures. However, the immediate financial impact of spread widening was only one quantitative consideration in assessing the materiality of spread widening. The qualitative impact of spread widening on Coventree's business also had to be considered.

ABCP was sold as a very safe short-term investment and historically was issued at very small interest rate spreads above CDOR (A notes were typically issued, for example, at one to three basis points over CDOR). Any substantial increase in interest rate spreads could affect the viability of Coventree's business.

(iv) Credit Default Swap Spread Widening

Spread widening with respect to credit default swaps meant that Coventree sponsored conduits were close to triggers for collateral calls on LSS transactions. If collateral calls occurred, the financial impact could be extreme given the high leverage inherent in LSS transactions. Coventree did not have the ability to issue new ABCP to fund collateral calls. The conduits' only source of cash for this purpose came from normal course amortization of transactions and asset sales.

Childs' notes of the August Board Meeting indicate that "we've had unprecedented movement with both spreads + correlation" (see paragraph 559 of these reasons).

It is clear from the evidence that, by August 1, 2007, Coventree, Cornish, Tai and Allan were extremely concerned about the possibility of collateral calls.

(v) Sales of Assets

By July 20, 2007, Coventree was selling conduit assets to generate cash in the conduits. That was a change made by Coventree in its business in response to external events and developments in credit markets.

By August 1, 2007, Coventree sponsored conduits had accumulated cash of approximately $188 million that was expected to increase to $610 million by Tuesday, August 7, 2007 (see paragraphs 513 and 667 of these reasons). The sale of assets to generate that cash reduced Coventree's revenue backlog, although we note that Coventree had concluded that the reduction in revenue backlog was not material at that time because of the particular assets that had been sold.

In addition, where assets were sold by the conduits to generate cash, there were potential losses on those sales and "negative carry" in terms of the return on the liquid assets held relative to the interest being paid on the affected ABCP (see paragraphs 517 to 520 of these reasons).

[591] In our view, each of the events and developments referred to in paragraph 590 of these reasons, were changes in Coventree's business or operations. Among other changes in its business, Coventree was unable to carry out through its sponsored conduits any traditional securitization transactions or any credit arbitrage transactions and there was increasing difficulty rolling Coventree sponsored ABCP as it matured. Spread widening was beginning to affect Coventree's financial returns but, more important, had implications for the ongoing viability of its business. In response to these developments, Coventree sponsored conduits were selling assets worth millions of dollars to generate cash for possible collateral calls. Coventree sponsored conduits were "perched on" collateral call triggers. In our view, these events and developments were changes in Coventree's business or operations. While external events and developments gave rise to those changes, it is the changes in Coventree's business or operations as a result that form the basis for a potential material change.

[592] *We would add that public shareholders and investors would have been unaware of the changes in Coventree's business or operations referred to in paragraph 590 of these reasons.*

(c) Material Changes Occurred

[593] In our view, the events and developments referred to in clause (i) of paragraph 590 of these reasons constituted changes in Coventree's business or operations that would reasonably be expected to have had a significant effect on the market price or value of Coventree shares. Those events and developments therefore constituted a "material change" with respect to Coventree, within the meaning of section 75 of the Act, that occurred by the close of business on August 1, 2007.

[594] Further and in any event, the events and developments referred to in clauses (i) to (v) inclusive of paragraph 590 of these reasons, taken together, constituted changes in Coventree's business or operations that would reasonably be expected to have had a significant effect on the market price or value of Coventree shares. Those events and developments therefore constituted a "material change" with respect to Coventree within the meaning of section 75 of the Act, that occurred by the close of business on August 1, 2007.

[595] As a result of our conclusions in paragraphs 593 and 594 of these reasons, Coventree was required to forthwith issue a news release on August 2, 2007, and to file a material change report as soon as practicable and in any event within 10 days following that date. Coventree failed to do so. Coventree thereby breached subsections 75(1) and (2) of the Act.

[596] We would add that the test to determine materiality is whether any of the events and developments referred to in paragraph 590 of these reasons, considered separately or together, would reasonably be expected to have had a significant effect on the market price or value of Coventree shares. Clearly, an event or development that would have that effect would be important to a reasonable shareholder or investor in making an investment decision with respect to Coventree shares. It is clear to us that if Coventree had informed a reasonable shareholder or investor of the facts that:

(a) its conduits were unable to carry out any new securitization transactions, whether traditional securitizations or credit arbitrage transactions;

(b) its conduits were unable to purchase assets from Coventree's traditional asset originators;

(c) its credit arbitrage business, which until very recently had represented approximately 80% of its revenues, was viewed by Coventree as dead or dying;

(d) the business of its wholly-owned subsidiary, Nereus, was no longer viable;

(e) its conduits were unable to issue any new ABCP for any purpose including for buying back maturing ABCP or funding possible collateral calls;

(f) its conduits were having increasing difficulty rolling their maturing ABCP and were doing so only with the reluctant market support of the Caisse in rolling its holdings of Coventree sponsored ABCP;

(g) interest rate spreads on Coventree sponsored ABCP had widened to an unprecedented level;

(h) its conduits were "perched on" collateral call triggers;

(i) its conduits were selling assets worth millions of dollars to accumulate cash to fund possible collateral calls;

(j) there was a very substantial supply/demand imbalance in the ABCP market (see paragraph 598 below); and

(k) Coventree had no way of knowing if or when market conditions would return to normal;

that shareholder or investor would have considered that information critically important in making an investment decision with respect to Coventree shares. That means, in our view, that those events and developments would reasonably be expected to have had a significant effect on the market price or value of Coventree shares. That is the common sense conclusion in all of the circumstances.

[597] We note in this respect that all of the events and developments referred to in paragraph 590 of these reasons had been communicated to the Board at the August Board Meeting (as reflected in a combination of the minutes of the August Board Meeting (see paragraph 550 of these reasons), the matters conveyed by Cornish at that meeting (see paragraph 552 of these reasons) and Child's notes of the meeting (see paragraph 558 of these reasons)).

[598] It is not important to our conclusions what was causing the liquidity related problems Coventree sponsored conduits were experiencing by August 1, 2007. Staff submits that an important factor was the subprime exposure of certain Coventree sponsored conduits or note series. On the other hand, Coventree submits that, by July 31, 2007, it was clear that the liquidity related issues and spread widening were due to a supply and demand imbalance in the ABCP market caused by the global credit crisis.

[599] The question we are addressing is whether a change or changes occurred in Coventree's business or operations for purposes of the definition of "material change" in the Act. We have concluded above that there were a number of such changes to Coventree's business or operations and that those changes were material within the meaning of the definition of "material change" in the Act. Subject to the discussion commencing at paragraph 621 of these reasons, the question of what gave rise to those changes in Coventree's business or operations does not ultimately affect our analysis or conclusions.

(d) RBC's Resignation

[600] RBC resigned as a member of the dealer syndicate on Friday, July 27, 2007. The RBC resignation is a relevant consideration because (i) it would have raised a question for investors as to why RBC resigned, and (ii) it meant that other members of the dealer syndicate would have to address the rolling of Coventree sponsored ABCP previously sold by RBC, as it matured. That potentially affected the liquidity of Coventree sponsored ABCP.

[601] Both Cornish and Allan acknowledged that RBC was the largest dealer in the Canadian commercial paper market. Cornish testified that RBC's resignation had the potential to "spook the market further at a critical time".

[602] We believe that the RBC resignation caused a change in Coventree's business or operations. As a result of that decision, which was clearly an external or outside event beyond Coventree's control, the make-up of Coventree's dealer syndicate changed and Coventree was no longer able to distribute ABCP through RBC. The question is whether that change was material.

[603] RBC appears to have distributed approximately 5% of the Coventree sponsored ABCP then outstanding. At the time of RBC's resignation, that meant that approximately $880 million of Coventree sponsored ABCP was held by RBC clients, many of whom would also have been clients of other members of the dealer syndicate. While RBC's resignation meant that those other members of the dealer syndicate would have to address the rolling of the affected ABCP as it matured, it does not appear to us, based on the evidence, that they were unable to do so. Nor does it appear to us, based on evidence, that the reason why RBC resigned was a significant factor in the circumstances in assessing the materiality of that event.

[604] Accordingly, we conclude, on balance, that the resignation of RBC from the dealer syndicate would not reasonably be expected to have had a significant effect on the market price or value of Coventree shares. We find, as a result, that the RBC resignation from the dealer syndicate did not itself constitute a "material change" with respect to Coventree within the meaning of the Act.

(e) Events Subsequent to August 1, 2007

[605] Following August 1, 2007, events and developments continued to occur that affected Coventree's business or operations. Those events and developments are summarized beginning at paragraph 655 of these reasons. They include the following:

(a) There continued to be liquidity related issues affecting the ability of the dealers to roll Coventree sponsored ABCP. We note, in this respect, that the decision of the Caisse to support Coventree sponsored ABCP during the week commencing Tuesday, August 7, 2007 relieved some of that pressure and temporarily avoided a default by Coventree sponsored conduits. Coventree knew, however, that was a short-term solution;

(b) Market liquidity for ABCP was negatively affected by the $3 billion ABCP issuance on Friday, August 3, 2007 sponsored by RBC and TD Bank. Allan believed that a substantial portion of that issuance was taken into inventory by RBC and TD Bank and would have to be sold in the market in the future. There is no question that issuance had a significant adverse effect on liquidity in the ABCP market (as reflected by Allan's comments at the time (see paragraph 671 of these reasons)). That transaction also demonstrated that liquidity for bank-sponsored ABCP was greater than for third-party sponsored ABCP;

(c) The risk of collateral calls continued to increase. On Friday, August 3, 2007, Coventree's calculations showed that collateral calls had been triggered for two transactions and that two other transactions were close to the triggers. We acknowledge in this respect that no valid collateral calls were ultimately made before the occurrence of the market disruption on August 13, 2007;

(d) On Friday, August 3, 2007, Tai confirmed that $60 million of cash had been used by a Nereus conduit to purchase Planet A notes. That is evidence that the liquidity for Coventree sponsored ABCP with subprime exposure had been negatively affected;

(e) By Sunday, August 5, 2007, legal counsel had been retained and was working to prepare the notices and documents necessary for possible liquidity calls on A notes and for extensions of E notes;

(f) Spreads on Coventree sponsored ABCP continued to widen on Tuesday, August 7, 2007, to 23 basis points over CDOR for the A notes and to approximately 37 basis points over CDOR for the E notes. That spread widening was unprecedented with respect to Coventree sponsored ABCP and was in part the price for the Caisse's market support during the week of August 7, 2007. At that time, there was a gap of approximately 15 basis points between the interest rates on Coventree sponsored A notes and on bank sponsored ABCP. That was approximately double the typical difference in spreads; and

(g) As previously noted, on August 8, 2007, after Citibank had earlier agreed to rescind its two collateral calls (see paragraphs 506 and 507 of these reasons), Coventree voluntarily posted cash collateral of $25 million for each of two Citibank transactions in order to provide an additional cushion before a collateral call could be triggered.

[606] Given the conclusion we have reached that material changes in Coventree's business occurred by the close of business on August 1, 2007, it is not necessary for us to assess the materiality of these further events and developments. Most of them were a continuation of events and developments that were occurring by August 1, 2007.

(f) Risk of Market Disruption

Submissions

[607] Staff also alleges that Coventree was aware by August 3, 2007 that the level of risk of a market disruption had significantly increased and that there was an imminent risk of a market disruption occurring. Staff submits that constituted a "material change" with respect to Coventree within the meaning of the Act.

[608] Coventree submits that a change in risk does not constitute a change in its business, operations or capital for purposes of the definition of "material change" in the Act. Coventree says that a change in risk relates to a prospective change that becomes an actual change in its business only when the events or developments reflected in the risk actually occur. Coventree submits that it is not appropriate for an issuer to be required to predict and publicly disclose the possibility of a future material change; disclosure is only required when a material change has actually occurred.

[609] Coventree also submits that the only Commission decisions that address a change in risk as constituting a possible material change are *Re YBM Magnex* and *Re Rex Diamond*. In both these cases, Coventree says there was an actual change in business associated with the relevant increased risk. In *Re YBM Magnex*, that change was the decision of the auditors of

YBM Magnex International Inc. ("**YBM**") not to perform any further audit procedures until a forensic audit was carried out. That meant that YBM would be unable to file audited financial statements as required by applicable securities law and that a cease trade order would be issued by the Commission. In *Re Rex Diamond*, Rex Diamond knew that the Sierra Leone government had given notice of the termination of its key mining leases. That meant that a risk of the termination of those claims had become a reality. As a result, Coventree submits that the references in *Re YBM Magnex* and *Re Rex Diamond* to a risk giving rise to a material change should be understood in that context.

Analysis

[610] In our view, there is a real legal question whether a change in a risk to which a business is subject constitutes a change in the business itself that can form the basis of a "material change" within the meaning of the Act. In this respect, it may be that some risks form part of an issuer's business while other risks are properly viewed as outside or external risks not forming part of the business.

[611] The Commission concluded in *Re YBM Magnex* that "facts that give rise to a material risk are material facts" within the meaning of the Act (*Re YBM Magnex, supra,* at para. 87). As a result, material risks were required to be disclosed by YBM in its prospectus and certain of those material risks were not disclosed. The Commission also considered whether the audit suspension by YBM's auditors was a change in the business, operations or capital of YBM within the meaning of the definition of "material change" in the Act. The Commission stated that, in the particular circumstances, "the risk regarding the filing deadline and likely cease trade order constituted a material change". That conclusion was reached, however, based on the auditors' communication to YBM that they would not carry out the YBM audit unless a forensic audit was done. As a practical matter, YBM knew that it would not be able to file audited financial statements by the filing deadline and that, as a result, a cease trade order would be issued by the Commission in respect of YBM securities.

[612] In *Re Rex Diamond*, the Commission commented that:

> We find it problematic that Rex had knowledge of the fact that it could potentially lose its Leases and Rex never revealed the final notice warning letter dated June 5, 2003 to the public. In our view, Rex should have issued a material change report when it initially learned that there was a risk that it would lose the Leases. This is because the loss of a right to mine for diamonds would impact the operations of a diamond exploration company such as Rex and this in turn would affect Rex's ability to generate profit and share price would be affected accordingly.

[613] The Commission also stated, however, that:

> Similar to the Notice of Tender, the Tender Evaluation signalled that a change occurred in Rex's operations and assets because it established that the Leases once belonging to Rex had been officially transferred to another company. Rex's ability to operate in Sierra Leone was significantly changed.

[614] As a practical matter, Rex Diamond knew that its mining leases were being terminated by the Sierra Leone Government and transferred to another company. Rex Diamond failed to make any disclosure of those circumstances.

[615] We do not read the decisions in *Re YBM Magnex* or *Re Rex Diamond* as concluding more generally that any significant change in the risks to which a business is subject necessarily constitutes a change in the issuer's business, operations or capital for purposes of the definition of "material change" in the Act.

[616] In the circumstances before us, we are not prepared to conclude that the change in the risk of occurrence of a market disruption in the ABCP market in the days leading up to August 13, 2007, constituted a change in Coventree's business or operations for purposes of the definition of "material change" in the Act. That was an external risk dependent on a complex interaction of market forces and the individual actions of market participants, that were beyond the control and knowledge of Coventree. We do not believe that the obligation to disclose material changes under the Act required Coventree to issue a news release speculating on or attempting to predict whether a market disruption would occur.

[617] At some point, a material risk may, for practical purposes, become a reality. That was the case in *Re YBM Magnex* and *Re Rex Diamond*. In our view, it was not the case in this matter.

[618] We have concluded that there were changes in Coventree's business or operations as a result of the events and developments referred to in paragraph 590 of these reasons that constituted a "material change" within the meaning of the Act. Further, in our view, the imminent risk of a market disruption in the days leading up to August 13, 2007 constituted a "material fact" with respect to Coventree within the meaning of the Act. In our view, however, the change in the risk of occurrence of a market disruption did not constitute a "material change" within the meaning of the Act.

[619] Determining whether a change has occurred in an issuer's business, operations or capital is a different question than determining the materiality of a contingent or speculative event. The Commission has in certain decisions applied the "probability/magnitude test" under U.S. securities law in making determinations as to the materiality of contingent or speculative events (see, for instance, *Re Donnini, supra,* at para. 131, and *Re YBM Magnex, supra,* at para. 92). The Commission stated in *Re AiT*, however, that the probability/magnitude test "is not particularly useful in determining whether a change has occurred, which is crucial in this case" (*Re AiT, supra,* at para. 207, *Re Rex Diamond, supra,* at para. 202). The question whether a change had occurred in Coventree's business or operations is the crucial question in this case. Further, in determining materiality in this matter, we are applying a statutory definition that requires a determination whether an event or development would reasonably be expected to have had a significant effect on the market price or value of Coventree shares. *In our view, there is no question as to the materiality to public shareholders and investors of the events and developments affecting Coventree and its business by the close of business on August 1, 2007.*

[620] Finally, we note that an issuer is required to disclose material risks in a prospectus and in its MD&A. Section 21.1(3) of the Prospectus Form requires an issuer to "describe any risk factors material to the issuer that a reasonable investor would consider relevant to an investment in the securities being distributed …" Further, Part 1(a) of Form 51-102F1 – *Management's Discussion and Analysis* – requires an issuer to "discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future …". Accordingly an issuer is required to disclose material risks and significant changes in those risks in its MD&A.

(g) Changes as External Events or Developments

[621] Coventree submits that the events and developments affecting its business during the period from late July to August 13, 2007 were quintessential external events or developments that were beyond its control. Coventree submits that the principal external development affecting its business was the lack of liquidity in Canadian and international credit markets triggered by the subprime mortgage crisis in the United States. Coventree described those external factors in the Draft Q3 MD&A sent by Child to Tai on August 8, 2007 as follows:

> In recent weeks, the market value of many investments around the world has fallen beginning with U.S. subprime mortgage loans and related securities and then spreading outwards. Problems that initially seemed isolated to a few U.S. subprime mortgage lenders are beginning to propagate across markets and borders in anomalous and unpredicted ways and degrees. Those problems have led to broader concerns relating to debt capital markets generally and it now appears that they have begun to affect the Canadian asset-backed commercial paper ("ABCP") market. It appears that some investors are reducing, or eliminating, their investments in the Canadian ABCP market, including ABCP issued by conduits sponsored by independents such as Coventree. Combined with recent large new ABCP issuances from bank-sponsored conduits, this has resulted in what we believe to be an imbalance between the supply and demand for ABCP in Canada. This imbalance has resulted in a widening of spreads generally in the Canadian ABCP market and the absence of capacity for new issuance by independent conduit sponsors.

(See the discussion of the Draft Q3 MD&A commencing at paragraph 730 of these reasons.) Because these were external events or developments, Coventree submits that it was not required to disclose them by news release in accordance with section 75 of the Act. Coventree relies in this respect on the principle reflected in section 4.4 of NP 51-201 (see paragraph 152 of these reasons).

[622] Section 4.4 of NP 51-201 is premised on the assumption that investors will be aware of external economic developments and their general effects on reporting issuers. Where those developments occur, and do not have an uncharacteristic effect on a particular issuer, no material change disclosure by a reporting issuer may be required. In our view, the circumstances we are addressing in this proceeding are not economic developments of the nature contemplated by section 4.4 of NP 51-201. There is no question that the international credit crisis in 2007 affected the Canadian ABCP market and that those events and developments were external and beyond Coventree's control. However, public shareholders and potential investors in Coventree shares had very limited knowledge of the ABCP market and of events and developments affecting that market (see, for instance, the risk factor referred to in paragraph 267(j) of these reasons). Public shareholders and investors would certainly not have known or been able to fully assess the implications of those events and developments on Coventree and its business.

[623] Accordingly, in our view, neither section 4.4 of NP 51-201, nor the principle reflected in that section, applies in the circumstances before us.

[624] We would add that, even if section 4.4 of NP 51-201 did apply, we would conclude that the events and developments before us had, in important respects, a direct effect on the business of Coventree that was uncharacteristic of the effect generally experienced by other issuers engaged in the same business or industry. Coventree was the largest third-party sponsor of Canadian ABCP and its conduits had outstanding more than 50% of the extendible ABCP in the market. Further, certain

Coventree sponsored conduits had significant subprime exposure. Bank sponsored conduits in the ABCP market were affected differently than Coventree sponsored conduits in terms of, for instance, the level of liquidity available and the extent of spread widening. Evidence was submitted to the effect that, during late July and early August 2007, there was a "flight to quality" by some investors from third-party sponsored ABCP to bank sponsored ABCP and government debt. Further, bank sponsored ABCP continued to roll on August 13, 2007, although it was ultimately also affected by the general market disruption that occurred. Accordingly, in our view, Coventree cannot rely on section 4.4 of NP 51-201, or the principle reflected in that section, as a basis for not complying with its disclosure obligations under section 75 of the Act. By its terms, section 4.4 is not intended to apply to circumstances such as these where external events and developments had uncharacteristic effects on the businesses of different reporting issuers in the same business or industry.

[625] Coventree made a critical error to the extent that it assumed that these external events or developments could not and did not have direct effects on, and consequences for, its business and operations that constituted changes in that business for purposes of the definition of "material change" in the Act. Further, Coventree appears to have assumed (at least by August 7, 2007) that investors were generally aware of "the impact of US subprime, "contagion" etc. [which] are widely discussed in the press" (see paragraph 720 of these reasons). To the contrary, public shareholders and investors were in the dark as to the direct consequences for Coventree and its business of U.S. subprime contagion and as to the severe liquidity problems being experienced in the Canadian ABCP market by August 1, 2007. Coventree had a legal obligation to publicly disclose and explain the resulting material changes in its business.

(h) Actions Taken as Prudent Management

[626] Coventree also submits that the sale of assets by its conduits to generate cash was no more than prudent fiscal management. While we do not disagree that that action may have been prudent, it is relevant to us for two reasons. First, the sale of assets was a change made by Coventree in its business in response to external events and developments in credit markets. As a result, the sale of assets was a change in Coventree's business that can form the basis for concluding that a "material change" occurred within the meaning of the Act (see paragraph 588 of these reasons). Second, the sale of assets indicates the seriousness with which Coventree viewed developments in the credit markets and the possibility of collateral calls.

[627] Coventree also submits that other actions alleged by Staff to constitute a change in its business leading up to the market disruption on August 13, 2007 were simply appropriate risk management strategies and responses to market developments. Coventree would include in that category the monitoring of ABCP maturities and the status of collateral call triggers, legal preparations for liquidity notices, E note extensions and a possible market disruption, and the calling of the August Board Meeting.

[628] We agree that we cannot assume that a material change occurred simply because Coventree took such steps and actions. At the same time, however, those steps and actions may suggest that changes in Coventree's business or operations may have occurred for purposes of the definition of "material change" in the Act.

(i) The "Soft Landing"

[629] By August 8, 2007, Allan had concluded that the liquidity issues in the ABCP market reflected an imbalance between the total amount of ABCP outstanding (which was continuing to mature and needed to be "rolled") and investor demand to purchase ABCP. In his view, this was a structural issue that required a reduction in the overall principal amount of ABCP outstanding in the market. The solution, in his view, was for all of the issuers of ABCP to agree to proportionately reduce the amounts of ABCP they had outstanding as part of a negotiated "soft landing" (see paragraphs 735 to 737 of these reasons for a further discussion of the "soft landing"). Allan viewed that outcome as being in the best interests of all market participants. A meeting of market participants was held in Montreal on Friday, August 10, 2007 to attempt to advance that solution.

[630] Coventree submits that the possibility of a "soft landing" is a consideration in assessing the materiality of the events and developments that occurred over the period from late July to August 13, 2007. That submission is, in effect, that the events and developments over that period did not constitute a material change because Coventree had a reasonable belief in the possibility of a negotiated soft landing.

[631] This issue takes on somewhat less importance because we have concluded that the increase in the risk of a market disruption did not itself constitute a change in Coventree's business or operations for purposes of the definition of "material change" in the Act. We would simply add that while the possibility of a soft landing was one of a number of possible outcomes, it was one that, in our view, did not have a high degree of likely success in the short term. If events occurred that gave rise to a material change with respect to Coventree (as we have found), the materiality of those events is not somehow delayed or qualified because of the possibility of some future negotiated solution or outcome. We do not accept that the possibility of a soft landing was sufficiently certain to justify delaying disclosure of the material changes that had occurred. The effects on and changes to Coventree's business described in paragraph 590 of these reasons were immediate, direct and material; the possibility of a soft landing was contingent, uncertain, and highly speculative. Disclosure to shareholders of the material changes

that occurred by the close of business on August 1, 2007 could not await the outcome of a possible negotiated solution among all of the market participants.

(j) Spread Widening

[632] Coventree also submits that spread widening as of August 1, 2007 or thereafter was not material because (i) it had occurred over a relatively few days, and (ii) Coventree had a reasonable expectation, based on past experience, that spreads on Coventree sponsored ABCP would eventually return to normal levels. If that is put forward as a justification for why no disclosure with respect to spread widening was required, it is not compelling. Coventree had an obligation to disclose material changes in its business or operations. As a result of developments in the ABCP market, spreads had widened very dramatically. If Coventree knew why that spread widening had occurred and knew that it was temporary, that would be one thing. But, in this case, Coventree could not be certain of the reasons for the spread widening or, more important, how long the spread widening would last. There was evidence that Coventree expected increased spreads to remain in place for some months (see, for instance, paragraph 724 of these reasons).

[633] It seems to us that, in these circumstances, it was simply wishful thinking to believe that spreads would return to normal levels in the near future. All one can do in assessing whether a material change has occurred is consider the events and developments as they exist at the particular time. It is certainly relevant to that analysis whether those events and developments will be of short-term duration or effect. But one cannot explain them away because it is uncertain how long they will last or by assuming they would be of short duration. The same comment applies to Coventree's inability to issue new ABCP and to the illiquidity in the ABCP market.

[634] We would add that, in determining whether a material change had occurred, Coventree should not have been influenced by the fact that a news release might have had a negative effect on the ABCP market. One of the stated reasons why Coventree did not issue a news release on August 2, 2007 following the August Board Meeting was because it might "contribute to the uneasiness of the ABCP markets" ("uneasiness" in the ABCP markets is rather an understatement in the circumstances; see paragraph 562 of these reasons). A news release disclosing a material change is for the benefit of Coventree public shareholders and potential investors in Coventree shares. While one cannot ignore the market consequences that a news release is likely to have, where a material change has occurred, a news release must be issued forthwith regardless of those consequences. The only alternative is to file a confidential material change report in accordance with subsection 75(3) of the Act if the issue of a news release would be unduly detrimental to the interests of the issuer.

(k) Premature Disclosure

[635] Coventree also submits that it would have been premature, and would have caused more harm than good, for it to have made disclosure by news release of market events and developments in early August 2007. Coventree says that any such news release would have been based on the rumours, speculation, misinformation and conjecture in the market at the time. One of the reasons that Coventree did not issue a news release on August 2, 2007 was because Coventree did not "have enough observable data points" and just did not "know what is going to happen tomorrow" (see paragraph 562 of these reasons).

[636] We recognise that Coventree did not have clear or complete information as to what was happening in credit markets in late July and early August 2007 or why. Coventree was striving to obtain as much guidance as possible from the dealers as to market developments and the reasons for them. Further, Coventree was not able to predict, and cannot be expected to speculate on, what dealers, investors or the Caisse might do in terms of purchasing or rolling maturing ABCP. Nor should Coventree be expected to have predicted the market disruption that occurred on August 13, 2007.

[637] Having said that, we have concluded that there were direct changes in Coventree's business as a result of the events and developments that had occurred by the close of business on August 1, 2007 and those changes were material. It is not premature disclosure to disclose those actual events and developments, and their consequences to Coventree's business, even if there is uncertainty as to their causes, future effects, financial impact or duration. An issuer can make appropriate disclosure of relevant events and developments as they exist and have occurred, even if the future is uncertain. An issuer does not subject itself to any liability (as suggested by Coventree) for premature disclosure where the disclosure made relates to events and their consequences that have occurred and is accurate, balanced and appropriately qualified.

[638] Further, in assessing whether changes that had occurred in Coventree's business were material, Coventree had to consider the likely future effects and consequences of those changes on its business, both as a quantitative and qualitative matter. That is not the same as requiring premature disclosure of uncertain future events or predicting future financial performance. It is requiring an assessment of the significant effects and consequences that changes in its business or operations may have going forward. That assessment is inherent in determining whether any change in business is material.

[639] Disclosure in this matter was for the benefit of public shareholders and potential investors in Coventree shares. It was not for the benefit of credit markets and purchasers of ABCP (although they would also have benefited from the disclosure). The

potential negative impact of disclosure by Coventree on credit markets or its share price did not justify Coventree's failure to comply with its disclosure obligations under section 75 of the Act.

(l) Investor Knowledge of Market Events

[640] Child's notes of the disclosure committee meeting held on August 7, 2007 state that "[i]nvestors are generally aware of the risks of our business and the impact of US subprime, "contagion", etc. …" which is "widely discussed in the press" (see paragraph 720 of these reasons).

[641] As discussed in these reasons, the fact that investors were aware of the material risks of Coventree's business does not relieve Coventree of its disclosure obligations when events reflected in those risks actually occur (see paragraph 268 of these reasons). Similarly, the fact that subprime contagion and the upheaval in U.S. credit markets were widely reported in the media does not relieve Coventree of its disclosure obligations. *The ABCP market was an opaque market about which public shareholders and investors had limited information. Most public shareholders and investors would not have known what was happening in the Canadian ABCP market and would not have been able to fully assess the effects on, and consequences for, Coventree and its business of the events that were unfolding*. Coventree had a legal obligation to publicly disclose that information, when a material change occurred, for the benefit of public shareholders and investors.

[642] We have noted above that any disclosure by Coventree in its MD&A did not satisfy its disclosure obligations under section 75 of the Act. It was a critical error for Coventree to have concluded that disclosure of the material events and developments discussed in these reasons was required to be included only in its MD&A. That error was compounded by the assumption that, as a result of previous disclosures, public shareholders and investors were sufficiently informed to be able to fully understand and assess the effects on, and consequences for, Coventree and its business of the events occurring in credit markets that were being reported in the media. What was required was disclosure by Coventree of how those events and developments were significantly, directly and adversely affecting its business and operations. Public shareholders and investors were in the dark as to those matters.

(m) Preparation of the Draft Press Release

[643] It was decided at the August Board Meeting that Coventree management should prepare a draft news release, disclosing events and developments at that time, for consideration by the Board and for possible issuance on August 2, 2007. One reason for doing so was to assist in determining whether a material change had occurred. It appears that the Board tentatively concluded at the August Board Meeting that a news release should be issued. However, Cornish and Tai decided the next day that it was preferable that Coventree not issue a news release for the reasons set out in paragraph 562 of these reasons. (We comment on those reasons in paragraph 757 of these reasons.) Cornish prepared and circulated the Draft Press Release to members of the Board on August 2, 2007 and it appears that the members of the Board, having reviewed the Draft Press Release, acquiesced to the conclusion reached by Cornish and Tai that a material change had not occurred and that a news release was not required to be issued. The decision was to "hold off on the press release, but have it ready if the uneasiness in the markets persist".

[644] It is surprising to us that the Draft Press Release prepared by Cornish addressed only the issue of spread widening. Further, the analysis as to the materiality of spread widening appears to focus only on when the direct financial impact of spread widening would materially affect Coventree's financial results. It appears to have been the assumption that no material change would occur as a result of spread widening until Coventree actually suffered a material financial impact as a result of the spread widening.

[645] In *Danier*, the Supreme Court of Canada held that changes only in intra-quarterly results of operations did not, by themselves, constitute a change in the business, operations or capital of an issuer for purposes of the definition of "material change" in the Act (see paragraphs 140 and 588 of these reasons). The Court did not conclude that a material change occurs only when the direct financial effects of the change are actually suffered. We do not accept that no material change occurred as a result of spread widening until the financial effects of spread widening had occurred and were material to Coventree's financial performance. The question that had to be addressed was whether there had been a change in Coventree's business or operations that was material at the time of the relevant events or developments. Clearly, the immediate financial impact of an event is a relevant consideration in determining materiality, but it is only one consideration. What is required is a quantitative and qualitative assessment of the effects and consequences of the relevant events or developments on the business of the issuer. Cornish prepared the Draft Press Release which addressed only the immediate quantitative impact of spread widening on Coventree's financial performance. That was not an adequate analysis.

[646] There is no question that there were other matters discussed at the August Board Meeting relevant to a determination of whether a material change had occurred. Those other matters included the events that were referred to in the minutes of the August Board Meeting, including the conduits' ability to issue new ABCP, Coventree's sense of a decreased market making capacity of the dealer syndicate and the increased probability of collateral calls (see paragraph 550 of these reasons). Child identified in her notes of the August Board Meeting, seven potentially material events for possible disclosure. These included, in

addition to spread widening, the impact of selling assets on revenue backlog, the resignation of RBC from the dealer syndicate, the delay of the Xceed transaction and the negative carry on overfunding (see paragraph 558 of these reasons). Cornish's comments to the Board are referred to in paragraph 552 of these reasons. He commented on at least five matters in addition to spread widening.

[647] We note in this respect that Child's notes of the August Board Meeting attribute to Allan the statement that "[b]efore today hadn't communicated that we don't have any new issue capability, we're only able to roll paper". That was very significant information communicated to the Board, for the first time, at the August Board Meeting.

[648] We do not understand why, in these circumstances, Cornish prepared a draft news release for review by the Board that focused only on spread widening. There were other very significant changes in Coventree's business that had occurred by August 1, 2007 that senior management had identified as potentially material. The failure to address those issues in the Draft Press Release may have misled the Board into believing that spread widening was the primary concern.

[649] It is not clear to us that the Board fully appreciated the impact on Coventree's business or operations of the events and developments referred to in paragraph 590 of these reasons. To the extent that the preparation of the Draft Press Release was intended as a means of assisting in the assessment of whether a material change had occurred, the Draft Press Release prepared by Cornish failed to provide that assistance. We would have expected that a news release prepared for that purpose would have attempted to identify all of the events and developments relevant to determining whether a material change in Coventree's business had occurred, and not merely one of those events.

[650] We comment further on this and other decisions made by the disclosure committee in paragraph 756 of these reasons.

(n) No News Releases Related to Market Events

[651] Coventree was a reporting issuer for only approximately nine months before the market disruption occurred on August 13, 2007. Coventree submits that over that period, it issued 11 news releases, demonstrating the seriousness with which it took its disclosure obligations.

[652] We would note, however, that all of those news releases dealt with routine matters, changes in management personnel or the litigation with Nereus. It is quite striking that over that nine-month period, with the significant events and developments that were occurring in or affecting the ABCP market and Coventree's business, no news release was ever issued by Coventree addressing any of those market developments and their effects on Coventree's business, until the market disruption actually occurred on August 13, 2007.

(o) Obtaining Outside Legal Advice

[653] Cornish testified that, in his view, Coventree did not require outside legal advice as to whether a material change had occurred by early August 2007 (see, for instance, paragraph 699 of these reasons). Those reasons included (i) that the senior officers of Coventree knew Coventree's business better than any outside lawyer, (ii) Cornish's and Allan's background as former securities lawyers, and (iii) the expertise of Board members. We note in this respect that Child did speak to outside legal counsel by telephone on August 6, 2007 to obtain disclosure advice (see paragraph 698 of these reasons).

[654] As the controlling shareholders of Coventree, Cornish and Tai had a potential conflict of interest in deciding whether to disclose information that could have a material adverse effect on the market price of Coventree shares. Obtaining objective outside legal advice would have assisted in addressing that conflict.

7. Summary of Events in the Period after August 1, 2007

[655] The following is a summary of events and developments that occurred after Wednesday, August 1, 2007, leading up to the market disruption that occurred on Monday, August 13, 2007. As set out in paragraphs 593 and 594 of these reasons, we have concluded that material changes occurred with respect to Coventree by the close of business on August 1, 2007. We provide the following summary of events and developments subsequent to August 1, 2007 and leading up to the market disruption that occurred on August 13, 2007 (i) in order to complete the narrative of events and developments leading up to the market disruption, and (ii) because Staff has alleged that Coventree failed to comply with its disclosure obligations in the period after August 1, 2007 and leading up to August 13, 2007. We have organised this summary primarily as a day-by-day chronology of events as they unfolded (see also the Chronology of Significant Events attached as Schedule E).

(a) Thursday, August 2, 2007

[656] As requested at the August Board Meeting, beginning on Thursday, August 2, 2007, Tai began providing daily e-mail updates on market conditions to the Board.

[657] Tai's first market update was sent to directors at 11:00 a.m. on Thursday, August 2, 2007. That e-mail included a copy of the Draft Press Release and the recommendation to hold off issuing it (see paragraph 562 of these reasons). Tai stated in the e-mail that:

> Every day in a market place where we are able to place all of our paper is a good day. Time is our friend as it will eliminate some of the emotions that are invariably playing in the market place. We continue to investigate transactions that we can unwind with little loss (albeit with decreases in our future backlog) to create more dry powder in the form of overfunding. Both Geoff and I are back from vacation and are now resident in our Toronto office. We are far from being out of the woods but today was a good day for the markets.

At the hearing, Cornish concurred with Tai's statement that any day Coventree sponsored ABCP rolled was a "good day".

[658] Later that day, at 3:30 p.m., Allan and Dalton participated in a conference call with Verville. Following that call, Allan's view was that "the only answer seems to be to convince him that our subprime exposure is not a risk concern. We have to get that information to him FAST". Cornish agreed. Allan also wanted the Caisse to have that information in case the matter was elevated within the Caisse and others there became concerned about subprime exposure.

[659] By August 2, 2007, in response to the narrowing returns on traditional securitizations that were reducing payments to asset originators, Coventree implemented a process whereby Coventree staff were to review invoices prior to sending them to traditional securitization clients. If the staff member anticipated that the client's reaction to the invoice would be shock, the staff member was to call the client in advance.

[660] At the time, Coventree was also working on a general communication and a "Frequently Asked Questions" document addressing how Coventree would inform its traditional securitization clients that Coventree could not fund any new transactions (see paragraph 712 of these reasons).

[661] At 7:43 p.m., Allan sent the e-mail to Dalton referred to in paragraph 477 of these reasons.

(b) Friday, August 3, 2007

[662] Friday, August 3, 2007 was the Friday before the August long weekend in Ontario.

[663] Prior to 8:00 a.m. on August 3, 2007, Tai and Cornish exchanged e-mails agreeing that a news release by DBRS "calming the markets" would be desirable.

[664] At 8:16 a.m., Allan and Cornish received updates on four transactions closest to collateral call triggers. Coventree's calculations showed that collateral calls had been triggered on two transactions and that two transactions were close to the triggers.

[665] At 9:00 a.m., Allan sent Verville a copy of the document from the April Investor Presentations entitled "Demystifying the Subprime Market" with the following message: "I reiterate our desire to get together with you and whoever might assist you from the risk management side to discuss this material and other questions you may have regarding our holdings."

[666] At 11:26 a.m., Tai sent an e-mail to Board members advising "we managed to roll our paper today …" and that Coventree was attempting to get the agreement of the Caisse to the proposed rebalancing of subprime assets to reduce the subprime exposure in those note series with the highest exposure. Tai also advised the Board that approximately $60 million in overfunding had been used to ease some of the "funding tensions" in one conduit with higher subprime exposure. Coventree had caused a Nereus conduit to purchase $60 million of Planet A notes. Cornish testified that he thought the amount of Planet A notes purchased by Coventree was not $60 million but a smaller amount. Both Dalton and Allan testified that $60 million of overfunding was used for that purpose. While nothing turns on it, we have accepted their evidence on the topic over that of Cornish.

[667] Tai's update to the Board that day stated as follows:

> Board Members, it was a quite [*sic*] day in the markets today in anticipation of the long weekend here in Canada. The details on things are still being sorted out, but it looks like we have managed to roll our paper today again. This was good in a heavy trading day of appx. $650M rolls. We ended up using a bit of our over-funding (circa $60M) to ease some of the funding tensions in one of our conduits that has more concentration to US subprime mortgages. We still have $160M of overfundings that increase by $450M on Tuesday with the sale of two deals that we managed to trade out of without too much loss of profits and some future revenue backlog. With $610M of dry power, we are trying to create some breathing room although their [*sic*] is more complexity around

> when and where we can use this. In addition to this we have a plan to try and re-balance our exposure at a conduit level to US subprime mortgages. Although in total our US subprime mortgages represent less than 4% of our total assets, and continue to perform well from a credit perspective, some of the individual conduits have higher concentrations. We are trying to get buy-in to the plan by one of the largest ABCP buyers (Caisse) and DBRS. Tuesday looks like a lighter day with appx. $300M in rolls.

It was conceded that the word “quite” in the first line of this e-mail should have been “quiet”.

[668] At 11:49 a.m., Cornish sent an e-mail to Tai, Allan, Child and another Coventree employee which stated:

> … [i]f we have no new issue capacity, we will have to keep some powder dry to continue to meet the future draws that we may be asked to fund. …

That was a reference to the fact that Coventree had a potential obligation to fund draws by an asset originator (other than Xceed).

[669] Accordingly, by Friday, August 3, 2007, Coventree had available approximately $160 million of overfunding that was expected to increase to $610 million by Tuesday, August 7, 2007.

(c) The $3 Billion New Issuance

[670] Just after 1:00 p.m. on Friday, August 3, 2007, Dalton was told by Courchesne that RBC and the Toronto-Dominion Bank (“**TD Bank**”) had sponsored a new traditional securitization in the amount of $3 billion. Dalton said to Courchesne that “we were probably … 9 out of 10 worried before that news. Now we’re 10 out of 10”. The RBC/TD Bank transaction was effected at CDOR plus five basis points and that spread did not go above eight basis points prior to August 13, 2007.

[671] According to Cornish, “[t]here already was an imbalance between supply and demand before this additional $3 billion came into the marketplace, and that simply exacerbated the problem at that stage”. Allan said that only a small portion of the $3 billion amount would have been funded at the time but “[t]he problem is the portion that did get funded might well have been liquidity that otherwise would have gone to rollovers in the non-bank sector”. Allan stated on a telephone call with Davidson on Saturday, August 4, 2007 that the RBC/TD Bank transaction was “the straw that broke the camel’s back” and that it was “decapitating this market” (see paragraph 688 of these reasons).

[672] In a powerpoint presentation subsequently prepared by Allan and entitled “What the Hell is Going On?” (see paragraph 745 of these reasons for a summary of the issues addressed), Allan commented that the $3 billion issuance by RBC and TD Bank created a real threat of default or liquidity draws on A notes and the extension of E notes.

[673] Cornish spoke to Loke that weekend about the $3 billion transaction and told Loke that he was extremely upset with DBRS for allowing that transaction to occur.

[674] At 4:18 p.m. on August 3, 2007, Paul circulated the maturity schedule for the next five business days to Allan, Dalton, Cornish, Tai and others with a note that Tuesday [the first business day after the long weekend] had turned into a large day with about $625 million in Coventree sponsored ABCP maturities. The maturity report showed that Planet A had $112 million and US $26 million of ABCP maturing that day. Paul testified that a daily maturity of $625 million would be “large enough to be of concern”. Coventree called DBRS to advise them of the large maturities on Tuesday, August 7, 2007.

[675] Just before 5:00 p.m., Dalton had two telephone conversations with Davidson. During the first call, Davidson stated that NBF was concerned about the maturities coming due on the upcoming Tuesday and would not be able to stand in and support the Coventree ABCP. As a result, Davidson said that she wanted to talk about the process around drawing down on liquidity arrangements and whether Coventree had alternate liquidity available. During the second call, Davidson stated that none of Coventree’s three largest dealers (NBF, CIBC or Scotia) could take any more Coventree sponsored ABCP into inventory. Davidson said that Coventree was going to go into default unless its liquidity providers stepped in as a result of a general market disruption. Dalton noted that if only one conduit defaulted, there would not be a general market disruption (which was a condition for the provision of liquidity under the various liquidity agreements).

[676] Coventree submits that the statement by Davidson to the effect that its three largest dealers would not take any more Coventree sponsored ABCP into inventory was posturing and spreading misinformation. Allan testified that what Davidson said on those calls should not be taken at face value.

[677] Cornish’s evidence from his interview with Staff on April 24, 2009 was that “What I was, and still am aware of, is that they were concerned that there was a large amount of CP [commercial paper] that needed to be placed that day, Tuesday,

August 7, 2007, that through whatever market-making capacity was left to support the Asset-Backed CP together with their ability to sell to other investors, they were concerned they might not get it all placed".

[678] At 6:40 p.m., Dalton updated Allan, Cornish and Tai on various matters, including that:

(a) it was essential that Allan call the head of credit at NBF on Monday (a holiday in Ontario but not in Quebec);

(b) Coventree had arranged for the purchase of approximately $60 million of Planet A notes "over the weekend";

(c) Tuesday maturities were $650 million for Coventree (including $112 million of Planet A) and $115 million for the Nereus conduits; and

(d) Dalton's group was working on the "splits" or allocations of the maturing ABCP, and Coventree was offside the liquidity requirements for one transaction by $11 million but they were continuing to work on it.

[679] At 8:53 p.m., Tai e-mailed the Board about the $3 billion new issuance and noted that the last time he had seen a transaction of that size it took months to work itself through the system. Tai advised the Board that management was meeting over the weekend to discuss matters internally and draw some conclusions but that their initial inclination was to save Coventree's "dry powder" for another day. He advised the Board that NBF had contacted the Bank of Canada and was in the process of contacting all the heads of the bank-owned dealers to see if there was an "emergency solution" and that Coventree management was in the process of calling all the third-party conduit sponsors to see if they could coordinate a strategy. Finally, Tai mentioned that maturities for the upcoming Tuesday were higher than his report earlier that day because of previous overnight rolls.

[680] Tai's e-mail stated as follows:

> Board Members, although it looked like a good day today and things were starting to look brighter with the hope of containing the market issues, we heard some very distressing news later in the afternoon. We heard today that RBC/TD did a $3 billion issuance into the ABCP market place today. We are still extremely puzzled as to why they would do this at this particular time when the markets are so precarious or why DBRS would let them do it. Our assumption is that the term debt market dried up and they are trying to find any markets that have liquidity still left in them to clean up their balance sheet issues or those of their major clients. This also now explains why RBC backed out of our dealer syndicate late last week (although they were never a big supporter or trader). Even though we have some dry powder left, we just don't believe that it will be enough to deal with this large of an overhang. The last time I remember a deal this size was near when we started about 10yrs ago when BMO did a large issuance to clear up their balance sheets for year end. Although the markets are a lot stronger now than they were, the BMO deal took months to work itself through the system. We are meeting over the weekend to discuss things internally and draw some conclusions, but our initial inclination is to save our powder for another day and let things roll through the markets. Our lead dealer at the National Bank has contacted the Bank of Canada and is in the process of contacting all the heads of the Bank owned dealers to see if there is an emergency solution. We are also in the process of calling all the non-bank owned independent securitization shops to see if we can coordinate a strategy. Roll-overs for Tuesday are higher than my previous note because we found out a lot of the paper was rolled over-night as opposed to my initial assumption that it rolled into 30-day paper. Unfortunate news…

[681] Cornish testified that by Friday, August 3, 2007 there was an increasing recognition that the liquidity issues affecting Coventree sponsored ABCP were not specific to Coventree but represented a bigger supply/demand imbalance in the ABCP market. Cornish was in favour of all of the various market participants getting together to talk through the issues and coming up with a joint solution to that imbalance.

(d) The August 2007 Long Weekend

Saturday, August 4, 2007

[682] On Saturday, August 4, 2007, at 7:40 a.m., Tai e-mailed Cornish and others saying "[i]f things really hit the fan on Tuesday, we should be prepared with draft press releases that are reviewed with legal counsel". There are additional references to preparing draft press releases in Child's notes from a strategic council meeting on August 5, 2007 (see paragraph 691 of these reasons). There was no evidence submitted that any such press releases were ever prepared.

[683] At 8:20 a.m., Tai e-mailed Dalton saying that "we are probably headed in for a worse day than any of the days we have experienced so far". Tai advised that he had spoken to an individual from Deutsche Bank and was trying to organize a call with

other third-party ABCP sponsors so that they would have at least talked through the situation by Tuesday "when either a GMD [general market disruption] or conduit defaults occur".

[684] In that e-mail, Tai indicated to Dalton that the overfunding amounts in Coventree sponsored conduits should not to be used to purchase Coventree sponsored ABCP. Tai indicated that he wanted the overfunding to be used only to meet collateral calls. On Sunday, August 5, 2007, the strategic council discussed whether to use "dry powder" to buy Coventree sponsored ABCP and decided that Coventree would not do so because the liquidity issues were too big for Coventree's available overfunding to handle.

[685] Cornish testified that, although Coventree had no legal obligation to do so, if one of the assets in a conduit ran into difficulties, Coventree would typically support that asset in order to protect Coventree's reputation with investors and sustain its business. Cornish testified that:

> It was theoretically possible that Coventree could simply walk away, but the day that the company decided to do that is probably the day that the company would be out of business in terms of financing new transactions at least in the future.

Cornish's testimony echoes the Prospectus which stated:

> Although Coventree has no contractual obligation to support the conduits that it sponsors, if investors were to suffer any losses as a result of the non-performance of a transaction in a Coventree conduit, Coventree's reputation in the industry and ongoing ability to access the capital markets could be severely affected if it chose not to do so. … In the past, Coventree elected to support one transaction in one of its conduits that failed to perform as expected by posting additional cash collateral to support the transaction in order to maintain the ratings of the ABCP issued by that conduit.
>
> (Prospectus, at p. 33)

[686] At 10:30 a.m., Dalton forwarded to Allan an e-mail she had received from Davidson to the following effect:

> I understand that you spoke to Bob [Courchesne] but I'm not sure if he conveyed exactly what the situation will be on Tuesday. From my understanding, the street cannot inventory any more of your paper including National due to trading lines. Which means that you will have to redeem unfunded commercial paper or the trust(s) may be put into default. This is why I'm trying to reach David [Allan] as well – I'm not sure if your lead dealer has conveyed how grave the situation now is.

[687] At 12:11 p.m., Allan responded to Davidson's e-mail advising "Natalie, don't worry – I am well aware of the gravity of Tuesday's situation. We will be prepared for the worst". At 12:39 p.m., in response to Davidson's question as to whether the "don't worry" message in Allan's e-mail meant that Coventree had available the liquidity necessary to cover any maturities that were not rolled, Allan stated, "[g]iven the size of what is rolling Tuesday and what Bob is anticipating as the further impact on our liquidity of the overhang from Friday's new issuance, I have no confidence that that is the case". To which Davidson responded, "Can you call me?"

[688] At 12:49 p.m., in a call between Allan and Davidson, Allan confirmed that "believe me, I understand the gravity of what's going on". When Davidson asked him whether he had a liquidity plan, he said "No, I don't think we have liquidity of $1.7 billion", the amount of paper that Coventree had coming due that week. Allan said that if the $3 billion of new ABCP had not been issued by RBC and TD Bank, Coventree might have been able to "plug the holes and see if we can get through it week by week and hope that the liquidity comes back. And quite honestly, we need credit markets to come back considerably as well to take the pressure off the … collateral call side as well…you know, may as well … make our stand on Tuesday as make our stand on Friday". Allan commented that RBC and TD Bank were "decapitating this market" with the $3 billion issuance and "they pushed us right out". Allan said that it was his expectation that, on Tuesday, August 7, 2007, there would be defaults in Coventree sponsored conduits and extensions of E notes, but not a general market disruption.

[689] Allan characterized his comments on these calls as "testy" because he felt Davidson was posturing.

Sunday, August 5, 2007

[690] Cornish told Loke on the morning of Sunday, August 5, 2007 that DBRS should be prepared for the possibility of a market disruption on the upcoming Tuesday. Cornish also encouraged Loke to issue a news release confirming the high quality of the subprime assets in Canadian conduits, something Loke was not enthusiastic about doing. In the conversation, Loke advised Cornish that Verville did not want a news release issued because he believed that a news release from DBRS would not calm the markets but would have the opposite effect.

[691] That morning, Cornish, Tai, Allan and Child participated in a strategic council meeting by conference call. According to Child's handwritten notes:

(a) Cornish had spoken to Loke and Coventree had received advice from NBF that Tuesday would be a difficult day and there was a good chance that there would be market disruption, extension or both;

(b) a lawyer at Davies Ward Phillips & Vineberg ("**Davies**") had been called to provide assistance over the weekend. The three points included under the heading "Review our legal position" included references to details of conditions to liquidity draws and extensions under E notes, defaults by the conduits and "failure to roll but doesn't meet GMD → roll paper for conduits that doesn't constitute market draw on some liquidity Tues";

(c) there was reference to the preparation of multiple versions of a press release addressing what had happened over the last five business days;

(d) there was consideration of whether there should be a voluntary posting of collateral in relation to an LSS transaction; and

(e) there was a note that if Coventree hit "an extension", Coventree would have to send out a press release immediately.

In respect of clause (e) above, Child testified that she was referring to having to extend the E notes and that Coventree wanted to understand what the outcomes could be and have press releases ready for those outcomes. As noted above, there was no evidence that any such draft press releases were prepared at the time.

[692] At 3:23 p.m., Allan received a call from Davidson in which Davidson stated that CIBC was under a lot of internal pressure to resign as a member of the dealer syndicate and Davidson asked Allan to give her reasons why CIBC should not resign. During that call, Allan acknowledged that he had no better knowledge whether Coventree sponsored ABCP would roll on Tuesday and that Coventree was relying on NBF's advice.

[693] At 9:06 p.m., members of the strategic council received an e-mail from Allan saying that CIBC was considering resigning from the dealer syndicate if alternative liquidity was not available with respect to Coventree ABCP maturities on Tuesday, August 7, 2007.

[694] Coventree was aware that another third-party ABCP sponsor was experiencing the same liquidity issues, that that sponsor had been in frequent contact with Verville and was concerned that the Caisse would not be "stepping up" at the eleventh hour. Allan reported that the other third-party sponsor's strategy seemed to be "praying for a GMD [general market disruption] on Tuesday that brings all of the players, including the Canadian banks, into the circle of pain".

[695] At 10:40 p.m., Cornish sent an e-mail to a Davies lawyer entitled "Mon due diligence review" referring to a due diligence review that was to take place the following day that Cornish and Tai would attend. Cornish indicated that the purpose of the review was "to prepare for a market disruption and/or extension or both".

Monday, August 6, 2007

[696] At 9:00 a.m. on Monday, August 6, 2007 (a holiday in Ontario but not in Quebec), Dalton contacted Verville to arrange a time to get his feedback on the asset rebalancing plan. The rebalancing plan that she had sent to Verville on August 3, 2007 did not transfer any assets to Coventree conduits that did not already have some subprime exposure. At 3:22 p.m., Verville responded that if Coventree could spread subprime exposures to the "most conduits as possible, it would suit us more".

[697] Coventree was preparing for a possible market disruption that day, including meeting with its legal counsel to prepare the necessary notices. Allan testified that lawyers from Davies were assisting Coventree in respect of the possibility of a default and liquidity draws on A notes and extensions of E notes.

[698] Child sought legal advice by telephone from Al Hudec ("**Hudec**") (a lawyer at Davis & Co.) as to Coventree's disclosure obligations. Child testified that the advice that she received was "[d]isclose as soon as you can and keep very good notes". Hudec apparently advised Child that there was "[n]o sense talking to MS, they'll force you to disclose or halt the stock". Child confirmed that "MS" referred to "Market Surveillance" of the TSX. Child's notes of the call also indicate that "*events whether market forces or whatever that were likely to impact had obligation to disclose*". [emphasis added]

[699] With respect to obtaining legal advice, Cornish testified that:

> … from my perspective at least anyway, I didn't think we needed to get additional legal advice beyond that which we already had as to what the test or at least the legal part of the test was.
>
> The critical question was how should that test be applied in these particular circumstances. We knew our business better than most law firms, and, in that context, it didn't seem to me that it would be all that helpful to get yet another piece of advice from outside lawyers in addition to that which we already had access to.
>
> If the key question, the sort of factual part of it of the mixed fact and law test relating to materiality, the key question of how would it be applied, that was a judgment that we thought we were in a better position to reach conclusions or reach a judgment on than additional lawyers would.

[700] In a call at approximately 3:16 p.m. with Davidson, Verville said that CIBC was getting "spooked about everything". Verville said that "Courchesne will be fine tomorrow". Davidson said that Coventree had indicated a default scenario was highly probable the next day. Verville said that was news to him and that he would make some calls. Verville told Davidson that she had to stop "this panic talk to everyone".

[701] In a call with Davidson at 4:22 p.m. that day, Allan told Davidson that there would be no market disruption on the following Tuesday because Verville was going to support third-party sponsored ABCP that day. He said, "Luc is stepping back to hold this market up". Allan also commented that "I understand that at this point, you've only got it from Luc so it's only a day or two days' worth of respite, but I hope [the Caisse] comes out with something that is enough that we can have orderly markets through a transition period while … the books downsize".

[702] Allan testified that Verville agreed that the Caisse would step back into the market and roll Coventree sponsored ABCP on Tuesday, August 7, 2007 and continue to do so through to Friday, August 10, 2007. That was the proposed date of a meeting in Montreal among all key market participants to discuss a possible restructuring of the ABCP market. It was a condition of the Caisse's support that concerted action be taken by market participants to reduce the total amount of ABCP outstanding. The proposed meeting was to be hosted by Verville.

[703] At approximately 5:30 p.m., there was a conference call meeting of the strategic council. According to Child's notes:

(a) Verville imposed the condition that work was being done to shrink the market segment. "He can't sustain the segment, discussing program to share the pain";

(b) the Caisse "needed to lighten up in this market, therefore wanted to transfer to bank sponsored than [*sic*] fade out as market support";

(c) "Banks need to step up";

(d) Coventree had a material overfunded or cash position, "sized for collateral calls, and won't be used to support the market";

(e) Verville believed that it was beneficial for Coventree to carry out the rebalancing related to subprime assets;

(f) Verville did not want a news release on market quality to be issued by DBRS; and

(g) concerning collateral calls, "Luc knows we're close".

[704] At 9:10 p.m., Tai updated the Board advising that:

> Board Members, we are still crossing our fingers, but it seems like we maybe [*sic*] dodging another bullet tomorrow. Through extensive discussions with the Caisse and our dealers, David and the team seem to have negotiated a verbal understanding with the Caisse to support the rolling of our paper tomorrow and/or as long as possible. This will likely mean that the Caisse will be moving paper away from the bank-sponsored conduits to the independents [*sic*] sponsored conduits which means the banks will likely be drawing on their trading lines to support their ABCP paper and thus indirectly the ABCP markets in general (still underlying market liquidity issues). We are under no illusion that the Caisse will be able to provide this support indefinitely.

That e-mail also confirmed that a meeting of market participants in Montreal was proposed to discuss a controlled shrinking of the ABCP market. That portion of the e-mail provided as follows:

> Our current anticipation is that a global meeting between the independents, National Bank, (our lead dealer) and the Caisse will be called shortly to sort through a more permanent and lasting solution (if the Caisse's support holds up). At this meeting, our current assumption is the discussions with [*sic*] surround a controlled shrinking of the market place to allow the Caisse to get down in an acceptable level (we will deal with this as we get closer to the meeting). At this point, we still have some powder left in the form of over fundings that we plan on still keeping as much dry as possible in anticipation of some sort of industry wide restructuring or further problems beyond the Caisse's support. Again, things are going up and down day by day, and it is difficult to figure out where we really stand at any given point in time. As you can imagine, we are dealing with imperfect information much of which is speculation and rumours, but so far I think the team is "containing" things. I will send an update later in the morning after the paper rolls (knocking on wood).

(e) Events Subsequent to the August Long Weekend

Tuesday, August 7, 2007

[705] On Tuesday, August 7, 2007 at 7:43 a.m., Gaucher asked Paul to send him information and materials necessary to prepare for the possibility of liquidity drawdowns in the event of a market disruption. Gaucher predicted that it was going to be a "tough day" in the market.

[706] The Caisse supported Coventree sponsored ABCP that day. It not only rolled its own maturing Coventree sponsored ABCP for a 90-day period but also purchased additional Coventree sponsored ABCP.

[707] The spreads on Coventree sponsored ABCP widened to approximately 25 basis points over CDOR for A notes and approximately 40 basis points over CDOR for E notes. Cornish testified that the increased spreads were attributable to the effect of the $3 billion RBC/TD Bank transaction on August 3, 2007 and to "the price that the Caisse, Mr. Verville, was saying he wanted to extract, if you like, so to speak, for his continued support of the marketplace".

[708] That day there was a gap of approximately 15 basis points between Coventree sponsored A note spreads and bank-sponsored ABCP spreads. This gap, in Allan's view, was too large to allow Coventree to retain its traditional securitization business if the asset originator had the option of using bank-sponsored conduits for funding.

[709] Coventree acknowledged internally that "the spread widening in the Canadian market [is] beginning to adversely affect Coventree's revenues and will adversely affect future revenues of Coventree if those conditions persist".

[710] Coventree's models indicated that four transactions had come close to or crossed collateral call triggers.

[711] Coventree knew that its conduits were unable to purchase new assets in connection with traditional securitization transactions and Coventree made preparations on August 7, 2007 to advise its asset suppliers that Coventree did not know when it would be able to resume offering financing in the ordinary course. Cornish testified that Coventree prepared speaking notes for phone calls that Coventree expected to have with traditional asset originators to explain market circumstances.

[712] The "Frequently Asked Questions" speaking notes prepared on August 7, 2007 included the following statements:

(a) "We cannot predict when past levels of liquidity will return to the market and thus we hesitate to predict when you will be able to fund again".

(b) "We do not believe you will be [able] to fund with us in the short term".

(c) "We strongly urge you to seek out funding from other financing sources with which you currently have an established relationship".

(d) "In the short term, this market turbulence is impacting our ability to offer financing in the normal course of business".

In his testimony, Cornish confirmed the accuracy of each of these statements.

[713] Coventree ultimately decided to wait until Monday, August 13, 2007 to speak to its traditional asset originators about developments in the credit markets. The cover e-mail for the "Frequently Asked Questions" document stated: "The Communication on Monday will coincide with the press release so that any potential shareholder/insider issues are eliminated". According to Cornish:

> We were just trying to be cautious about not getting out and talking to others that were not shareholders about matters that might somehow be relevant to shareholders. We are trying to be careful not to get into selective disclosure issues.

Cornish testified that Coventree did not want to have discussions with asset providers until it issued its third quarter MD&A. If, however, an asset provider needed funding in the week of August 7, 2007, then Coventree would have a conversation with that asset provider that was "much along the same lines that Ken [Toten] has already had with Xceed to explain, look, we can't do this funding at this point in time".

[714] On August 7, 2007, Coventree continued to monitor the increasing daily or short-term maturities of Coventree sponsored ABCP. Allan was concerned that increasing overnight rolls of Coventree sponsored ABCP could result in non-compliance with the liquidity agreements. That could preclude the exercise of liquidity draw rights for the benefit of note holders even if a general market disruption occurred (see paragraphs 466 and 467 of these reasons).

[715] Tai sent an e-mail to the Board at approximately 8:00 p.m. updating the Board on market conditions that day. That e-mail provided as follows:

> Board Members, today was a good day for Coventree. All our paper rolled with the Caisse picking up about $400M in aggregate from the independents. Spreads have widened out (which will begin to impact our revenue) but so far we are hanging in there to fight another day. An additional benefit to what happened today is most of the paper purchased by the Caisse was for 90 day maturities. Although expensive at these spreads, we are hoping that this will start to buy us some breathing room to allow for some stability to enter back into this market. As a result of this, our rolls for tomorrow are down to more manageable levels for tomorrow. OSFI has been in contact with us through David and they are aware of the situation and hopefully will bring their weight behind a permanent solution. It helps to have someone on our team that has been through a similar crisis situation (David with CIBC/Enron) who has always done the right things and as a result has incredible credibility with the market participants…. We understand that what has happened has serious strategic implications for our business and throws many of our assumptions out the window in terms of the planning process we were engage [*sic*] in prior to this market volatility.

[716] When asked about the meaning of the Caisse stepping back into the market for Coventree sponsored ABCP on August 7, 2007, Cornish testified that "in the end, I don't believe, however, that [Verville] changed his ultimate goal of reducing his exposure to the marketplace … longer term, I think he still maintained his objective of reducing his exposure if he hadn't already achieved it at that point".

[717] Cornish and the other Coventree witnesses testified that the Caisse was fully entitled to operate in its own economic self interest and was free to make whatever decisions it wished based on its investment objectives. They testified that it was not possible to predict the Caisse's future actions.

Disclosure Committee Meeting

[718] Coventree's disclosure committee met on Tuesday, August 7, 2007.

[719] Child prepared draft notes of the disclosure committee meeting that were never finalized. Although in draft form, Cornish testified that the notes referred to all of the factors the disclosure committee was considering at the time. The notes refer to the fact that Coventree had previously disclosed in its annual report and quarterly filings the impact of the DBRS announcements in substantially curtailing its ability to grow, if not halt in the short-term, its credit arbitrage business. The notes indicated that "we don't have enough information on what is happening in the markets … Speculating and drawing incorrect conclusions … could contribute to the uneasiness in the ABCP markets and result [*sic*] deteriorating or jeopardizing the Company's viability". The notes then refer to the financial impact of spread widening, negative carry on overfunding, potential losses on reserves, the valuation of intangibles from the purchase of the balance of Nereus shares, the sale/termination of transactions and loss of revenue backlog.

[720] The draft disclosure committee notes also refer to a rule of thumb that an event is material for securities law purposes if it affects at least 5% of net income. The notes in this respect read as follows:

> Al Hudec of Davis & Co advises us that a rule-of-thumb for materiality is 5% of net income … Another similar test is that used by our auditors, E&Y, in doing the audit of our 2006 consolidated financial statements. E&Y considered an error of $3.85 million in the net income excluding VIEs to be significant.
>
> …

> Al Hudec also advised that, although conventions such as the 5% rule of thumb can be used, the securities commission doesn't support them. *In their view, the relevant test is whether the information can be reasonably expected to influence investors. Again we concluded that disclosure was not required under this test. Investors are generally aware of the risks of our business and the impact of US subprime, "contagion" etc. are widely discussed in the press.* If disclosed, Coventree could only comment that the current impact. [*sic*] Speculating or forecasting these unprecedented times would not only be not consistent with our disclosure policy but could subject Coventree to liability if erroneous. If at some point in the future, additional information that changes the above conclusion [*sic*], the matter will be reconsidered at that time. [emphasis added]

We understand from Child's testimony that these references to legal advice from Hudec relate to advice given by him in the past in connection with the Nereus litigation.

[721] Accordingly, the disclosure committee apparently concluded that investors were generally aware of the risks of Coventree's business and the impact of U.S. subprime contagion. Coventree concluded therefore that no news release was required to be issued under section 75 of the Act.

[722] Child's notes indicate that the disclosure committee reached the following conclusion:

> We concluded that we will include commentary on this matter in our Q3 MD&A as we view it is in the interest of the owners to understand these details but it is not material for a press release at this time. If the market persists or a material event occurs in the interim, we will reconsider…

[723] The disclosure committee notes also indicate that Child provided a calculation of the financial impact of spread widening on profitability based on a spread of 12 basis points over CDOR. Child calculated the impact on gross revenue over 30 days, for a one basis point increase in spread, to be $100,000. Child calculated the financial impact to Coventree over 30 days of a one basis point increase in spread to be $52,000 of net after-tax impact or $624,000 of net after-tax impact for a 12 basis point increase. She stated in her notes that:

> For the investments that earn a fixed spread above CDOR (i.e., securities arbitrage vs. traditional that earn a program fee), the widening will result in decreased revenue [*sic*] future revenue.

[724] On August 7, 2007, Coventree was preparing its third quarter MD&A disclosure, which was to be approved by the Board and issued on August 13, 2007. Cornish testified that Coventree wanted to convey in the MD&A that:

(a) there had been spread widening and what its impact would be;

(b) Coventree's perception of the causes of the situation at the time, that the effects they were seeing were not limited to the Canadian ABCP market but were effects that were being seen in credit markets in Canada, the U.S. and elsewhere;

(c) investors appeared to be reducing or eliminating their investments in the Canadian ABCP market, which had contributed to an imbalance of supply and demand for ABCP; and

(d) Coventree was unable to predict when the supply/demand imbalance would be restored, so there was a risk spreads would continue to widen.

[725] Paul testified that, during the week of August 7, 2007, it seemed that the majority of Coventree sponsored ABCP was being purchased by the Caisse and that if the Caisse did not continue to roll its Coventree sponsored ABCP there would have been insufficient demand to support maturing ABCP. In a call with Gaucher, Paul expressed his view that if the Caisse had not rolled its ABCP holdings on Tuesday, August 7, 2007, "it would have been over".

Wednesday, August 8, 2007

[726] On Wednesday, August 8, 2007, Coventree advised another traditional asset provider, NorthBrook Capital Corp. ("**NorthBrook**"), that it was unable to fund a purchase of assets from Northbrook.

[727] Coventree also voluntarily posted collateral of $25 million to each of two Citibank transactions, in order to provide an additional cushion before a collateral call could be triggered.

[728] There was a taped telephone call on August 8, 2007 between Allan and Davidson in which Allan criticized CIBC for not following the Caisse when it had "stepped up" on Tuesday, August 7, 2007. On that call, Allan stated that he believed that the

ABCP market was headed for a "soft landing", which he said Verville was trying to facilitate, whether or not CIBC participated (see the discussion of the "soft landing" commencing at paragraph 735 of these reasons).

[729] In his evening update to the Board on Wednesday, August 8, 2007, Tai stated:

> The only excitement was provided by the Caisse punishing one of the bank-owned dealers (CIBC) for not behaving in these trying times. CIBC as a result of their legal counsel has informed us that they were not going to offer our paper. Today with the Caisse leading the charge there was a run on CIBC ABCP paper. Senior level folks at CIBC called David to see if we could help to sort things out and things seemed to have settled down. This is all leading to a meeting orchestrated by the Caisse (with our encouragement) on Friday in Montréal with all the key participants on a more permanent solution. Unfortunately for some, the proposed solution will be more painful for some rather than others who have more prudently managed their assets. *It will take some time for people to absorb the enormity of the situation and come willing to entertain solutions.* We are hopeful in this turmoil there may be opportunities. Tomorrow should be another light day and I likely won't give an update unless things are different. I will definitely give an update after the Friday meeting. We are also preparing a fairly detailed account of what has brought us here for the board meeting on Monday that David will present. [emphasis added]

(f) Draft Q3 MD&A

[730] Coventree's third quarter MD&A for the period ending June 30, 2007 was to be considered and approved by the Coventree Board at its scheduled August 13, 2007 Board meeting. That MD&A was not approved as a result of the market disruption that occurred that day. A draft of the third quarter MD&A (the "**Draft Q3 MD&A**") was sent by Child to Tai on August 8, 2007. The Draft Q3 MD&A contained disclosure related to credit market developments and their impact. Coventree addressed the following matters in the MD&A:

(a) the imbalance in supply and demand in the ABCP market;

(b) the cause of spread widening and the financial impact on Coventree;

(c) the high credit quality of the assets held by Coventree sponsored conduits and the limited subprime exposure;

(d) Coventree's inability to predict if or when ABCP spreads and liquidity would return to historic levels; and

(e) the effect on Coventree of the new criteria adopted by DBRS in the DBRS January Release.

[731] In connection with the imbalance in supply and demand, the Draft Q3 MD&A stated that:

> … It appears that some investors are reducing, or eliminating, their investments in the Canadian ABCP market, including ABCP issued by conduits sponsored by independents such as Coventree. Combined with recent large new ABCP issuances from bank-sponsored conduits, this has resulted in what we believe to be an imbalance between the supply and demand for ABCP in Canada. This imbalance has resulted in a widening of spreads generally in the Canadian ABCP market and the absence of capacity for new issuance by independent conduit sponsors.

[732] The Draft Q3 MD&A also commented on Coventree's inability to predict the duration of the supply/demand imbalance:

> … The Company is unable to predict if, or when, the balance between supply and demand for ABCP will be restored. Accordingly, the Company is unable to predict whether ABCP spreads and liquidity will return to historic levels. There is a risk that ABCP spreads may widen further. The Company is continuing to work with its ABCP dealers and other interested parties including key ABCP investors to address the current supply/demand imbalance.

[733] The Draft Q3 MD&A also addressed the cause of spread widening and the credit quality of assets in the Coventree sponsored conduits:

> Management believes that the recent spread widening for the ABCP issued by its conduits is a consequence of the liquidity issues facing the Canadian ABCP market rather than concerns with the quality of the assets in its conduits. Management continues to believe in the high quality of those underlying assets. Coventree-sponsored conduits have limited exposure to U.S. subprime mortgages – less than 4% of the total assets in Coventree-sponsored conduits are backed by assets related to U.S. subprime mortgages.

[734] The Draft Q3 MD&A also commented on the effects of DBRS's new criteria for rating credit arbitrage transactions, as follows:

> Also affecting our business is the continuation of the Dominion Bond Rating Service Limited ("DBRS") changes relating to the Canadian ABCP markets. In particular, in January 2007, DBRS announced new criteria relating to transactions involving the purchase of structured credit products by Canadian ABCP conduits. The Company's view is that these criteria will be very difficult to satisfy. *As a result, these changes have had and will continue to have the effect of reducing the profitability of the Company by substantially curtailing its ability to grow its credit arbitrage business.* [emphasis added]

It is interesting that this paragraph addressed Coventree's "ability to grow" its credit arbitrage business. Coventree had previously stated in its Q2 MD&A that the DBRS changes in criteria would "have the effect of reducing the profitability of the Company by substantially curtailing its ability to grow, if not halt in the short-term, its credit arbitrage business" (see paragraph 327 of these reasons). We are not aware that there was any change in circumstances that would support the more positive change in wording highlighted above. We acknowledge, however, that the Draft Q3 MD&A was a draft that had not been finalised as of August 8, 2007.

(g) The "Soft Landing"

[735] Allan had concluded by Wednesday, August 8, 2007 that the lack of liquidity in the ABCP market reflected a structural problem: there was more ABCP outstanding than there was investor demand to purchase it as it matured. Allan thought that the only solution was for market participants in the issue and sale of ABCP to address this supply/demand imbalance. In the "What the Hell is Going On?" presentation material (see paragraph 745 of these reasons), Allan stated that "[t]his adjustment can be made catastrophically (extensions, liquidity draws and defaults) or in a managed fashion through orderly sequential and proportionate liquidation" of a significant portion of the outstanding ABCP in the market. The latter would involve agreement by market participants to a pro rata reduction in the total amount of ABCP outstanding. Allan referred to this solution as the "soft landing". Allan testified that Coventree's share of such a reduction would likely have been approximately $2 billion. According to Allan, that $2 billion reduction could have been accomplished within 60 days from:

(a) the $800 million of "dry powder" that Coventree sponsored conduits had accumulated up to that point; and

(b) a further $1 billion that could come from the potential early termination of a traditional securitization transaction with HSBC.

[736] According to Tai's e-mails to the Board, by the August long weekend, Coventree had $160 million of excess cash available (after using $60 million to "ease some of the funding tension" in one of its conduits with subprime exposure) and expected to increase cash to $610 million by Tuesday, August 7, 2007 (see paragraph 667 of these reasons). Allan referred to $800 million of "dry powder" in his testimony and Cornish testified that shortly after August 13, 2007, Coventree sponsored conduits would have had approximately $1 billion of "dry powder". Whatever the actual amount of cash available, it was clearly insufficient, absent a soft landing, to resolve the liquidity issues affecting Coventree sponsored ABCP.

[737] Allan testified, however, that by August 8, 2007, he believed that events were coalescing in a manner that made a soft landing increasingly likely.

Thursday, August 9, 2007

[738] On Thursday, August 9, 2007 at 9:11 a.m., Gaucher advised Paul that:

(a) "It's goin' very bad";

(b) "Laurentian dropped today. Deutsche Bank can't place the paper. Royal's dropping, CIBC dropped everything. HSBC can't place the paper. Nobody can place the paper"; and

(c) "there's … 15 minutes left before we decide to do what we do".

[739] Allan testified that "dropping" paper referred to dealers returning unsold maturities to NBF rather than rolling the ABCP or taking the ABCP into inventory.

[740] At 9:23 a.m., Tai reported to the Board that "things have settled down for the moment in our Canadian ABCP markets, but our fears continue to be that there is more to come and this may ultimately be a problem that is not containable by just the support of Quebec Inc.". Staff alleges that this Board update was inconsistent with what was actually happening in the market.

[741] At 10:24 a.m., NBF advised Coventree that there was a backstop for the day. NBF stated "thank God the Caisse is still there 'cause … I don't know what would have happened". NBF also reported that CIBC had been turning back all its Coventree sponsored ABCP for the entire week.

[742] Cornish testified that he considered Thursday, August 9, 2007 another good day in the market. Cornish said there was no issue with Coventree sponsored ABCP rolling and the Caisse was continuing to do exactly what it had said that it would do.

[743] On August 9, 2007, BNP, France's biggest bank, froze $1.6 billion Euros (U.S. $2.2 billion) worth of funds, citing the U.S. subprime mortgage problems that had rattled financial markets worldwide. There were also reports in the media that day that U.S.-based companies were extending payments on commercial paper backed by home loans for the first time as the subprime mortgage crisis spread to debts perceived to be among the safest in the market. Also on August 9, the Bank of Canada issued a news release in an attempt to reassure the markets. It stated: "In light of current market conditions, the Bank of Canada would like to assure financial market participants and the public that it will provide liquidity to support the stability of the Canadian financial system and the continued functioning of financial markets." On Friday, August 10, 2007, the United States Federal Reserve issued a similar release stating that it was providing liquidity to facilitate the orderly functioning of financial markets.

[744] By August 9, 2007, Allan had suggested asking the Bank of Canada to consider accepting any ABCP, including third-party sponsored ABCP, as collateral for Bank of Canada loans to banks, in order to encourage the banks to resume their role as market makers and to provide liquidity in the ABCP market. Allan acknowledged that "this was going to be a bit of a problem because the Bank's mandate is to support bank liquidity and this would be indirectly supporting non-bank sponsored liquidity".

(h) Draft Board Presentation

[745] Allan prepared a powerpoint presentation for the Monday, August 13, 2007 Board meeting entitled "What the Hell is Going On?". Allan sent that presentation to Tai, Cornish, Child and one other Coventree employee on August 9, 2007. The presentation included comments to the following effect:

(a) the crisis has not passed and there are more shocks to come (p. 3);

(b) contagion has caused a problem in one area to migrate to others due to the influence of the CDO market (p. 4);

(c) there has been a contraction of available cash in the Canadian ABCP market and unprecedented spread volatility and risk correlation in all credit portfolios (p. 5);

(d) conduits sponsored by non-banks have always had poorer liquidity than those sponsored by banks (p. 6);

(e) conduits containing U.S. subprime assets (even where not credit impaired) suffer poorer liquidity than those that do not (p. 6);

(f) the illiquidity in the marketplace started with the highest subprime exposures but spread more generally to the market for ABCP issued by third-party sponsors; spread widening occurred as a result. Spread widening impacts Coventree's net revenue (pp. 7-8);

(g) the illiquidity challenges became even more severe on August 3, 2007 with the issue of $3 billion of new ABCP into the market, such that "default or liquidity draws on A notes and extensions on E notes became a real threat" (p. 9);

(h) collateral call triggers remain perilous and "a prolonged rally in credit markets and a return to the normal differentiated trading patterns among credits is required to bring these levels in and reduce our collateral call risk" (p. 11);

(i) in order to deal with collateral call risks it is necessary to hold overfunding in Coventree conduits. This exposes Coventree to negative carry (p. 13);

(j) in the absence of new issue capacity, Coventree has only two mechanisms to generate overfunding: amortization and asset sales (p. 13);

(k) all remaining investing assets (credit arbitrage assets) have liquidation values between 50 – 90% of their funded value (p. 15);

(l) the cost of funds situation will result in the migration of $3 – 4 billion of assets (p. 15);

(m) there is the potential for liquidity draws to be unavailable to Coventree sponsored conduits because of the size of maturities of Coventree sponsored ABCP on particular days (p. 17);

(n) dealer market-making lines for Coventree sponsored ABCP and other independents are at or close to zero (p. 19);

(o) market disruption liquidity lines are only 364 day commitments; without the prospect of ongoing credit arbitrage transactions to motivate providers to renew, none can be presumed to roll over (p. 21); and

(p) Coventree's profits and losses would be impacted by negative carry on overfundings, reduced margins due to wider spreads, potential "make-wholes" to conduits for losses on sales of assets and lost backlog (pp. 23-24).

[746] In the same presentation, Allan concluded that there had to be a contraction in the overall amount of ABCP in the Canadian credit market and that adjustment could occur "catastrophically" or by a managed proportionate reduction (i.e., the "soft landing", see paragraph 735 of these reasons).

[747] We consider the "What the Hell is Going On?" presentation to be very cogent evidence of Allan's objective assessment of the circumstances by August 9, 2007. A number of those challenges and issues were evident to Coventree well before that date.

(i) Friday, August 10, 2007 to Monday, August 13, 2007

[748] In his daily update to the Board on Friday, August 10, 2007, Tai reported that it was a "tough day" in the markets with all the headline press "but Coventree managed to roll all of its conduits' ABCP with the continuing market support of the Caisse".

[749] On August 10, 2007, Tai, in person, and Allan, by telephone, attended the meeting of market participants hosted by Verville in Montreal. In attendance were representatives of all the major participants in the ABCP market including the dealers, liquidity providers and conduit sponsors. Verville proposed that coordinated steps should be taken to shrink the size of the ABCP market and that all players in the market would be expected to participate in that reduction. On Saturday, August 11, Allan sent an e-mail to Verville saying that Verville "did an excellent job putting some form to the beginning of [the] way out of the crisis the market is in".

[750] By Sunday, August 12, 2007, however, Allan reported that it appeared that the Caisse had been unsuccessful in getting the Bank of Canada to accept third-party sponsored ABCP as collateral for advances to banks. Allan and Verville both believed, as a result, that there was no chance that the Canadian banks would support Coventree sponsored ABCP on August 13, 2007.

[751] Allan stated in an e-mail to Cornish, Tai, Child and others at Coventree on August 12, 2007 at 3:56 p.m. that:

> I have had a number of conversations with Luc Verville today, and I have to report that it is far from clear that he has approval to stand in tomorrow.
>
> …
>
> Bottom line: I am not optimistic about our chances of dodging the bullet tomorrow. All hands should be on deck; all procedures for extensions, draws and defaults should be ready for execution.
>
> Helmets on; chin straps tightened.

[752] On Monday, August 13, 2007, Coventree agreed with NBF to widen spreads on its ABCP. While some Coventree sponsored ABCP was rolled, the dealers were not able to place all of the maturing Coventree sponsored ABCP. As a result, Coventree widened the spreads on the A notes to 50 basis points and on the E notes to 110 basis points. That allowed Coventree to take immediate steps to make claims under the relevant liquidity agreements and to extend the terms of the E notes. Some of the liquidity providers provided liquidity in response to notices for liquidity draws while others refused on the grounds that the circumstances that existed that day did not constitute a general market disruption within the meaning of the applicable liquidity agreements. Bank-sponsored ABCP continued to roll.

[753] When it became clear on August 13 that not all Coventree sponsored ABCP would be rolled, Cornish contacted Market Regulation Services to request a halt in trading of Coventree shares on the TSX. Cornish was ultimately able to persuade Market Regulation Services to halt trading in Coventree shares to give Coventree sufficient time to prepare and issue a news release that day.

[754] Coventree issued news releases on August 13, 14, 16, 22 and 23, 2007 addressing the market disruption and related matters.

[755] On August 22, 2007, Coventree reported in its news release that the spread widening that had occurred to that date meant that "Coventree's revenues from credit arbitrage transactions will in the short-term be reduced to zero".

8. Decisions of the Disclosure Committee

[756] We have indicated in these reasons a number of our concerns with the decisions made by the Coventree disclosure committee with respect to Coventree's obligations under section 75 of the Act to disclose material changes. We would reiterate here that:

(a) Coventree's disclosure in its MD&A did not satisfy its obligation to disclose material changes by news release in accordance with section 75 of the Act (see paragraph 642 of these reasons);

(b) the fact that extensive risk factors were disclosed in the Prospectus and that "US subprime "contagion" etc. [was] widely discussed in the press" did not mean that public shareholders and investors had sufficient information to be able to fully assess the effects on, and consequences for, Coventree and its business of the events and developments that were unfolding in late July and early August 2007; to the contrary, we have concluded they did not have sufficient information to do so;

(c) Coventree's obligation was to disclose changes that had occurred in its business or operations that were material; that disclosure obligation was not "premature" and did not require Coventree to speculate about or predict uncertain future events (see paragraphs 637 and 638 of these reasons); and

(d) the Draft Press Release prepared by Cornish addressed only spread widening and thereby failed to address a number of very significant events and developments that were discussed at the August Board Meeting (see paragraph 646 of these reasons) and that we have concluded constituted material changes.

In our view, the various rationalizations of the disclosure committee did not justify the decisions it made not to publicly disclose events and developments that had occurred and constituted "material changes" within the meaning of the Act by the close of business on August 1, 2007.

[757] In particular, in our view, the reasons Tai expressed to the Board for not issuing a news release on August 2, 2007 (see paragraph 562 of these reasons) did not justify that decision.

[758] Further, Child's notes of the disclosure committee meeting on August 7, 2007 indicate that the relevant test used by securities regulators to determine when disclosure is required "is whether the information can be reasonably expected to influence investors". The disclosure committee concluded that "disclosure was not required under this test" (see paragraphs 720 and 721 of these reasons). We see no reasonable basis for that conclusion. To the contrary, we have concluded that a number of the events and developments that had occurred by the close of business on August 1, 2007 would have significantly affected the investment decisions of public shareholders and investors (see paragraphs 336, 338 and 596 of these reasons).

9. Multiple Breaches of the Act

[759] Staff has alleged that by reason of Coventree's failure to comply with section 75 of the Act as a result of the DBRS January Release, Coventree also failed to comply with its disclosure obligations under that section on each day thereafter from January 19, 2007 to August 13, 2007. In essence, that is an allegation that Coventree's failure to comply with section 75 constitutes a continuing breach of the Act until appropriate disclosure is made. Staff makes the same allegation of a continuing breach on each day following the alleged material change that occurred on August 1, 2007 or thereafter. Staff did not address this issue in its submissions. The reason for making these allegations may be simply to ensure that Staff has alleged a breach of the Act on each day upon which we could potentially determine a material change to have occurred. That is more a matter of pleading than substance. At the same time, one consequence of this allegation is that Coventree would potentially be subject to sanctions for breaches of the Act on each day after a material change had occurred until it was properly disclosed.

[760] The Commission may well conclude that it is in the public interest in some circumstances to impose sanctions on an issuer for failure to correct a previously made misstatement. One example may be where an issuer becomes aware that a previous statement was materially misleading and fails to correct it. Similarly, the Commission may conclude in certain circumstances that an issuer repeats a previous misstatement by necessary implication (see, for example, *Re Biovail, supra,* at para. 251).

[761] In this case, however, we do not believe that the circumstances before us justify treating Coventree's failure to comply with its disclosure obligations with respect to the DBRS January Release or by the close of business on August 1, 2007 as

giving rise to further multiple breaches of the Act on every day thereafter. The essence of Coventree's contraventions of the Act is the failure to comply with its obligations to issue and file a news release forthwith after the occurrence of those material changes and thereafter to file material change reports. Coventree ultimately made public disclosure related to those circumstances on May 14, 2007 (in its Q2 MD&A, in the case of the DBRS January Release) and on August 13, 2007 (in respect of the market disruption that occurred on that date). We are not satisfied that the disclosure in the Q2 MD&A was adequate (see paragraph 349 of these reasons) and we have not considered the adequacy of disclosure made by Coventree on August 13, 2007. In any event, those disclosures did not absolve Coventree's previous failures to comply with subsection 75 of the Act. In the circumstances, however, we are not prepared to conclude that, having failed to comply with its disclosure obligations on January 22, 2007 and August 2, 2007, Coventree thereby breached the Act on every day thereafter until corrective disclosure was made. The same conclusion applies to Coventree's failure to file required material change reports.

[762] In coming to that conclusion, we should not be taken to have decided that there are never circumstances in which the Commission would take the position that a breach of a disclosure obligation constitutes a continuing breach on each day thereafter until appropriate corrective disclosure is made. We have identified above two circumstances in which the Commission might take that view. We note, in addition, that in imposing sanctions for a breach of the Act or for conduct contrary to the public interest, the Commission will take into consideration all of the relevant circumstances. Those circumstances would include the failure to appropriately and adequately correct a previously made misstatement on a timely basis.

XIII. CONTRAVENTIONS OF THE ACT BY CORNISH AND TAI

[763] We have concluded that Coventree failed to comply with subsections 75(1) and (2) of the Act in respect of the material changes that occurred on January 22, 2007 and by the close of business on August 1, 2007. Staff has alleged that Cornish and Tai, as senior officers and directors of Coventree, authorized, permitted or acquiesced in Coventree's contraventions of the Act and are thereby deemed also to have not complied with the Act in accordance with section 129.2 of the Act.

1. Section 129.2 – Authorize, Permit or Acquiesce

[764] A director or officer of an issuer is deemed not to have complied with securities law where the director or officer authorized, permitted or acquiesced in the issuer's non-compliance with the Act (Act, *supra*, section 129.2).

[765] Staff alleges that Cornish and Tai authorized, permitted or acquiesced in Coventree's breaches of the Act described in paragraphs 342 and 595 of these reasons.

[766] We interpret the words "authorize, permit or acquiesce" as bearing their ordinary or dictionary meaning. In *R. v. Armaugh*, in considering the application of subsection 122(3) of the Act, the Court stated that:

> In *Webster's New World Dictionary*, 3rd college edition acquiesce means to agree or consent quietly without protest. Authorize is defined in part as to give official approval or permission, to give power or authority, to give justification for and permit is defined as to allow, consent to tolerate, to give permission, authorize permission especially in writing, a document granting permission, licence, warrant.
>
> (*R. v. Armaugh Corp.* (1993), 1 C.C.L.S. 87 (Ont. Ct. J.) at para. 20 ("***R. v. Armaugh***")

[767] Consistent with *R v. Armaugh*, in our view, the threshold for liability under section 129.2 of the Act is relatively low, in that merely acquiescing or passively consenting without protest will satisfy the requirements of that section (*R. v. Armaugh, supra,* at para. 19).

[768] Officers and directors of a reporting issuer are ultimately responsible for ensuring that timely and accurate information is disclosed by the issuer in accordance with the Act:

> The responsibility of companies to make timely and accurate financial disclosure ultimately rests with directors of those companies. In practice, the responsibility is shared by the directors, audit committees, chief executive officers, chief financial officers and other management. The company itself would also be responsible.
>
> (*Re Standard Trustco* (1992), 15 OSCB 4322 at 4364) ("***Re Standard Trustco***")

[769] More is expected of directors and officers who have superior qualifications, such as experienced business people, and more is expected of inside directors, such as Cornish and Tai, who have much greater involvement in corporate decision making and much greater direct access to corporate information (*Soper v. Canada* (1997) F.C.J. No. 881, at paras. 37 to 41; see also *Re YBM Magnex, supra,* at paras. 177, 183 and 184). The chief executive officer of a corporation plays a "pivotal" role in "co-

ordinating, compiling and vetting material corporate disclosure" (*Re Biovail, supra,* at para. 387, referring to *Re Ironside,* 2006 ABASC 1930*,* at paras. 963 and 982; and *Re Workum and Hennig*, 2008 ABASC 363, at para. 713).

2. Analysis and Conclusions

[770] Both Cornish and Tai were leaders of Coventree and senior officers. Cornish was President and Tai was CEO of Coventree. They were both members of the Board and of Coventree's strategic council and disclosure committee. They had the knowledge, experience and access to information that their roles implied. Both Cornish and Tai were directly involved in deciding whether Coventree should make disclosure of the material changes in its business that we have found occurred on January 22, 2007 and by the close of business on August 1, 2007.

[771] We find that Cornish and Tai authorized, permitted or acquiesced in Coventree's contraventions of section 75 of the Act referred to in paragraphs 342 and 595 of these reasons. As a result, Cornish and Tai are deemed, pursuant to section 129.2 of the Act, also to have not complied with subsections 75(1) and (2) of the Act.

[772] We would add that there was no evidence before us that would lead us to conclude that either Cornish or Tai intentionally breached the Act or attempted to intentionally mislead public shareholders or investors.

[773] While no allegations were made in this matter against Allan, Child, Dalton or Paul, we have no reason to doubt that they testified truthfully and forthrightly and that they acted throughout the events that were the subject matter of this proceeding in good faith in what they considered to be the best interests of Coventree and its shareholders. Allan appeared to us to be attempting in good faith to fully inform the Board of developments in the ABCP market as they unfolded. Child appeared to us to be focused in good faith on attempting to ensure that Coventree complied with its disclosure obligations in the circumstances. No one should conclude otherwise based on these reasons.

[774] We would also add that there was no evidence that would lead us to conclude that Coventree, Cornish or Tai, or any other employee of Coventree who testified, did not co-operate fully in responding to Staff's investigation in this matter. We understand that Coventree voluntarily agreed that it would not make any distribution of dividends to shareholders in the course of its winding up until Staff's investigation had been completed and at least 45 days notice of any proposed distribution was given to Staff.

XIV. CONDUCT CONTRARY TO THE PUBLIC INTEREST

1. Staff Allegations

[775] Staff alleges that the conduct of Coventree, Cornish and Tai in contravening the Act as alleged by Staff is contrary to the public interest. No public interest order is sought by Staff as a result of any conduct of the Respondents that does not constitute a contravention of the Act. Accordingly, while our public interest jurisdiction may be exercised in circumstances where there has been no breach of the Act, in this case we will limit the exercise of that jurisdiction to circumstances in which we have concluded that there has been a contravention of the Act.

2. Coventree Submissions

[776] Coventree submits that there is no basis upon which the Commission can or should exercise its public interest jurisdiction against Coventree or the other Respondents in the absence of an established breach of the Act. Staff has conceded that point in this proceeding.

[777] In any event, Coventree submits that its conduct does not warrant the exercise of the Commission's public interest jurisdiction. It submits that there is no need for a preventative order against Coventree or any of the other Respondents in this case. Coventree further submits that it acted honestly, reasonably, diligently and fairly throughout the relevant period. There is no evidence that anyone at Coventree turned a blind eye to the company's disclosure obligations or set out to treat investors unfairly or improperly in any way. This case does not involve a scheme to mislead. To the contrary, Coventree submits that its management and Board considered their disclosure obligations carefully and took those obligations extremely seriously.

[778] Further, Coventree submits that there is no evidence that Coventree (or anyone associated with it) intended to mislead, conceal or withhold the truth from its shareholders or from anyone else. To the contrary, the record is replete with evidence that Coventree sought to keep its public shareholders and investors in Coventree sponsored ABCP fully informed in respect of the matters that Staff alleges should have been publicly disclosed.

Prospectus Disclosure

[779] With respect to Staff's allegation regarding the disclosure in the Prospectus, Coventree submits that it engaged in a rigorous process guided by highly experienced experts with respect to the drafting, finalization, approval and issuance of the

Prospectus. That process was intended to ensure that the Prospectus contained full, true and plain disclosure of all material facts. Moreover, Coventree submits that the undisputed evidence in this proceeding is that Coventree adopted the approach of disclosing in the Prospectus, in detail, every conceivable risk Coventree then faced, and attempted to dampen expectations regarding Coventree's future performance.

DBRS January Release

[780] With respect to Staff's allegation concerning the DBRS January Release, Coventree submits that when it became clear, Coventree disclosed the impact that the DBRS January Release would likely have in the Letter to Owners, Q1 MD&A and Q2 MD&A. Coventree submits that this was not the conduct of a company trying to mislead, conceal or hide the truth.

Disclosure of Subprime Exposure

[781] Coventree submits that to the extent it received enquiries concerning U.S. subprime exposure from investors or dealers, it responded to those enquiries in a helpful, accurate and timely manner. Coventree submits that the U.S. subprime disclosure that Coventree made in the April Investor Presentations was unprecedented at the time in the ABCP market in Canada and went beyond what other conduit sponsors and DBRS were providing to ABCP investors.

Events of Late July and Early August 2007

[782] Coventree submits that it had prepared, and was planning to disclose in its Q3 MD&A, a detailed and accurate summary of the prevailing market conditions and their impact on Coventree. That disclosure would have been made on August 13, 2007, but for the market disruption that occurred on that date. Again, Coventree submits that this is decidedly not the conduct of a company engaged in a scheme to mislead or conceal the truth.

[783] In late July and early August 2007, Coventree was struggling to understand the events and developments that were occurring in the ABCP market. The global economic crisis resulted from numerous factors that were beyond the control of Coventree. In this difficult, highly fluid and constantly changing environment, Coventree made its disclosure decisions based on the information then available to it. Coventree submits that those decisions should not be judged against a standard of perfection or with the benefit of hindsight.

[784] Coventree submits that it did not make its disclosure decisions arbitrarily or without careful deliberation. Coventree's management and Board included at least three former Bay Street lawyers with experience and training concerning the continuous disclosure obligations of public companies. The Board and members of senior management concluded reasonably and prudently that it was not necessary to issue a news release or file a material change report in late July or early August prior to the market disruption that occurred on August 13, 2007.

[785] In addition, Coventree submits that it had well-founded concerns about making premature and unnecessary disclosure based on potentially misleading or inaccurate information. During this period, the ABCP market was characterized by speculation, misinformation, posturing and rumours. Issuing a premature or unnecessary news release or material change report based on this sort of information might well have misled the market and sparked panic, thereby precipitating the very market disruption that Coventree was trying to avoid.

[786] Coventree submits that there is no evidence to suggest that anyone associated with Coventree attempted to, or did, profit in any way from any of the alleged non-disclosure. When the market disruption occurred on August 13, 2007, it affected not only Coventree's public shareholders, but also Cornish, Tai and other members of the Board and management who owned shares in Coventree. Cornish and Tai were Coventree's largest shareholders and, as such, suffered the greatest losses in the period following the market disruption.

[787] Finally, in determining whether there is a need for a preventative order against Coventree and the other Respondents, Coventree submits that the Commission should have regard to Coventree's conduct following the market disruption. In particular, Coventree co-operated fully in the restructuring process as well as with Staff's investigation in this matter. Coventree produced every document Staff requested and every witness Staff sought to interview. Coventree answered all of Staff's questions fully and expeditiously, even in the highly difficult circumstances following the market disruption.

[788] Moreover, Coventree formed a special committee of independent directors to respond to Staff's investigation and to conduct its own investigation into the issues raised by Staff. The special committee spent hundreds of hours analyzing and considering the DBRS January Release, the events of late July and early August 2007 and Coventree's disclosure obligations in light of those events.

3. Cornish Submissions

[789] Cornish submits that he exercised good judgement and carried out his obligations as a senior officer and director of Coventree in a diligent and careful manner. He submits that he was attentive to and involved in all of Coventree's deliberations and discussions about its disclosure obligations under the Act.

[790] Cornish submits that his actions indicate his intention to "get in front of" the subprime issue by taking the lead in disclosing the U.S. subprime exposure of Coventree-sponsored conduits. Cornish submits that this evidences his proactive attitude and approach to disclosure.

[791] Cornish submits that he continuously assessed and re-assessed Coventree's disclosure obligations at each critical interval from Coventree's evolution into a public company in November 2006 through to the market disruption on August 13, 2007.

[792] Cornish submits that Staff can point to no instance when he did not personally review or consider Coventree's disclosure obligations in response to market events or developments involving DBRS or the dealer syndicate. Cornish submits that nothing in the evidence provides a basis to conclude that he would, in the future, be a risk to or would prejudice the fair and efficient operation of Ontario's capital markets.

[793] Cornish submits that evidence of his good character is relevant to the issue of his credibility as a witness and to the substantive issue of whether he is a person who should be the subject of an order made by the Commission in the public interest.

[794] Cornish submits that his conduct and analysis of Coventree's disclosure obligations throughout the period under review were consistent with and reflected the attributes of an intelligent, diligent, thoughtful and experienced business person.

[795] Cornish submits that the Commission must examine the nature of his conduct in the larger context of market events that occurred in 2007. Cornish submits that it appears that no other similarly situated individual or company has been the subject of enforcement proceedings arising from the global credit crisis of 2007 and 2008. The strong inference to be drawn from the absence of a response from other regulators is that there is no valid basis for Staff's decision to seek to punish Coventree for alleged failures to disclose events that were driven by external events and that were uncertain in the circumstances.

[796] Cornish submits that, contrary to Staff's allegations, there is no evidence that he controlled or dictated the disclosure decisions of Coventree. The disclosure decisions were made on a collective basis, through a process of consultation and discussion among Coventree's management team and the Board, and were reasonable in the circumstances. Staff's allegations against Cornish are inconsistent with the uncontradicted evidence of all the witnesses, other than the Staff witnesses.

[797] Cornish also adopts the submissions of Coventree and Tai on this issue.

[798] Accordingly, Cornish submits that there is no basis for the Commission to make an order against him in the public interest.

4. Tai Submissions

[799] Tai also submits that the alleged breaches of securities law, and the alleged conduct contrary to the public interest, are not pleaded by Staff as alternative bases of liability; rather, they are pleaded conjunctively. Accordingly, Tai submits that in order to succeed, Staff must prove both elements of the allegation that it has made: that Tai breached securities law *and* that Tai acted in a manner contrary to the public interest.

[800] Tai submits that he had an honest belief that none of the facts relied upon by Staff were material changes to the business or operations of Coventree. Tai submits that his belief was reasonable for the following reasons:

(a) there is no evidence that Tai delegated tasks inappropriately or shirked his responsibilities as Coventree's CEO. Rather, he discharged his duties and played a pivotal role in coordinating, compiling and vetting material corporate disclosure;

(b) Tai sought out, considered and relied upon input from Cornish, who was a securities lawyer with at least 15 years' experience in securities regulation and a fellow member of Coventree's disclosure committee. Allan, who was also a member of the strategic council from January 22, 2007 onwards, was a lawyer with experience in advising public companies with respect to their disclosure obligations;

(c) Tai relied on input from independent Board members, including those with significant public company disclosure experience, to advise of any concerns they had with respect to Coventree's public disclosure;

(d) Tai relied on Child, as Coventree's CFO, to make financial calculations and projections with respect to the materiality of certain events and developments;

(e) Tai relied on an extensive, seasoned team of underwriters and counsel to advise of any concerns they had with respect to the disclosure in the Prospectus; and

(f) Tai relied on reports he received from Allan and others that the Caisse and other entities (such as the Office of the Superintendent of Financial Institutions) would intervene to ensure the Canadian ABCP market remained stable.

[801] Tai submits that the evidence of the robust disclosure made to the owners of Coventree when it was a private company as well as the evidence of Tai's expansive attitude toward risk disclosure during the drafting of the Prospectus are additional reasons why an order in the public interest against him is not appropriate in this case.

[802] Tai also adopts Coventree's and Cornish's submissions with respect to this issue.

[803] Accordingly, Tai submits that there is no basis for the Commission to make an order against him in the public interest.

5. Analysis and Conclusions

[804] The purpose of the Commission's public interest jurisdiction is protective and preventive. It is intended to be exercised to prevent likely future harm to Ontario capital markets.

[805] The Commission is entitled to make various sanction orders under section 127 of the Act if it is of the opinion that doing so would be in the public interest. In considering the Commission's power to make such orders in the public interest, the Supreme Court of Canada has observed that "[t]he OSC has 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).

[806] The Supreme Court of Canada has indicated that the Commission's public interest discretion 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)

[807] Further, the Supreme Court of Canada has recognized general deterrence as an additional factor that the Commission may consider when imposing sanctions. In *Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at para. 60, the Supreme Court stated that "… it is reasonable to view general deterrence as an appropriate and perhaps necessary consideration in making orders that are both protective and preventative".

[808] The Commission has exercised its public interest jurisdiction in a number of circumstances that involved the failure to make timely disclosure or the making of misleading disclosure (See, for instance, *Re Cineplex Corporation*, *Drabinsky and Gottlieb* (1983), 6 OSCB 3845, *Re Standard Trustco*, *supra, Re YBM Magnex, supra, Re Rex Diamond*, *supra,* and *Re Biovail, supra*). It is clear that the Commission considers the failure to make timely disclosure in accordance with section 75 of the Act, and the making of inaccurate, misleading or untrue disclosure, to be contrary to the public interest.

[809] In our view, the conduct of Coventree, Cornish and Tai in contravening the Act was contrary to the public interest.

[810] The question of what orders against Coventree, Cornish or Tai should be made in the public interest is a matter for consideration at the sanctions hearing.

XV. CCAA RELEASE

1. Coventree's Submission

[811] On March 17, 2008, the Ontario Superior Court of Justice (Commercial List) issued an Initial Order under the CCAA (*ATB Financial Metcalfe and Mansfield Investments II Corp.* (2008), 42 CBR (5th) 90 (Ont. S.C.J. (Comm. List)) imposing a stay of proceedings in order to allow creditors to vote on a plan of arrangement (the "**Plan**") that resulted in a restructuring of ABCP in Canada.

[812] Coventree submits that participants in the Plan, including Coventree, Cornish and Tai, were released under the terms of the Plan from various claims. Coventree submits that the release contained in the Plan is a complete bar to Staff commencing this proceeding and on the Commission making any order against Coventree, Cornish or Tai.

2. Background

[813] The Plan contains a comprehensive release of what are defined as "ABCP Market Claims". Section 10.2 of the Plan provides as follows:

> [E]very Person … hereby fully, finally, irrevocably and unconditionally releases and forever discharges each of the Released Parties of and from any and all past, present and future claims, rights, interests, actions, rights of indemnity, liabilities, demands, duties, injuries, damages, expenses, fees (including attorney fees and liens), costs, compensation, or causes of action of whatsoever kind or nature whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or actual, liquidated or unliquidated, whether in tort or contract, whether statutory or at common law or in equity, based on, in connection with, arising out of, or in any way related to, in whole or in part, directly or indirectly, any act, inaction or omission existing or taking place on or prior to the Plan Implementation Date relating to or otherwise in connection with the Third Party ABCP market in Canada, the ABCP Conduits, the Affected ABCP, the business and affairs of any of the Released Parties relating to or otherwise in connection with the Affected ABCP … (collectively, the 'ABCP Market Claims').

[814] Both Staff and the Commission are "Persons" for purposes of the release. "Person" is defined in the Plan to include any "government, agency, regulatory body or instrumentality thereof".

[815] There is a "carve-out" provided for in section 10.3 of the Plan which allows the Commission to conduct certain types of regulatory proceedings related to ABCP Market Claims notwithstanding the terms of the release. The carve-out reads as follows:

> Notwithstanding sections 10.1 and 10.2, nothing in this Plan shall: (i) release, enjoin or compromise claims against Directors of the Respondents that are described in Section 5.1(2) of the CCAA; or (ii) stay, release, discharge, bar, enjoin or otherwise interfere with any powers or remedies of, or proceedings or investigations by, *any regulatory or self-regulatory body having jurisdiction* (pursuant to any applicable statute, regulation, rule or, in the case of the Investment Industry Regulatory Organization of Canada, contract) over any Released Party *concerning such Released Party's involvement in the creation, issue, sale or rating of any Affected ABCP*, provided that sections 10.1 and 10.2 would be effective to release and enjoin the making of any order or award to compensate or make restitution to an aggrieved person or company or to pay general or punitive damages to any other person or company. [emphasis added]

[816] Coventree, Cornish and Tai submit that the allegations made by Staff in this matter, other than the allegation with respect to the subprime statement, do not concern "the creation, issue, sale or rating" of any affected ABCP. The Respondents submit that those allegations relate primarily to Coventree's compliance with its disclosure obligations under the Act and do not concern "the creation, issue, sale or rating" of affected ABCP.

3. Analysis and Conclusion

[817] In our view, the submissions made by Coventree in this respect should have been brought as a motion at the commencement of the hearing. In our view, Coventree should not be permitted to take the position referred to in paragraph 812 of these reasons after having participated in a 45-day hearing on the merits without objection.

[818] In any event, we take a different view of the proper interpretation of the provisions of the Plan.

[819] There is no question that the language of the release contained in the Plan is extremely broad and would, as a threshold matter, apply to the Commission. However, in our view, the exception to the release referred to in paragraph 815 of

these reasons is sufficiently broad to apply to this proceeding. This proceeding relates to compliance by Coventree with its disclosure obligations under the Act arising out of the creation, issue and sale of ABCP. It is regulatory in nature and is not for the purpose of compensating any market participant for any damages or claims arising out of events in the ABCP market or for paying any restitution.

[820] We agree with Staff that the Plan provides that the release does not apply to any regulatory body that has jurisdiction over an otherwise released party who was involved in the "creation, issue, sale or rating of any Affected ABCP". In our view, the Respondents fit within that language. They are persons who were involved in the "creation, issue, sale or rating" of ABCP and over whom the Commission has jurisdiction. The regulatory carve-out is directed at the Commission's jurisdiction in the public interest over certain released parties and not, as suggested by the Respondents, at the scope of the regulatory proceedings that may be brought against them. This proceeding relates to the Respondents' involvement and activities in the ABCP market in connection with the creation, issue and sale of ABCP and is regulatory in nature. This proceeding therefore falls within the terms of the exception to the release referred to in paragraph 815 of these reasons.

[821] Accordingly, we reject the submission that the terms of the Plan bar this proceeding or the making of any order against the Respondents.

XVI. SALES OF ABCP TO INVESTORS

[822] While the background facts, events and developments in this matter involve the Canadian commercial paper market and the issuance and "rolling" of ABCP, it does not, with the exception of the allegation with respect to the subprime statement (set out in paragraph 18(c) of these reasons), relate to whether misleading statements were made to investors in connection with the sale of Coventree sponsored ABCP to them. In 2010, settlements were reached by securities regulators with a number of the Canadian dealers who distributed and sold ABCP to the public in Canada (see, for instance, *Re Canadian Imperial Bank of Commerce* (2010), 33 OSCB 73 and *Re HSBC Bank of Canada* (2010), 33 OSCB 62). Each of those banks admitted in a settlement agreement that it "engaged in conduct contrary to the public interest by failing to adequately respond to emerging issues in the third-party ABCP market insofar as it continued to sell third-party ABCP without engaging compliance and appropriate processes for the assessment of such information and concerns".

[823] As noted in paragraph 21 of these reasons, with the exception of the allegation with respect to the subprime statement, this proceeding does not address the question whether any of the facts, events and developments referred to in these reasons were material to purchasers of ABCP or would reasonably be expected to have had a significant effect on the market price or value of Coventree sponsored ABCP. Those questions are not the subject of this proceeding.

[824] We would be remiss, however, if we did not make one additional comment in connection with the issue and sale of ABCP in the period leading up to the market disruption that occurred on August 13, 2007. It is clear to us having considered and reviewed the extensive evidence submitted to us over 45 hearing days, that Coventree and a number of the dealers distributing Coventree sponsored ABCP from August 1, 2007 to August 13, 2007, had knowledge of liquidity related events and developments in the ABCP market that were important to investors considering the purchase of ABCP. It is unlikely that any investor would have purchased Coventree sponsored ABCP, or any other ABCP, if they had been aware of those market events and developments.

XVII. CONCLUSIONS

[825] For the reasons discussed above, we have concluded that:

(a) Coventree contravened subsection 75(1) of the Act by failing to forthwith issue and file a news release disclosing the material change that occurred as a result of the DBRS January Release. Coventree contravened subsection 75(2) of the Act by failing to file a material change report in respect of that material change in accordance with that subsection. (see paragraph 342 of these reasons)

(b) Coventree contravened subsection 75(1) of the Act by failing to forthwith issue and file a news release disclosing the material changes that occurred by the close of business on August 1, 2007. Coventree contravened subsection 75(2) of the Act by failing to file a material change report in respect of those material changes in accordance with that subsection. (see paragraph 595 of these reasons)

(c) Each of Cornish and Tai authorized, permitted or acquiesced in Coventree's non-compliance with Ontario securities law referred to in sub-paragraphs (a) and (b) above and are deemed also to have not complied with Ontario securities law in accordance with section 129.2 of the Act. (see paragraph 771 of these reasons)

(d) The conduct of Coventree in contravening Ontario securities law as provided in sub-paragraphs (a) and (b) above, and the conduct of each of Cornish and Tai in contravening Ontario securities law as provided in sub-paragraph (c) above, was contrary to the public interest. (see paragraph 809 of these reasons)

[826] The allegations of Staff that Coventree breached section 56 and subsection 126.2(1) of the Act are dismissed (see paragraphs 215 and 402 of these reasons).

[827] The Respondents should contact the Office of the Secretary of the Commission within 30 days of these reasons to schedule a sanctions hearing.

DATED at Toronto this 28th day of September, 2011.

"James E. A. Turner"

James E. A. Turner

"Mary G. Condon"

Mary G. Condon

"Paulette L. Kennedy"

Paulette L. Kennedy

SCHEDULE A

GLOSSARY OF TERMS AND LIST OF INDIVIDUALS REFERRED TO IN THESE REASONS

Acronym	Term	Description
AcG-15		CICA Accounting Guideline 15, Consolidation of Variable Interest Entities.
	Act	*Securities Act*, R.S.O. 1990, c. S.5, as amended.
	A notes	Series of ABCP issued by Coventree or Nereus sponsored conduits typically backed by liquidity arrangements.
	April Investor Presentations	Presentations on April 25 and 26, 2007 by Coventree to ABCP investors that included a statement as to the total subprime exposure of Coventree sponsored conduits. See the “subprime statement”.
ABCP	Asset-backed commercial paper	Asset-backed debt securities distributed in Canada with a term to maturity of less than one year.
	asset originator/seller	Person that “originates” or sells to a conduit the assets that back ABCP in a traditional securitization transaction.
	Attachment Point	The point at which there is exposure of a holder of ABCP to losses in a CDO structure. It is dependent on the level of credit enhancement.
	August Board Meeting	Meeting of the Coventree Board on August 1, 2007.
BA	bankers’ acceptance	Form of short-term borrowing by a Canadian bank, typically for less than 365 days.
	bank-sponsored ABCP	ABCP sponsored by a Canadian bank or other large financial institution.
	basis point	One basis point equals 1/100th of one percent. The interest rate on ABCP was expressed as the basis point spread over the CDOR rate.
	BGI Deal	Coventree and Nereus sponsored transaction that did not proceed as a result of DBRS withdrawing its grandfathered status under the DBRS January Release.
BIMCOR		Bell Investment Management Corporation, manager of Bell Canada’s pension fund. An ABCP investor.
	bids	An ABCP investor wishing to sell ABCP prior to maturity requests a “bid” or purchase offer for the ABCP from dealers in the secondary market.
BNP		BNP Paribas (Canada), a member of Coventree’s dealer syndicate.
	Board	The Coventree board of directors.
	Caisse	Caisse de dépôt et placement du Québec, the Quebec pension fund that in 2007 held approximately one-third to one-half of ABCP issued by Coventree sponsored conduits. An ABCP investor and a minority shareholder in Coventree.
CDOR	Canadian Deposit Offering Rate	Daily average of the interest rates for Canadian bankers’ acceptances.

Acronym	Term	Description
	Canadian style liquidity (also known as general market disruption liquidity)	Liquidity arrangements generally backing A notes; liquidity would be provided only if: (i) new ABCP could not be issued due to a general market disruption, and (ii) DBRS confirmed that the credit quality of the underlying assets had not been impaired. A general market disruption may be defined differently in different liquidity arrangements but it generally means a disruption to the overall ABCP market and not just to certain conduits or note series.
	cash or dry powder	Cash held by a conduit; created by overfunding, selling assets or amortization of assets.
	cash CDO	A CDO structure that owns the underlying securities directly.
CIBC		CIBC World Markets Inc., a member of Coventree's dealer syndicate.
	Citibank	Citibank Canada, an ABCP investor.
	collateral	Short-term high quality assets that may be available to eventually repay ABCP investors on maturity.
	collateral call	A request that a conduit post additional cash collateral for the benefit of a counter party in an LSS transaction.
	collateral call trigger	The occurrence of an event that would require the posting of additional collateral by a conduit to a counter party in an LSS transaction.
CDO	collateralized debt obligation	A form of credit arbitrage transaction where diversified debt instruments are owned by a special purpose entity referred to as a CDO trust. The CDO Trust issues different tranches of securities, backed by the debt instruments. The different tranches have different risk profiles. Coventree sponsored conduits generally invested in AAA tranches of CDOs. CDOs may be cash CDOs or synthetic CDOs.
CCAA	*Companies' Creditors Arrangement Act*	Canadian statute under which an insolvent issuer may be reorganized.
	CDO related SFA transaction	An SFA transaction involving a CDO.
	CDO trust	A special purpose vehicle that purchases assets from originators in the form of bonds or other securities that are repackaged for sale to a conduit. See also "synthetic CDO".
	conduit	The issuer of ABCP. A special purpose vehicle.
	contingent funding risk	The risk that a conduit would have to raise additional funding in order to meet collateral calls. Contingent funding risk arises only in LSS transactions.
	Coventree sponsored ABCP	ABCP issued by Coventree sponsored conduits

Acronym	Term	Description
	Coventree sponsored conduits	Coventree sponsored eight conduits: Apollo Trust, Aurora Trust, Comet Trust, Gemini Trust, Planet Trust, Rocket Trust, Slate Trust and Venus Trust.
	credit arbitrage transaction	Type of ABCP asset securitization transaction that includes collateralized debt obligations and LSS transactions. Revenue to the sponsor is based on the spread between the return on the underlying assets and the conduit's cost of funds. The term is generally used interchangeably with structured financial asset transactions or "SFA transactions". Cornish testified that SFA transactions include all credit arbitrage transactions, but not all SFA transactions are credit arbitrage transactions.
	credit default swaps	Derivative contract used as part of certain credit arbitrage securitizations to hedge the risk of default in a reference portfolio. In economic effect, similar to insurance for the protection buyer.
	credit enhancement	Credit protection within an ABCP structure; a buffer between the default rate and the exposure to risk.
	Davies	Davies Ward Phillips & Vineberg
	dealer	Investment dealer that sells ABCP to investors.
	dealer lines	See "market-making lines"
	dealer syndicate	Coventree sponsored conduits sold ABCP through a syndicate of dealers that included NBF, CIBC, Scotia, RBC, Deutsche Bank, HSBC, Laurentian Bank and BNP.
	Deutsche Bank	Deutsche Bank Securities Limited, a member of Coventree's dealer syndicate.
DBRS	Dominion Bond Rating Service Limited	Only Canadian domiciled credit rating agency; only credit rating agency that rated ABCP with Canadian style liquidity.
	DBRS January Release	News release issued by DBRS on January 19, 2007 announcing new criteria for CDO related SFA transactions including a requirement for global style liquidity (attached as Schedule D to these reasons).
	DBRS November Letter	Letter sent by DBRS to market participants on November 10, 2006 indicating a more restrictive approach to rating SFA transactions (attached as Schedule C to these reasons).
	Draft Q3 MD&A	Coventree's draft third quarter Management's Discussion and Analysis for the period ending June 30, 2007.
	Draft Press Release	Draft news release prepared by Cornish following the August Board Meeting that was distributed to directors on August 2, 2007.
	E notes	Extendible ABCP. No liquidity protection was provided because the conduit had the option, in certain events, of extending the maturity date of the ABCP for a period of up to 364 days from the original date of issue.
	extension risk	The risk that the term of extendible ABCP may be extended by the conduit; E notes were offered at a higher interest rate spread because the conduit had the option, in certain events, of extending the maturity date of the ABCP for a period of up to 364 days from the original date of issue.
	February Subprime Data	Data set out in an e-mail from Dalton to NBF on March 15, 2007 disclosing the subprime exposure of Coventree sponsored conduits, by conduit, as of February 28, 2007.

Acronym	Term	Description
FRNs	floating rate notes	Floating rate notes; generally notes with terms that exceed one year and that are not backed by liquidity arrangements.
	general market disruption liquidity	Used interchangeably with the term "Canadian style liquidity".
	global style liquidity	Type of liquidity facility that can be accessed by a conduit where the ABCP fails to roll essentially for any reason.
HSBC		HSBC Bank Canada, a member of Coventree's dealer syndicate.
IPO	initial public offering	The initial public offering by Coventree of shares pursuant to the Prospectus.
	July 24 e-mail	E-mail sent by Dalton to the dealer syndicate on July 24, 2007 disclosing subprime exposure of Coventree sponsored conduits, by conduit and note series, as of June 28, 2007.
	July 30 Conference Call	Conference call on July 30, 2007 among representatives of Coventree and its three largest dealers.
	June Subprime Data	Data set out in an e-mail from Paul to NBF on July 11, 2007, disclosing the subprime exposure of Coventree sponsored conduits, by conduit and note series, as of June 29, 2007.
	Laurentian Bank	Laurentian Bank Securities Inc., a member of Coventree's dealer syndicate.
	Letter to Owners	Letter to Owners contained in Coventree's 2006 Annual Report filed on SEDAR on February 14, 2007.
LSS Transactions	leveraged super senior transactions	A type of synthetic CDO credit arbitrage transaction. A low yield on a perceived very safe investment is leveraged to provide a higher return.
	liquidity provider	A person who commits in certain circumstances to purchase or otherwise provide liquidity for A notes that mature.
MD&A		Management's Discussion and Analysis under Ontario securities law.
	market-making lines	Funds available to dealers to acquire maturing ABCP that does not roll on a particular day. Dealers may, at their discretion, purchase the ABCP into inventory. The ABCP is then sold as soon as market conditions permit.
	material or materiality	Whether a fact or change in an issuer's business, operations or capital would reasonably be expected to have a significant effect on the market price or value of the issuer's securities (see the definition of "material fact" and "material change" in the Act and subsection 126.2(1) of the Act).
	maturity date	The date when ABCP becomes due and payable to the holder.
	Mavrix	Mavrix Fund Management Inc., a mutual fund management company. An ABCP investor.
NBF		National Bank Financial, lead dealer of Coventree's dealer syndicate. As lead dealer, NBF would set the daily spread on Coventree sponsored ABCP after consultation with Coventree.
	NI 45-106	National Instrument 45-106 – *Prospectus and Registration Exemptions*

Acronym	Term	Description
	NP 51-201	National Policy 51-201 – *Disclosure Standards*
	Nereus	Wholly-owned subsidiary of Coventree as of May 10, 2007 that focused principally on credit arbitrage transactions. Prior to that date, Coventree owned 75.5% of Nereus.
	Nereus sponsored conduits	Nereus sponsored two conduits: Structured Investment Trust III (SIT III) and Structured Asset Trust (SAT).
	non-CDO related SFA transaction	A type of credit arbitrage transaction where ABCP funds are used to purchase a bond structure. Cornish testified that non-CDO related SFA transactions comprised approximately 20% of Coventree sponsored conduit assets.
	notional portfolio	In an LSS transaction, the conduit has exposure to a notional portfolio of securities that is some multiple of the size of the reference portfolio (see "reference portfolio").
	NorthBrook	NorthBrook Capital Corp., a traditional asset provider.
	overfunding	Another term for cash held by a conduit. Assets in a conduit mature or are sold and the proceeds of the maturity/sale are held in cash by the conduit pending redemption of ABCP. Overfunding is typically invested in safer, short-term assets such as BAs.
	Plan	The plan of arrangement under the CCAA that resulted in a restructuring of ABCP in Canada.
	pre-funding	Another term for cash held by a conduit. Pre-funding means that a conduit issues ABCP before actually purchasing underlying assets. The pre-funding is typically invested in safer, short-term assets such as BAs.
	Prospectus	Coventree's final prospectus dated November 15, 2006, filed with the Commission on November 16, 2006.
	Prospectus Form	Form 41-101F – *Information Required in a Prospectus*
	protection buyer	A person, usually a bank or financial institution, that purchases protection from a conduit in respect of the loss of value of CDOs or other assets. The protection buyer pays a protection premium to the conduit. The protection buyer is paid protection payments by the conduit in specified circumstances.
	protection payments	The amounts payable by a conduit to a protection buyer. The protection payment for a specific CDO tranche is triggered when losses reach a specified level.
	Q1 MD&A	Coventree's publicly filed first quarter Management's Discussion and Analysis for the period ending December 31, 2006.
	Q2 MD&A	Coventree's publicly filed second quarter Management's Discussion and Analysis for the period ending March 31, 2007.
	rebalancing	Transfer of assets between conduits or note series in order to reduce the subprime exposure of a particular conduit or note series.
	R-1(high)	The highest DBRS credit rating for ABCP, comparable to an AAA bond rating. Almost all Coventree sponsored ABCP was rated R-1(high).
	reference portfolio	The portfolio of securities referenced by a credit default swap.

Acronym	Term	Description
	Respondents	Coventree, Cornish and Tai
	revenue backlog	The present value of Coventree's total estimated future revenues from completed funding transactions; as of February 14, 2007, Coventree revenue backlog for the 2007 fiscal year was approximately $34.4 million.
	Roadshow Presentation	Coventree's roadshow presentation in connection with the IPO.
	rolled or rolling ABCP	An investor re-investing the proceeds from maturing ABCP in newly issued ABCP for another term; also refers generally to the purchase of maturing ABCP by another investor or by a dealer.
	rollover risk	The risk that a conduit does not have the funds to meet its obligations to repay maturing ABCP.
RBC		RBC Dominion Securities Inc., a member of Coventree's dealer syndicate until July 27, 2007.
	Scotia	Scotia Capital Inc., the lead dealer for Nereus. As lead dealer, Scotia would set the daily spread on Nereus sponsored ABCP after consultation with Nereus.
	securitization transactions	There are two basic types of securitization transactions: traditional securitizations and credit arbitrage transactions. The former involve the purchase of traditional revenue generating assets. The latter include CDO related SFA transactions. See "SFA transactions".
	shares	Coventree common shares.
S&P		Standard & Poor's Financial Services LLC, a U.S. rating agency.
	sponsor	The person who sponsors a conduit by managing its activities as securitization agent, including making all of the arrangements for securitization transactions and the issue and repayment of ABCP.
SPPA		*Statutory Powers Procedure Act*, R.S.O. 1990, c. s.22
	Spread on ABCP	Interest rate payable on ABCP, expressed as a number of basis points above CDOR.
	Sprott	Sprott Securities Inc., co-lead underwriter of Coventree's IPO.
	Staff	Staff of the Ontario Securities Commission.
	Statement of Allegations	The statement of allegations in this matter issued by Staff on December 7, 2009.
SFA transactions	structured financial asset transactions	Term typically used by DBRS to refer to credit arbitrage transactions. Cornish testified that SFA transactions include all credit arbitrage transactions, but not all SFA transactions are credit arbitrage transactions.
	subprime exposure	Exposure of a conduit to assets that constitute U.S. subprime mortgages from less creditworthy borrowers.
	subprime statement	The statement made by Coventree at the April Investor Presentations that the total U.S. subprime mortgage exposure of its sponsored conduits was 7.4%.
	super senior tranches	The most senior tranches of a CDO trust (tranches typically are (a) super senior tranches, (b) mezzanine tranches, and (c) equity tranches). Credit enhancement is higher than for other tranches, so the possibility of default on a super senior tranche is generally viewed as very low.

Acronym	Term	Description
	synthetic CDO	A CDO that replicates a bond portfolio through credit default swaps. Cash from ABCP investors is invested in liquid collateral such as BAs that is pledged to the protection buyer and is intended to be used in the event of losses.
	third-party sponsor	A conduit sponsor such as Coventree that is not a Canadian bank or large financial institution. Also referred to as a non-bank sponsor of ABCP.
	traditional assets	Income producing assets acquired by a conduit in a traditional securitization transaction (for example, mortgages or credit card receivables).
	traditional securitization	Proceeds from the sale of ABCP are used to fund the direct purchase by the conduit of traditional assets. The assets are owned directly by the conduit.
	tranches	Different classes of debt securities with different credit ratings issued by a CDO Trust.
	Xceed	Xceed Mortgage Corporation, an asset originator or seller of mortgages to Coventree sponsored conduits.

Individuals Referred to in these Reasons
(and their affiliation or role at the relevant time)

Name as Defined	Name and Affiliation or Role
Allan	David Allan joined Coventree on January 22, 2007 as head of Coventree's Capital Markets Group.
Allardyce	Craig Allardyce, Associate Portfolio Manager at Mavrix.
Child	Bridget Child, Coventree's Chief Financial Officer during 2006 and 2007. Member of Coventree's credit committee, strategic council and disclosure committee.
Cornish	Geoffrey Cornish, President and a director of Coventree during 2006 and 2007. One of the three founders of Coventree. Member of Coventree's strategic council and disclosure committee.
Courchesne	Bob Courchesne, of NBF.
Dalton	Judi Dalton, group leader of Coventree's funding group.
Davidson	Natalie Davidson, of CIBC.
Dymott	Peter Dymott, head of the Canadian fixed income and currency business at RBC during 2006 and 2007.
Gaucher	Christian Gaucher, of NBF.
George	Christine George, Senior Forensic Accountant in the Enforcement Branch of the Commission.
Homer	Per Homer, Vice-President and Senior Trader at Citibank during 2007.
Hudec	Al Hudec, a lawyer at Davis & Co.
Jones	Michael Jones, President and Chief Executive Officer of Xceed.
Loke	Huston Loke, Group Managing Director and Head of Global Structured Finance at DBRS in 2006 and 2007. A member of DBRS's rating committee and executive committee.
McCloskey	Michael McCloskey, Partner and Director, Investment Banking at Sprott. Lead participant at Sprott during the IPO process.
Miller	Patrick Miller, junior money market trader at BIMCOR.
Mowat	Clara Jane Mowat, a director of Coventree and Chair of Coventree's Audit Committee.
Paul	Doug Paul, member of Coventree's funding group.
Smith	Greg Smith, of Scotia.
Tai	Dean Tai, CEO and a director of Coventree during 2006 and 2007. One of the three founders of Coventree. Member of Coventree's strategic council and disclosure committee.
Tillie	Marcel Tillie, Senior Forensic Accountant in the Enforcement Branch of the Commission.
Toten	Ken Toten, a Coventree employee.
Verville	Luc Verville of the Caisse, responsible for ABCP purchases.

SCHEDULE B

STAFF'S DETAILED ALLEGATIONS FROM THE STATEMENT OF ALLEGATIONS

Staff's detailed allegations in this matter are reproduced from the Statement of Allegations as follows:

…

IV. Allegations

A. Prospectus Disclosure

42. Coventree had an obligation under section 56 of the Act to provide full, true and plain disclosure in its prospectus of all material facts relating to the Coventree securities that it proposed to distribute.

43. In addition, Coventree's CEO, CFO and any two of its directors, on behalf of the board of directors were required under section 58 of the Act to certify that the prospectus contained full, true and plain disclosure.

44. Coventree filed its preliminary prospectus with the Commission on October 18, 2006 and filed its final prospectus (dated November 15, 2006) with the Commission on November 17, 2006. Its initial public offering consisted of a secondary offering of 22.81 percent of the then-issued and outstanding common shares held by certain shareholders of the company.

45. Cornish and Tai certified the prospectus as a director and CEO, respectively.

46. Coventree's final prospectus identified material risk factors relating to the business of Coventree, including that:

(a) if a disruption in the ABCP market occurred and there was a cessation or fundamental adverse shift in the liquidity of the ABCP market, Coventree sponsored conduits would be exposed to a demand for payment well in excess of Coventree's cash reserves. In its prospectus, Coventree acknowledged that "[a]lthough Coventree has no legal obligation to fund the conduits to buy back ABCP from investors in the event of a disruption, Coventree's reputation in the industry and ongoing ability to access the capital markets could be severely adversely impacted if it did not or could not do so.";

(b) Coventree was heavily dependent on a sole supplier, DBRS, to provide credit rating services for the ABCP issued by Coventree-sponsored conduits;

(c) Coventree relied on a small number of investors to purchase a relatively high percentage of the ABCP issued by its conduits. In particular, a substantial minority percentage of the ABCP issued by Coventree-sponsored conduits was purchased by the Caisse de depot et placement du Quebec ("CDPQ") which also held a minority interest in Coventree's equity;

(d) ABCP investors relied on Coventree because they were not provided with financial information about the assets underlying the conduits;

(e) Coventree was exposed to basis risk, being the difference (or spread) between the CDOR rate and Coventree's ABCP interest rates;

(f) the assets underlying the ABCP could perform at less than expected levels, such that cash flow generated by the assets would be insufficient to meet the conduit's outstanding obligations, including to its ABCP investors;

(g) a default could occur by any counterparty to the Coventree-sponsored conduits' liquidity agreements, swaps, or other credit-related derivatives;

(h) the supply of ABCP could exceed demand from investors in Canada, given the substantial growth in the ABCP market and given the possibility of investors moving their money to other money market investments;

(i) there was a high degree of competition in the markets for Coventree's services; and

(j) negative press or rumours regarding any ABCP industry participant could adversely affect the market and prevent the Coventree-sponsored conduits from re-issuing or rolling their commercial paper (ABCP).

47. Coventree did not disclose in its final prospectus that on, November 10, 2006, DBRS had advised Coventree that, effective immediately, DBRS was taking a more restrictive approach to approving new structured financial asset-backed (“SFA”) transactions (which Coventree described as credit arbitrage transactions) for ABCP conduits. DBRS had advised Coventree of this fact by email five days before Coventree filed its final prospectus with the OSC.

48. Coventree’s final prospectus contained the same language about DBRS as the preliminary prospectus.

49. As discussed above, the ABCP issued by the conduits had to have an approved credit rating from an approved credit rating organization to qualify for the prospectus exemption contained in section 2.35(2) of NI 45-106.

50. All Coventree-sponsored ABCP had approved credit ratings from DBRS. No other credit rating organization was willing to provide those services. Coventree was therefore wholly dependent on DBRS as its sole supplier of credit rating services, a fact which was disclosed in Coventree’s prospectus.

51. The final prospectus did not disclose that approximately 80 percent of Coventree’s revenues were derived from credit arbitrage transactions.

52. Coventree’s revenues were ‘substantially derived from establishing, operating and administering securitization conduits. In the prospectus, Coventree described itself as “a niche investment bank specializing in structured finance using securitization based financing technology”. Coventree stated that it was also beginning to focus on an expanded vision of becoming “a financial services company focused on niches”. This expanded corporate objective was in the early planning stage and the prospectus stated that there “is no assurance that all, or any, of current Coventree’s growth experiments will be successful”. The growth experiments had not yielded revenue when the final prospectus was filed, nor did they generate revenue subsequently.

53. The November 10, 2006 notification from DBRS was a material change for Coventree and, in any event, a material fact to Coventree.

54. Each of Cornish and Tai knew, or ought to have known, of the November 10, 2006 notice from DBRS when they certified that the final prospectus contained full, true and plain disclosure of all material facts.

55. Contrary to section 56 of the Act, Coventree failed to provide full, true and plain disclosure of all material facts relating to the Coventree securities that it proposed to distribute. In particular, the fact that on November 10, 2006, DBRS had advised Coventree that, effective immediately, DBRS was taking a more restrictive approach to approving new SFA transactions for ABCP conduits.

56. Each of Cornish and Tai being directors and officers of Coventree authorized, permitted or acquiesced in Coventree’s failure to provide full, true and plain disclosure of all material facts in its prospectus contrary to section 129.2 of the Act.

B. Impact of the DBRS Change in Rating Criteria

57. As a reporting issuer, Coventree had continuous disclosure obligations and, in particular, where a material change occurred in Coventree’s business, operations or capital it was required under section 75 of the Act to issue a press release forthwith.

58. When Coventree went public, it formed a disclosure committee that included Cornish and Tai. The disclosure committee was responsible for ensuring that all securities regulatory disclosure requirements were met and for overseeing the company’s disclosure practices. Coventree’s disclosure policy required the disclosure committee to meet “as conditions dictate, and at least quarterly” and to keep minutes of its meetings.

59. Coventree also had a strategic council that included Cornish and Tai. The strategic council was formed in the spring of 2007 and was Coventree’s senior decision making team. The members of the disclosure committee were represented on the strategic council.

60. On January 19, 2007, DBRS issued a press release announcing changes to its rating methodology for arbitrage-type transactions entered into by commercial paper issuers and funded by ABCP. The press release detailed specific new rating criteria, including that SFA transactions were required to be supported by Global-style liquidity.

61. The assets in the Coventree-sponsored conduits were not supported by Global-style liquidity, and Global-style liquidity was not available to Coventree. Consequently, Coventree experienced a change in its business or operations as it was no longer able to purchase credit arbitrage assets for its conduits because a credit rating from DBRS was required in order to continue to qualify for prospectus exemptions for the ABCP under section 2.35 of NI 45-106. DBRS was the sole supplier of essential credit rating services to Coventree.

62. As previously stated, Coventree's only business was related to securitization conduits. Approximately 80 percent of Coventree's revenues were derived from credit arbitrage transactions and its ongoing operations were substantially funded from this revenue source. Coventree had not disclosed this in either its prospectus or subsequently filed financial statements.

63. Since Coventree had not disclosed the fact that a substantial majority of its revenues were derived from credit arbitrage transactions, the market could not appreciate the change in DBRS rating criteria resulted in a change to Coventree's business or operations without elaboration by Coventree.

64. Each of Cornish and Tai knew, or ought to have known, that the change in DBRS rating criteria resulted in a change to Coventree's business or operations, but refused or failed to make disclosure.

65. On each day between January 19, 2007 and August 13, 2007, Coventree failed to comply with its continuous disclosure obligations contained in section 75(1) of the Act by failing to issue and file a news release disclosing the nature and substance of the material change namely, that the change in DBRS rating criteria resulted in a change to Coventree's business or operations.

66. On each day between January 19, 2007 and August 13, 2007, each of Cornish and Tai, being directors and officers of Coventree, authorized, permitted or acquiesced in Coventree's failures to comply with its continuous disclosure obligations contrary to section 129.2 of the Act.

67. On each day between January 19, 2007 and August 13, 2007, Coventree failed to file a report of a material change, namely that the change in DBRS rating criteria resulted in a change to Coventree's business or operations, contrary to section 75(2) of the Act.

68. On each day between January 19, 2007 and August 13, 2007, each of Cornish and Tai, being directors and officers of Coventree, failed to file a report of a material change, namely that the change in DBRS rating criteria resulted in a change to Coventree's business or operations, contrary to section 75(2) of the Act.

69. On each day between January 19, 2007 and August 13, 2007, each of Cornish and Tai, being directors and officers of Coventree, authorized, permitted or acquiesced in Coventree's failures to file a report of a material change, contrary to section 129.2 of the Act.

C. Misleading Statement

70. In early 2007, market participants became increasingly concerned about assets with US subprime exposure, including those underlying the ABCP. In this environment, Coventree gave a presentation "Coventree Investor Update" to a number of ABCP dealers and investors on April 25, 2007 in Toronto and gave the same presentation on April 26, 2007 in Montreal. In the portion of the presentation called "Demystifying the Subprime Market", Coventree told dealers and investors that the total US subprime exposure in its conduits was 7.4 percent but failed to provide a detailed breakdown by conduit and note series.

71. The US subprime exposure varied by conduit and note series and exceeded 15 percent in three conduits, and 40 percent in one note series. Coventree knew or ought to have known that the US subprime exposure in three of its ABCP note series was significantly higher than 7.4 percent.

72. By advising investors that there was 7.4 percent exposure to US subprime in its conduits, while failing to tell those same investors that the US subprime exposure was significantly higher than 7.4 percent in three ABCP note series, Coventree made a misleading statement to investors and dealers.

73. On each of April 25, 2007 and April 26, 2007, Coventree made a statement contrary to section 126.2(1) of the Act that it knew or reasonably ought to have known, was in a material respect and at the time and in light of the circumstances under which it was made, misleading (namely that Coventree's total US subprime exposure was 7.4 percent), and did not state a fact that was required to be stated or necessary to make the statement not misleading (namely that the US subprime was significantly higher than 7.4 percent in three of its ABCP note series). This misleading statement would reasonably be expected to have a significant effect on the market price or value of at least three Coventree-sponsored ABCP note series.

74. On July 24, 2007, Coventree advised the dealer syndicate of the US subprime exposure per conduit and note series as of June 28, 2007 but did not generally disclose the facts required to be stated or necessary to make its April statements not misleading.

D. Liquidity and Liquidity-Related Issues Prior to August 13, 2007

75. As a reporting issuer, Coventree had continuous disclosure obligations and, in particular, where a material change occurred in Coventree's business, operations or capital it was required under section 75 of the Act to issue a press release forthwith.

76. In January 2007, Coventree put its US subprime transactions on its internal watchlist.

77. Beginning in February 2007, Coventree began making disclosure to some dealers and ABCP investors about the US subprime exposure in Coventree's sponsored conduits. Coventree's dealer syndicate members and a few ABCP investors began making increasingly detailed inquiries about the assets underlying Coventree's ABCP, and by July 2007, Coventree's disclosure to some dealers and ABCP investors became more frequent and detailed.

78. Two of these disclosures by Coventree were: (a) a July 11, 2007 email from Coventree to it a member of the dealer syndicate attaching a breakdown of the US subprime exposure in its conduits, and (b) a July 24, 2007 email from Coventree to its dealer syndicate attaching a similar breakdown.

79. The dealer sent the July 11, 2007 email to CDPQ on July 20, 2007. In the first half of 2007, CDPQ held up to 50 percent of Coventree-sponsored ABCP. In response to the facts disclosed in the July 11 email, on July 23, 2007 CDPQ began substantially reducing its holdings of Coventree ABCP with US subprime exposure. CDPQ's reduction of ABCP with US subprime exposure was of such a concern to Coventree that Coventree took steps to reallocate US subprime assets among its conduits to satisfy CDPQ. In doing so, Coventree did not take into account the interests of other ABCP investors.

80. On July 24, 2007, Coventree sent an email to the dealer syndicate with the following table summarizing the Coventree-sponsored conduits' US subprime exposure per conduit and note series as of June 28, 2007.

Conduit	Series A	Series E	Total ABCP	FRNs	Total ABCP
Aurora Trust	0%	8%	3%	2%	3%
Comet Trust	0%	**42%**	16%	12%	16%
Planet Trust	**26%**	3%	17%	0%	15%
Slate Trust	0%	**16%**	13%	0%	13%
Apollo Trust Gemini Trust	0%	0%	0%	0%	0%
SAT	0%	0%	0%	0%	0%
SIT III	1%	0%	1%	0%	1%
TOTAL	**3%**	**6%**	**5%**	**2%**	**4%**

81. After Coventree sent the July 24, 2007 email to its dealer syndicate, certain dealers reduced or temporarily eliminated their market-making lines and adjusted their inventory holdings of Coventree-sponsored ABCP, in order to minimize their exposure to losses in the third-party ABCP market.

82. On July 25, 2007, DBRS advised Coventree that it was getting daily calls on US subprime exposure in Canadian conduits and stated that Coventree's funding capacity might be affected.

83. By early August 2007, a number of material risks that Coventree had identified in its prospectus (see paragraph 46 above) had occurred:

(a) Coventree was experiencing a sharp and substantial loss of demand for its ABCP products, which Coventree expected to continue. The loss of demand manifested itself in several ways, including that:

- by July 23, 2007, Coventree's dealers were reporting difficulty selling Coventree ABCP, especially ABCP with US subprime exposure;
- beginning on July 26, 2007 other members of Coventree's dealer syndicate had substantially reduced their participation in the market for Coventree-sponsored ABCP (by turning back unsold newly issued ABCP to the lead dealer, by declining to bid on Coventree's ABCP in the secondary market and by reducing their market making lines);

- on July 27, 2007, one of the dealers had resigned from Coventree's dealer syndicate;
- by July 27, 2007, Coventree was aware that CDPQ was reducing its holdings in Coventree-sponsored conduits with US subprime exposure and if it continued to do so it would cause a market disruption; and
- by August 1, 2007, spreads on Coventree-sponsored E notes were widening above 25 basis points over CDOR, which was well beyond historical levels, and the market conditions were adversely affecting Coventree's revenue. The spreads on A notes had also widened above 10 bps.

(b) by July 31, 2007, Coventree had sold assets in its conduits to accumulate funds so that it would be able to honour anticipated collateral calls. Coventree was doing daily calculations to determine whether a collateral call would occur.

(c) by August 7, 2007, Coventree was unable to purchase new assets from its asset suppliers and ultimately advised its asset suppliers that it did not know when it would be able to resume offering financing in the ordinary course. At that time, Coventree acknowledged that "the spread widening in the Canadian market [is] beginning to adversely affect Coventree's revenues and will adversely affect future revenues of Coventree if those conditions persist."

The events described in subparagraphs (a) to (c) above, individually and collectively, constituted a material change in Coventree's business or operations.

84. Coventree's management convened an emergency board of directors meeting on August 1, 2007 to discuss deteriorating market conditions. After being briefed, the Board instructed Coventree's management to draft a press release about liquidity issues in the third-party ABCP market.

85. On August 2, 2007, Coventree management circulated a draft press release to the Coventree Board, together with a recommendation by Coventree management that the press release not be issued, but that it be held for future release. Cornish stated in the August 1, 2007 draft press release that "this spread widening has decreased the current revenues of Coventree and, if it were to continue, will result in a material decrease in the future revenues of the Company and therefore its profitability".

86. The decision by Coventree not to disclose the material change was substantially influenced by its perception that disclosure would have an adverse market impact.

87. On July 25, 2007, Coventree had an internal meeting to discuss market disruption procedures. By July 26, 2007, dealers had been asking Coventree for details of liquidity agreements and the liquidity drawdown protocols relating to the ABCP.

88. After August 1, 2007, the liquidity in the market for Coventree's ABCP continued to deteriorate, a clear indication that demand for Coventree's ABCP was disappearing, but a press release was not issued until after the third-party ABCP market froze on August 13, 2007.

89. On August 6, 2007, Coventree took comprehensive steps to prepare for a market disruption, including meeting with their counsel to prepare the necessary notices and notifying DBRS. The risk of a market disruption was also a material change requiring disclosure.

90. Cornish and Tai were aware of the liquidity and liquidity-related issues and the risk of a market disruption and, notwithstanding their roles as members of the disclosure committee, the strategic council and directors and officers of Coventree, refused or failed to make disclosure.

91. On each day between August 1, 2007 and August 13, 2007, Coventree failed to comply with its continuous disclosure obligations contained in section 75(1) of the Act by failing to issue and file a news release disclosing the nature and substance of the material change, namely the liquidity and liquidity-related issues and the risk of a market disruption.

92. On each day between August 1, 2007 and August 13, 2007, each of Cornish and Tai, being directors and officers of Coventree, authorized, permitted or acquiesced in Coventree's failures to comply with its continuous disclosure obligations contrary to section 129.2 of the Act.

93. On each day between August 1, 2007 and August 13, 2007, contrary to section 75(2) of the Act, Coventree failed to file a report of a material change, namely the liquidity and liquidity-related issues and the risk of a market disruption.

94. On each day between August 1, 2007 and August 13, 2607, each of Cornish and Tai, being directors and officers of Coventree, authorized, permitted or acquiesced in Coventree' s failure to file a report of a material change, contrary to section 129.2 of the Act.

V. Conduct Contrary to Ontario Securities Law and the Public Interest

95. Based on the foregoing, Coventree, Cornish and Tai breached the Act and acted in a manner that is contrary to the public interest.

96. Such further and other allegations as Staff may advise and the Commission may permit.

December 7, 2009

SCHEDULE C

DBRS NOVEMBER LETTER

Dominion	200 King Street West, Suite 1304	Telephone 416-593·5577
Bond	Sun Lire Centre, West Tower, P.O. Box 34	Fax 416-593-5904
Rating	Toronto, Ontario, Canada M5H 3T4	Website www dbrs.corn Limited
Service		

November 10, 2006

Sent by e-mail

To: various market participants,

Re: Canadian ABCF-funded Structured Financial Asset-backed transactions

As part of ongoing credit reviews of Canadian ABCP-funded transactions, DBRS has made the following observations:

1. The Canadian asset backed commercial paper ("ABU") market has experienced extraordinary growth (in excess of 50%) over the past two years. This growth has largely been attributed to the contemporaneous growth of Structured Financial Asset-backed ("SEA") transactions funded by ABCP. These types of transactions now comprise approximately 28% of all ABCP outstandings and approximately 20% of total ABS outstandings in the Canadian market;

2. Leveraged Super Senior ("LSS") CDO structures have been the most popular type of transaction selected for inclusion into Canadian ABCP conduits and the portion of LSS transactions funded by ABCP is now approximately 70%; and

3. Current conditions in the structured credit market provide for less attractive returns for credit protection sellers than before. Consequently, greater scrutiny has been required in reviewing newer transactions to ensure that no additional risks are incorporated into SFA transactions.

After considerable contemplation of the above points, together will a detailed review of existing SFA transactions, DBRS has concluded that:

1. Although the current volume of SEA transactions is sizable in relation to the overall ABS market, DBRS views the quality of current assets in its rated universe as very high and anticipates that future performance of these assets to be strong.

2. Should growth rates in SPA backed transactions continue at the pace previously experienced, DBRS believes that certain concerns will arise with respect to:

   a. The continued and near exclusive use of LSS technology resulting in contingent funding obligations embedded in an increasingly larger portion of the market; and

   b. SFA transactions structured in the current environment potentially may incorporate economic and risk characteristics that are quite different from previously structured transactions.

Pursuant to the views expressed above, DBRS believes that a measured approach should be taken with respect to managing the future growth of SFA-backed transactions funded in the Canadian ABCP market. Consistent with past practice, market participants should only expect transactions that clear the minimum rating requirements by an ample margin to be approved by DBRS. However, consistent with DBRS's new approach to SFA transactions, market participants should also expect that the types of SFA transactions that will be approved going forward will be more restrictive than those approved in the past.

This mandate will be effective immediately. It is DBRS's expectation that no existing Canadian ABCP ratings will be affected, as all rated SFA transactions are currently enhanced beyond minimum thresholds for each rating category.

With regard to transactions currently: under review by DBRS, such transactions will be reviewed on a case by case basis to determine whether the transaction in question can be approved.

All inquiries regarding this matter should be directed to Huston Loke.

Yours truly,

DOMINION BOND RATING SERVICE LIMITED

Huston Loke

Assistant Group Managing Director 416-597-3627

SCHEDULE D

DBRS JANUARY RELEASE

DBRS® As It Happens JANUARY 19, 2007 03:34 PM

Press Releases

DBRS Revises CDO Criteria for Canadian ABCP Issuers

Dominion Bond Rating Service (DBRS) has today announced changes to its methodology for arbitrage-type transactions entered into by Canadian commercial paper issuers (CP Issuers) and funded by DBRS-rated Canadian asset-backed commercial paper (ABCP)(l).

The Canadian ABCP market has grown rapidly over the past two years with growth largely being attributed to the contemporaneous growth of arbitrage-type transactions (also known as Structured Financial Asset or SFA Transactions). The most common type of SFA Transaction funded by ABCP involves collateralized debt obligations (CDOs) that reference corporate obligations. Recently, Leveraged Super Senior (LSS) structures have been the most prevalent type of CDO transaction executed by Canadian CP Issuers. SFA Transactions currently represent approximately 30% of Canadian ABCP market outstandings and LSS technology is used in transactions that account for approximately 22% of ABCP outstandings.

Although growth in ABCP outstandings has been rapid, DBRS views the quality of existing SFA Transactions as very high and consistent with the ratings assigned. In its evaluation of transactions funded by CP Issuers, DBRS has followed traditional conservative Canadian structuring practices, which in many instances have resulted in transaction credit enhancement significantly exceeding the AAA threshold required to qualify for funding with R-1 (high)-rated ABCP. These conservative practices have increased ABCP investors' confidence in the ABCP market and assisted in maintaining a track record of zero downgrades or defaults of ABCP rated by DBRS. The proposed criteria revisions are intended to ensure that transactions continue to be conservatively structured and ratings stability continues to be a key requirement of all DBRS-rated ABCP transactions.

Within the structured credit market, complexity is increasing while transparency for ABCP investors is still quite limited. More recent proposals by CP Issuers have incorporated structural and risk characteristics that are quite different from previously completed SFA Transactions. While these proposals can be readily structured to AAA attachment levels using the DBRS CDO Toolbox, other risk characteristics relating to leverage, mark-to-market, hedging and collateral are more challenging to mitigate in today's environment.

DBRS has recently declined to approve many of the SFA Transactions proposed by CP Issuers and at this time believes it is appropriate to outline to market participants the basis on which DBRS would find new SFA Transactions acceptable for funding by ABCP. DBRS would welcome the opportunity to consider CDO-related SFA Transactions that:

(1) Provide for resilient credit characteristics that surpass the DBRS CDO Toolbox minimum 'AAA' attachment point;

(2) Contain limited exposures to any one particular industry and to non-investment grade entities;

(3) Are supported by liquidity facilities from DBRS-approved liquidity providers that contain conditions to draw that are not limited to market disruption and are not dependent on a confirmation of the then-current ratings; and

(4) Are proposed by CP Issuers that maintain a superior level of information disclosure to ABCP investors, which in particular relate to the type of SFA Transactions executed, the nature of the collateral and hedging transactions employed by the CP Issuer, and whether or not the CP Issuer is exposed to contingent funding obligations.

In addition to the criteria listed above and consistent with past practice, DBRS will also review other risk characteristics associated with each CDO transaction such as leverage, mark-to-market, hedging, collateral quality and liquidity in order to confirm that the proposed SFA Transaction is appropriate for a CP Issuer to fund with ABCP.

The changes to DBRS's methodology will be effective immediately and apply to all SFA Transactions including both public and private transactions that may involve a single or series of re-packaged notes. For non-CDO related SFA Transactions that involve publicly traded instruments that are deemed to have robust credit and liquidity characteristics, alternative mechanisms may be available to mitigate the risks described above. It is DBRS's expectation that no existing Canadian ABCP ratings will be affected as all rated SFA Transactions are currently enhanced beyond minimum thresholds for the applicable rating category.

Note:

(1) The term ABCP in this press release refers to all forms of notes issued by a CP Issuer including extendible commercial paper, fixed or floating rate notes and medium term notes.

Click here for the full document.

Michael Buzanis
Managing Director - Canadian Structured Finance 416-597-3620
mbuzanis@dbrs.com

Huston Loke, CFA
Group Managing Director - Global Head Structured Finance 416-597-3627
hloke@dbrs.com

You can reach DBRS at:

E-Mail: info@dbrs.com
Phone: 416-593-5577 ext. 2333 Fax: 416-593-8432
Website: www.dbrs.com

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SCHEDULE E

CHRONOLOGY OF SIGNIFICANT EVENTS

Date	Event
October 18, 2006	Coventree's preliminary prospectus is filed with the Commission.
November 10, 2006	DBRS November Letter is sent to market participants by e-mail indicating DBRS's more restrictive approach to rating SFA transactions (see Schedule C to these reasons).
November 3 to 15, 2006	Roadshow Presentations in Toronto and Montreal. Final due diligence session for Coventree's final Prospectus.
November 16, 2006	Coventree's final prospectus is filed with the Commission.
January 9, 2007	Coventree news release announcing the hiring of David Allan.
January 19, 2007	DBRS January Release announcing revised credit rating criteria for CDO related SFA transactions (see Schedule D to these reasons).
January 22, 2007	Coventree confirms with DBRS that global style liquidity is being required by the DBRS January Release in connection with CDO related SFA transactions. David Allan joins Coventree as head of Coventree's Capital Markets Group.
February 9, 2007	DBRS ABCP Investor Conference addressing its revised credit rating criteria for CDO related SFA transactions.
February 14, 2007	Coventree 2006 Annual Report and Letter to Owners is filed on SEDAR. Coventree First Quarter MD&A for the three months ended December 31, 2006 is filed on SEDAR.
March 13, 2007	Citibank is sent subprime information for Coventree sponsored conduits by NBF; information is not provided by note series.
March 15, 2007	Coventree e-mail to NBF disclosing the subprime exposure of its conduits as of February 28, 2007 (defined as the February Subprime Data).
March 27, 2007	Date by which Citibank had sold all of its Planet E notes.
April 25 and 26, 2007	Coventree April Investor Presentations; statement made that total subprime exposure of Coventree sponsored conduits is 7.4%.
May 10, 2007	Nereus becomes a wholly-owned subsidiary of Coventree.
May 14, 2007	Coventree Second Quarter MD&A for the three months ended March 31, 2007 is filed on SEDAR.
June 12, 2007	Bloomberg Business Week article on "Bear Stearns Subprime Bath".
July 6, 2007	Coventree e-mail to Mavrix disclosing subprime exposure by conduit and note series.
July 10, 2007	S&P issues a news release announcing the downgrade of billions of dollars of U.S. asset-backed securities because of subprime exposure. Moody's issues a similar news release.
July 11, 2007	Coventree e-mail to NBF disclosing subprime exposure by conduit and note series. Cornish attends S&P conference in the United States and learns of hundreds of downgrades of U.S. asset-backed securities because of subprime exposure.
July 12, 2007	Coventree e-mail to Citibank disclosing subprime exposure by conduit and note series.
July 13, 2007	Citibank sells Comet E notes.

Date	Event
July 20, 2007	NBF e-mail to the Caisse disclosing subprime exposure of Coventree sponsored conduits by conduit and note series. Significant downgrades in the U.S. of ABCP backed by subprime mortgages. Coventree sponsored conduits sell assets generating cash of approximately $173 million.
July 23, 2007	Caisse reduces its holdings of Coventree sponsored ABCP with subprime exposure.
July 24, 2007	Coventree e-mail (the July 24 e-mail) sent to all members of the dealer syndicate disclosing subprime exposure by conduit and note series. Coventree advised by dealers that the Caisse is reducing its holdings of Coventree sponsored ABCP. Date by which Citibank had sold all of its holdings of Comet and Slate notes. Dealers begin requesting information with respect to conduit assets as part of credit reviews.
July 25, 2007	Internal Coventree meeting to discuss and review market disruption procedures; some dealers have been asking for details as to those procedures. Increasing information requests from dealers for credit review of conduit assets. Scotia returns a relatively small amount of unsold Coventree sponsored ABCP to NBF. Caisse switches from some Coventree sponsored ABCP to bank sponsored ABCP.
July 27, 2007	RBC resigns from Coventree dealer syndicate. Dealers are “no bid” for secondary market purchases of Coventree sponsored ABCP in the previous week. Scotia reassures Allan that Scotia will continue to make its market-making lines available for Coventree sponsored ABCP.
July 28, 2007	Paul proposes that Coventree set up a data room to address the high level of dealer requests for credit review of conduit assets.
Monday, July 30, 2007	Coventree conference call with members of the dealer syndicate (including NBF, CIBC and Scotia) discussing market events and conditions (the July 30 Conference Call). Coventree advises Xceed that it is postponing a scheduled mortgage purchase due to turbulent market conditions. Citibank makes two collateral calls that are withdrawn the next day. Coventree transfers assets of approximately $58 million between conduits to reduce the subprime exposure of Comet E notes. Courchesne indicates that Coventree sponsored conduits cannot issue new ABCP. Toten states in an e-mail that Coventree is struggling to roll ABCP and has no new issue capacity. Allan is aware that all of the dealers “have issues” with the availability of their market-making lines. July 24 e-mail forwarded by RBC to its clients. RBC advises its clients of its resignation from the dealer syndicate.

Date	Event
Wednesday, August 1, 2007	Coventree convenes emergency board meeting on short notice. Spreads on Coventree sponsored A notes widen to approximately 12.8 basis points over CDOR and on E notes to approximately 26.8 basis points over CDOR. Coventree calculations indicate that one transaction has crossed the collateral call trigger; counterparty advises it will not make a collateral call that day. Child prepares a schedule assessing financial impact of spread widening. Cornish prepares draft press release addressing only spread widening. Coventree and Nereus sponsored conduits hold cash from asset sales of approximately $188 million.
Thursday, August 2, 2007	Disclosure committee meeting to discuss draft press release. Coventree draft press release e-mailed to Board, but Cornish and Tai recommend that it not be issued. E-mail from Paul indicating that over the past week, spreads on third-party sponsored ABCP have increased approximately 12 basis points relative to bank sponsored ABCP.
Friday, August 3, 2007	Syndicate members advise Coventree of $3 billion new bank sponsored ABCP transaction led by RBC and TD Bank. Approximately $60 million of overfunding is used by a Nereus conduit to purchase Planet A notes. Approximately $160 million of cash overfunding has been accumulated in Coventree sponsored conduits according to Tai's e-mail to the Board. Coventree calculations show that collateral calls have been triggered on two transactions and two transactions are close to the triggers.
Saturday, August 4, 2007	Tai indicates that cash overfunding should be used only to meet collateral calls.
Sunday, August 5, 2007	Coventree prepares with assistance of legal counsel for the possibility of a liquidity event on Tuesday, August 7, 2007.
Monday, August 6, 2007 (holiday in Ontario)	Allan requests that the Caisse support Coventree sponsored ABCP during the week commencing August 7, 2007; the Caisse confirms its support. Child consults Davis & Co. by telephone as to Coventree's disclosure obligations. Strategic council meeting to discuss market developments. Coventree determines not to proceed with rebalancing of conduits to reduce subprime exposure.
Tuesday, August 7, 2007	Caisse and other Quebec purchasers "back-stop" the market for Coventree sponsored ABCP. Spreads on Coventree sponsored A notes widen to approximately 25 basis points over CDOR and on E notes to approximately 40 basis points over CDOR. Disclosure committee meeting to discuss whether a disclosure obligation was triggered. Coventree calculations indicate that four transactions are close to or have crossed collateral call triggers.

Date	Event
Wednesday, August 8, 2007	Coventree voluntarily posts $25 million of cash collateral for each of two Citibank transactions. Coventree advises NorthBrook, a traditional asset provider, that it is unable to fund a purchase of assets.
Thursday, August 9, 2007	BNP freezes US$2.2 billion of funds associated with US subprime. Bank of Canada announces it will provide liquidity to support financial markets. Allan circulates draft powerpoint presentation to other Coventree officers entitled: “What the Hell is Going On?”.
Friday, August 10, 2007	Meeting of ABCP market participants in Montreal to discuss restructuring of ABCP market (the “soft landing”). United States Federal Reserve announces it will provide liquidity to support financial markets.
Sunday, August 12, 2007	Allan concludes that the Caisse may not support Coventree sponsored ABCP on the following Monday.
Monday, August 13, 2007	An ABCP market disruption occurs: • Coventree substantially widens spreads on ABCP • Some Coventree sponsored ABCP fails to roll • Coventree begins notifying liquidity providers of market disruption, extending extendible ABCP • Bank sponsored ABCP continues to roll Coventree requests TSX trading halt and issues news release announcing that Coventree sponsored conduits are unable to fund some ABCP maturing that day. Regularly scheduled Coventree Board meeting to approve Q3 MD&A; no approval of MD&A as a result of market disruption.
August 16, 2007	Montreal agreement reached in which market participants agree to a temporary ABCP market freeze.
February, 2008	First downgrade of credit rating for Coventree sponsored notes.
March 17, 2008	Ontario Court of Justice issues an initial order staying proceedings to allow a vote on the Plan restructuring ABCP in Canada.

3.1.2 Deutsche Bank Securities Limited – s. 21.7

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

AND

IN THE MATTER OF
DEUTSCHE BANK SECURITIES LIMITED

AND

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

REASONS AND DECISION
(Section 21.7 of the Act)

Hearing: January 7, 2011

Decision: September 30, 2011

Panel:	Mary G. Condon	–	Commissioner and Chair of the Panel
	Paulette L. Kennedy	–	Commissioner
Counsel:	Nigel Campbell Ryan A. Morris Doug McLeod	–	For the Applicant, Deutsche Bank Securities Limited
	Christopher D. Bredt Caitlin Sainsbury	–	For the Respondent, the Investment Industry Regulatory Organization of Canada
	Swapna Chandra	–	For the Ontario Securities Commission

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REASONS AND DECISION

I. INTRODUCTION

[1] This is an application (the "**Application**") brought by Deutsche Bank Securities Ltd. ("**DBSL**" or the "**Applicant**") pursuant to section 21.7 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**"). DBSL asks the Ontario Securities Commission (the "**Commission**" or the "**OSC**") to set aside the October 13, 2010 decision of a Hearing Panel of the Ontario District Council of the Investment Industry Regulatory Organization of Canada ("**IIROC**" and the "**IIROC Hearing Panel**") dismissing DBSL's motion to set aside or stay the Notice of Hearing against it (the "**IIROC Decision**").

[2] DBSL contends that IIROC does not have jurisdiction to hear the allegations against DBSL in this case because it cannot provide DBSL with basic procedural fairness. DBSL states that although IIROC Staff relies on evidence obtained through the powers of the OSC and the Autorité des Marchés Financiers (the "**AMF**") to compel evidence, IIROC cannot provide DBSL with an opportunity to make full answer and defence to the allegations brought by Staff of IIROC ("**IIROC Staff**") because IIROC does not have power to compel evidence from anyone other than IIROC members, their employees and others who are under IIROC's jurisdiction ("**IIROC Members**" or "**Compellable Witnesses**"). DBSL submits that a stay of proceedings or dismissal of the Notice of Hearing was the only remedy available to the IIROC Hearing Panel to cure the prejudice to DBSL. DBSL submits that in dismissing the DBSL Stay Motion, the IIROC Hearing Panel proceeded on an incorrect principle, erred in law, and failed to consider material evidence of prejudice to DBSL, and further that new and compelling evidence of prejudice is available to the Commission that was not available to the IIROC Hearing Panel. Therefore, DBSL submits that the decision of the IIROC Hearing Panel should be set aside in accordance with the criteria set out in *Canada Malting Co.* (1986), 9 O.S.C.B. 3565 ("***Canada Malting***").

[3] IIROC Staff and Staff of the Commission ("**OSC Staff**") contend that none of the Canada Malting criteria is satisfied and that there is no basis for interfering with the decision of the IIROC Hearing Panel. They also submit that the Application is premature.

[4] At the conclusion of the hearing of the Application on January 7, 2011 (the "**Hearing**"), we reserved our decision and ordered that any further proceeding before the IIROC Hearing Panel (the "**IIROC Proceeding**") is stayed until a decision of the Commission has been released ((2011), 34 O.S.C.B. 756) (the "**Interim Stay**").

[5] Having considered the submissions of DBSL, IIROC Staff and OSC Staff (the "**Parties**"), we have concluded that the Application does not satisfy the *Canada Malting* criteria and that it is premature. Accordingly, the Application will be dismissed. Our reasons are as follows.

II. BACKGROUND

[6] The following background facts are set out in the motion records and memoranda of fact and law filed by DBSL and by IIROC Staff.

A. DBSL is a Member of IIROC

[7] On May 15, 2008, DBSL executed a membership application with IIROC (the "**Membership Application**"), the purpose of which was to transfer to IIROC the regulatory functions of IIROC's predecessor, the Investment Dealers Association (the "IDA") in respect of DBSL. In the application, DBSL agreed to submit to the jurisdiction of IIROC, and further consented to IIROC "initiating or continuing either in its own name or the name of the IDA any proceeding or action under the Rules; the Constitution, By-laws, Regulations, Forms, Rulings and Policies of the IDA (the "**IDA Rules**"); or pursuant to any statute, regulation or at law or equity." IIROC consolidated the regulatory and enforcement functions of the IDA and Market Regulatory Services, Inc. ("**RS**") on June 1, 2008.

[8] Article 13, section 13.6 of IIROC By-law No. 1, a general by-law, provides for the collection and exchange of information between IIROC and other provincial regulators for the purpose of investigations and enforcement litigation. Prior to June 1, 2008, the IDA was similarly authorized by IDA By-laws 16.8 and 16.9 to enter into agreements with provincial securities commissions for the collection and exchange of information. By executing the Membership Application, DBSL agreed to be bound by IIROC By-law No. 1 and its predecessor by-laws.

B. The ABCP Market Freeze and the Joint Investigation

[9] On August 13, 2007, the Canadian market for non-bank sponsored asset-backed commercial paper ("**ABCP**") froze (the "**ABCP Market Freeze**").

[10] By May 2008, the Commission and IIROC had started a joint regulatory investigation of Coventree Inc. ("**Coventree**"), the largest non-bank sponsor of ABCP in Canada. By December 2008, the AMF had joined the investigation (the "**Joint Investigation**"). In addition to Coventree, the Commission, the AMF and IIROC (the "**Joint Regulators**") investigated:

- the ABCP dealers in the Coventree dealer syndicate: BNP Paribas (Canada); Canaccord Financial ("**Canaccord**"); CIBC World Markets ("**CIBC**"); Citibank; Credential Securities Inc. ("**Credential**"); Cormark Securities Ltd.; DBSL; HSBC Bank of Canada ("**HSBC**"); National Bank Financial Inc. ("**NBF**"); RBC Dominion Securities ("**RBCDS**"); and Scotia Capital Inc. ("**Scotia**");

- the primary credit rating agency for ABCP in Canada, Dominion Bond Rating Service ("**DBRS**");

- the dominant institutional investor in the ABCP market, Caisse de Dépôt et Placement du Québec ("**CDPQ**"); and

- other ABCP buyers.

C. Regulatory Proceedings Arising out of the Joint Investigation

[11] As a result of the Joint Investigation, each of the Joint Regulators assumed carriage of proceedings against different ABCP market participants.

[12] The Commission took carriage of proceedings against Coventree, CIBC and HSBC. In December 2009, OSC Staff entered into Settlement Agreements with CIBC and with HSBC, and the Settlement Agreements were approved by the Commission in separate orders issued on December 21, 2009 (*Re HSBC* (2010), 33 O.S.C.B. 62, and *Re CIBC* (2010), 33 O.S.C.B. 73). The Commission issued a Notice of Hearing against Coventree on December 7, 2009. The Coventree hearing on the merits started on May 12, 2010 and ended on December 9, 2010 (the "**Coventree Hearing**"); the Commission's decision was issued on September 28, 2011.

[13] The AMF took carriage of proceedings against NBF and Laurentian Bank Securities ("**LBS**"). The AMF entered into Settlement Agreements with NBF and LBS in December 2009, and the Settlement Agreements were approved by the AMF on December 21, 2009.

[14] IIROC took carriage of proceedings against Scotia, Credential, Canaccord and DBSL. In December 2009, IIROC entered into Settlement Agreements with Scotia, Credential and Canaccord, and the Settlement Agreements were approved by IIROC on December 21, 2009. As a result, DBSL is the only IIROC Member currently facing allegations brought by IIROC Staff in connection with the ABCP Market Freeze.

D. The Notice of Hearing against DBSL

[15] On December 7, 2009, IIROC Staff issued a Notice of Hearing against DBSL. IIROC Staff alleged that DBSL "committed the following contraventions" ("the "**Allegations**"):

1. During the period between July 25 and August 13, 2007, the Respondent failed to observe high standards of ethics and conduct in the transaction of their business, and/or engaged in business conduct or practice which is unbecoming or detrimental to the public interest contrary to IDA By-law 29.1 in that it failed to act fairly, honestly and/or in good faith to its clients by not disclosing the information relating to US subprime and the liquidity risk in third-party ABCP to all of its clients who had invested or were interested in investing in third-party ABCP, while continuing to sell third-party ABCP to its clients.

2. Between March and August, 2007, the Respondent failed to ensure proper regulatory compliance oversight of third-party ABCP, contrary to Policy 5.

E. DBSL's Stay Motion

[16] On September 7, 2010, DBSL brought a motion for an order staying or dismissing the Notice of Hearing (the "**Stay Motion**"), or alternatively an order that IIROC Staff disclose and produce all documents and evidence gathered by the Joint Regulators in the course of their Joint Investigation. DBSL's grounds for the Stay Motion, were as follows:

. . . .

(f) The Joint Investigation involved close collaboration amongst the Joint Regulators, including:

(i) coordinated and joint investigative steps;

(ii) jointly interviewing witnesses, including witnesses compelled to attend and give evidence;

(iii) sharing the fruits of their investigations, including documents and materials provided to the senior regulators under compulsion;

(iv) determining which regulator would take carriage of proceedings against each of the parties; and

(v) jointly drafting the settlements and statements of allegation.

(g) The Joint Regulators collaborated in the investigation of the Respondent, as is evidenced by, among other things:

(i) the OSC investigation order(s) pursuant to which the investigation of the Respondent was conducted;

(ii) representatives of the Respondent were examined by staff of the Joint Regulators at the offices of the OSC, pursuant to summons and to an order of the OSC; and

(iii) representatives of each of the Joint Regulators participated in the examinations of representatives of ABCP market participants relating to DBSL including the examinations of representatives of Coventree and the Credit Union of Central Ontario (“**CUCO**”):

(h) In addition to cooperating to investigate the Respondent, the Joint Regulators shared the fruits of their investigations of other parties. In particular, [IIROC] Staff produced to the Respondent more than 195,000 documents obtained by the OSC in the course of the Joint Investigation and more than 182,000 documents obtained by the AMF in the course of the Joint Investigation;

(i) Flowing from the Joint Investigation, the Joint Regulators prepared a Joint Statement of Facts purporting to set out a comprehensive description of the third-party ABCP market, the roles of different participants in the market, the nature and degree of information disclosure in the market, and the events that allegedly caused the August 13, 2007 market freeze. The Joint Statement of Facts was based on collaboration and discussion between the Joint Regulators, and the sharing of all evidence collected by each of the Joint Regulators during the Joint Investigation;

(j) The Notice of Hearing issued to DBSL sets out the Joint Statement of Facts, which is essentially identical to the Joint Statement of Facts in the Statements of Allegation and the Settlement Agreements entered by the OSC, AMF and IIROC in respect of other ABCP market participants, and is based on the entirety of the fruits of the Joint Investigation.

(k) the allegations made against the Respondent in the Notice of Hearing involve: (i) a July 24, 2007 email from Coventree that Staff alleges should have been provided to the Respondent’s clients [the “**July 24 Email**”]; and (ii) an August 7 telephone conference convened by [CDPQ], the dominant purchaser of ABCP in the Canadian market, regarding liquidity concerns [the “**August 7 Call**”];

(l) The allegations against DBSL are premised upon and flow directly from the Joint Statement of Facts, and are based on the entirety of the evidence obtained by the Joint Regulators in the Joint Investigation, including evidence that IIROC Staff received from the other Joint Regulators. [DBSL] wishes to fully defend the allegations against it.

(m) As a result of IIROC Staff's close collaboration with the other Joint Regulators in the Joint Investigation, IIROC Staff was not subjected to the limitations of IIROC's jurisdiction, and thus was able to obtain evidence that would not have been available to it had it been investigating independently.

(n) IIROC's jurisdiction is limited to investigating the activities of IIROC Members, who are subject to IIROC's jurisdiction by agreement. IIROC is not able to compel attendance for examination, attendance at hearings, or production of documents or evidence.

(o) By contrast, the OSC and the AMF have statutory authority to compel attendance for examination, attendance at hearings, and production of documents and evidence.

(p) IIROC Staff's collaboration with the other Joint Regulators enabled Staff to obtain evidence from parties not subject to IIROC's investigative jurisdiction, through the statutory authority of the OSC and the AMF. Evidence that Staff was able to obtain through the OSC and AMF that it would not otherwise have been able to obtain includes:

(i) documents obtained from, among others, Coventree, DBRS, CUCO, CDPQ, NBC [National Bank of Canada], LBC [Laurentian Bank of Canada], CIBC, HSBC and others unknown to the Respondent; and

(ii) transcripts of interviews of representatives of, among others, Coventree, DBRS, CUCO, CDPQ, NBC, LBC, CIBC, HSBC and others unknown to the Respondent.

(q) IIROC Staff's allegations against DBSL, premised on the Joint Statement of Facts, are based on the entirety of the evidence obtained in the course of the Joint Investigation, including evidence that IIROC Staff only received or had access to through the other Joint Regulators. Accordingly:

(i) the allegations in the Notice of Hearing could not have been formulated but for the evidence obtained by extra-jurisdictional methods; and

(ii) IIROC cannot require witnesses to attend for cross-examination by the Respondent, thereby denying the Respondent the ability to test the evidence against it and to make a full answer and defence to the allegations in the Notice of Hearing.

(r) DBSL's inability to test the evidence against it is of particular importance in the instant case. The allegations against DBSL hinge on: (i) a July 24, 2007 email from Coventree that IIROC Staff alleges should have been provided to the Respondent's clients; and (ii) an August 7, 2007 teleconference convened by CDPQ regarding market support. At a minimum, IIROC cannot compel Coventree and CDPQ representatives to attend at the Respondent's hearing to provide evidence about the email, the teleconference or other relevant circumstances.

(s) IIROC Staff operated outside of its jurisdiction in issuing a Notice of Hearing against DBSL based on the evidence obtained through the other Joint Regulators. Because the jurisdiction of IIROC prevents DBSL from making full answer and defence to the allegations against it, and from demonstrating that its conduct is distinguishable from the conduct of other market participants and was entirely proper, the Notice of Hearing should be stayed or dismissed.

(t) The Notice of Hearing should be stayed or dismissed because the Joint Regulators chose the regulator to prosecute DBSL. It was open to the Joint Regulators to have the OSC prosecute DBSL. Instead, the Joint Regulators proceeded in a forum that renders full answer and defence by DBSL impossible, breaching a key principle of fundamental justice.

(u) In the alternative, if the prosecution of DBSL is permitted to proceed, DBSL's right to make full answer and defence in accordance with the principles of fundamental justice must be protected to the extent possible by providing DBSL with full disclosure of the fruits of the Joint Investigation.

(v) IIROC Staff is obliged to disclose all relevant evidence, including material that has a reasonable possibility of being relevant to the ability of DBSL to make full answer and defence. In this case, that includes evidence obtained by the other Joint Regulators that IIROC Staff had access to in formulating the Joint Statement of Facts and the allegations against DBSL.

[17] DBSL's Stay Motion was heard by the IIROC Hearing Panel on September 27, 2010 and October 6 and 7, 2010 (the "**Stay Motion Hearing**").

F. The IIROC Decision

[18] On October 13, 2010, the Hearing Panel dismissed the Stay Motion, giving the following reasons:

> IIROC participated with the Ontario Securities Commission and L'Autorité des marchés financiers in an investigation into the freezing of the third party Asset-Backed Commercial Paper market in the summer of 2007. That investigation identified a number of specific persons who, Deutsche Bank states, could give material support to its defence to the contraventions alleged against it. Those persons are not IIROC Members. Deutsche Bank wants to have those persons testify on its behalf at the hearing.
>
> It is common ground that IIROC has no power to compel persons, who are neither members of the IDA nor employed by a member, to testify at a disciplinary hearing. Deutsche Bank contends, therefore, that it is deprived of its right to make full answer and defence because it cannot force those persons, or any of them, to testify.
>
> The law with respect to granting a stay at this stage of a proceeding has been enunciated by the Court of Appeal on more than one occasion. We refer specifically to *R. v. R.C.*, [1995] O.J. No. 210 (C.A.) ["***R.C.***"]. While the circumstances giving rise to the application for a stay in that case were different from these, we are satisfied that there is no difference in principle. We quote from the decision of the Court which was delivered by Griffiths J.A.:
>
>> Mr Justice Jenkins then found on the evidence before him that the accused had met this burden.
>>
>> In our respectful view the evidence must clearly establish prejudice to the defence of a significant degree before a stay should be granted by reason of pre-charge delay. In *Regina v. François*, (1993) 15 O.R. (3d) 627 this court quoted with approval from an earlier decision in *Blake* as follows:
>>
>>> In our view, the showing of some prejudice is not a sufficient basis for a decision that an accused person's Charter rights under ss. 7 and 11(d) would be infringed if the accused were required to stand trial. What must be demonstrated on the balance of probabilities is that the missing evidence creates a prejudice of such magnitude and importance that it can be fairly said to amount to a deprivation of the opportunity to make full answer and defence. The measurement of the extent of the prejudice in the circumstances of this case could not be done without hearing all of the relevant evidence, the nature of which would make it clear whether the prejudice was real or minimal. The Crown's submission was, in our view, right. The motion was premature and the stay should not have been granted when it was.
>
> In our view the above reasoning applies equally to this case. It would be more appropriate for this matter to proceed to trial and for the trial judge to determine whether a stay is appropriate at that stage of the trial, when he or she has had the benefit of hearing sufficient evidence to assess whether prejudice has been demonstrated of such magnitude as to justify a stay.
>
> We have no hesitation in concluding that, in this case, the appropriate course is to allow the case to proceed to a hearing at which time the hearing panel will be able to assess whether prejudice has been demonstrated of such magnitude as to justify a stay. The request for a stay is, accordingly, dismissed.

[19] Though DBSL also raised disclosure issues in its Stay Motion before the IIROC Hearing Panel, those issues had been substantially resolved prior to the Stay Motion Hearing. The IIROC Hearing Panel granted DBSL's request for an adjournment to

allow counsel to review the disclosure, and ordered that a date for the hearing on the merits (the "**IIROC Merits Hearing**") be set after April 4, 2011. No date has been fixed.

G. The Application

[20] In its Notice of Request for Hearing and Review, DBSL asks the Commission to:

(a) set aside the IIROC Decision;

(b) set aside, or, in the alternative, stay the Notice of Hearing;

(c) stay further IIROC proceedings until the Application has been concluded; and

(d) such further and other relief as the lawyers may request and the Commission may permit.

[21] As noted at paragraph 4 above, we issued an interim stay of the IIROC Proceeding pending our decision on the Application.

III. THE STANDARD OF REVIEW

[22] There is no dispute in this case about the appropriate standard of review.

[23] Section 21.7 of the Act provides as follows:

> **21.7(1) Review of decisions** – The Executive Director or a person or company directly affected by, or by the administration of, a direction, decision, order or ruling made under a by-law, rule, regulation, policy, procedure, interpretation or practice of a recognized stock exchange, recognized self-regulatory organization, recognized quotation and trade reporting system or recognized clearing agency may apply to the Commission for a hearing and review of the direction, decision, order or ruling.
>
> **(2) Procedure** – Section 8 applies to the hearing and review of the direction, decision, order or ruling in the same manner as it applies to a hearing and review of a decision of the Director.

[24] Subsection 8(3) of the Act provides as follows:

> **8(3) Power on review** – Upon a hearing and review, the Commission may by order confirm the decision under review or make such other decision as the Commission considers proper.

[25] There is no dispute that the IIROC Decision is a "direction, decision, order or ruling made under a by-law . . . of a recognized self-regulatory organization" and is therefore subject to review by the Commission under section 21.7 of the Act.

[26] In considering a section 21.7 application, the Commission exercises original jurisdiction, as opposed to a more limited appellate jurisdiction, and is free to substitute its judgment for that of the self-regulatory organization ("**SRO**"). However, in practice the Commission takes a restrained approach. The Commission will not substitute its own view of the evidence for that of the SRO just because the Commission might have reached a different conclusion. As stated in Canada Malting, the leading case on this issue, and reaffirmed in a number of subsequent decisions, the Commission will intervene in a decision of the SRO if:

1. the SRO has proceeded on an incorrect principle;

2. the SRO has erred in law;

3. the SRO has overlooked some material evidence;

4. new and compelling evidence is presented to the Commission that was not presented to the SRO; or

5. the SRO's perception of the public interest conflicts with that of the Commission.

(*Canada Malting*, *supra*, at para. 24, followed in, for example, *Re Boulieris* (2004), 27 O.S.C.B. 1597 ("***Boulieris***"), at paras. 29-32, aff'd [2005] O.J. No. 1984 (Div. Ct.), at para. 27; *Re Berry* (2008), 31 O.S.C.B. 5441 ("***Berry Disclosure***"), at paras. 55-59; *Re Berry* (2009), 32 O.S.C.B. 8051 ("***Berry Jurisdiction***"), at para. 69; *Re HudBay*

Minerals Inc. (2009), 32 O.S.C.B. 1089, at para. 23, and (2009), 32 O.S.C.B. 3733, at para. 105; and *Re Kasman* (2009), 32 O.S.C.B. 5729, at para. 43)

IV. POSITIONS OF THE PARTIES

A. DBSL

1. The Standard of Review

[27] DBSL submits that its Application satisfies four of the five Canada Malting criteria. Specifically, DBSL submits that the IIROC Hearing Panel proceeded on an incorrect principle, which led to an error of law and failure to consider material evidence, and that new and compelling evidence that was not available to the IIROC Hearing Panel confirms the prejudice to DBSL as a result of what DBSL claims is IIROC's inability to provide a fair hearing.

[28] In particular, DBSL makes the following submissions:

(i) IIROC proceeded on an incorrect principle

[29] DBSL submits that the common law rules of natural justice apply to IIROC proceedings, and a high level of procedural fairness is required because an IIROC hearing is close to the judicial end of the administrative-judicial spectrum (*Re Mills*, [1999] I.D.A.C.D. No. 41 (IDA) ("***Mills***") at p. 5 (QL)). As a matter of natural justice, DBSL has a right to make full answer and defence to the allegations against it, and is entitled to procedural fairness, including the right to call, examine and cross-examine witnesses (*Mills*, *supra*, at p. 3 (QL); *Derivative Services Inc. v. Investment Dealers Association of Canada*, [2005] O.J. No. 2118 (Div. Ct.), at paras. 58, 87-88).

[30] However, as an SRO, IIROC is not governed by the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**"), and has no power to issue subpoenas under subsection 12(1) of the SPPA (*Re Derivative Services Inc.*, 1999 CarswellNat 3808 IDA) ("***Derivative Services***"), at para. 69; *Re Shaughnessy*, [2001] I.D.A.C.D. No. 3 (IDA) ("***Shaughnessy Withdrawal***"), at para. 13; and *Re Konidis*, [2002], I.D.A.C.D. No. 18 (IDA) at para. 14).

[31] DBSL submits that the IIROC proceeding concerns broad allegations that engage an entire segment of the financial services market. The Allegations are based on an expansive investigation in which Staff employed the powers of senior regulators to compel evidence from persons who are not IIROC Members and are not compellable by IIROC (the "**Non-Members**" or "**Non-Compellable Witnesses**"), and then based the Allegations against DBSL on the evidence so obtained. DBSL submits that probative exculpatory evidence in support of DBSL's defences is known to IIROC Staff and DBSL but DBSL cannot secure it because of IIROC's inability to compel the testimony of Non-Members, thus denying it the right to make full answer and defence (*R. v. Seaboyer*, [1991] 2 S.C.R. 577, at para. 34). DBSL submits that unlike the other Joint Regulators (the OSC and the AMF), IIROC alone cannot provide DBSL with this fundamental level of fairness. DBSL submits that the OSC has not assigned to IIROC any of its investigative or disciplinary authority, and is not authorized to do so (Derivative Services, supra, at para. 91). A hearing in this case, on the alleged subject matter before IIROC, would be so tainted by procedural unfairness and breach of natural justice that it should not proceed, in DBSL's submission.

[32] Accordingly, DBSL submits that the IIROC Hearing Panel proceeded on an incorrect principle by treating DBSL's Stay Motion as an evidentiary motion rather than a jurisdictional motion. DBSL submits that while some evidentiary issues may be determined in the context of a hearing, a jurisdictional issue, particularly in the case of an SRO, which has no inherent jurisdiction, must be determined before a hearing can proceed:

> The District Council will lose jurisdiction to hear a matter only if a respondent presents evidence of actual prejudice from the delay that significantly hinders the respondent's ability to make full answer and defence to the allegations in the notice of hearing. As long as there is sufficient evidence to allow a fair hearing, a matter can proceed.
>
> (*Re Shaughnessy*, [2000] I.D.A.C.D. No. 34 (IDA) ("***Shaughnessy***"), at pp. 7-8 (QL); followed in *Re Global Securities Corp.*, [2007] I.D.A.C.D. No. 42 (IDA) ("***Global Securities***"), at para. 48; see also *Berry Jurisdiction*, *supra*, at paras. 60-65)

[33] DBSL submits that IIROC does not have jurisdiction to hear the Allegations because it cannot provide DBSL with a fair hearing.

(ii) IIROC erred in law

[34] DBSL submits that proceeding on this incorrect principle led the IIROC Hearing Panel to err in law by basing its decision on *R.C.*, an evidentiary decision in a criminal case. DBSL submits that *R.C.* is distinguishable. Whereas *R.C.*

concerned evidence that was "missing" or unavailable, due to the death of the accused's wife, DBSL submits that this case is about evidence that is available but cannot be compelled because of IIROC's limited powers of compulsion. In *R.C.*, the accused did not challenge the jurisdiction of the court.

[35] DBSL submits that IIROC erred in law by asserting jurisdiction where it had none due to its inability to provide procedural fairness, including the right to make full answer and defence. DBSL submits that in this case, the IIROC Hearing Panel did not have the option to proceed to a hearing on the merits because the deficiency that arises from IIROC's limited powers of compulsion goes to fundamental jurisdiction.

[36] DBSL also submits that it is necessary for a fair hearing that the DBSL Stay Motion be decided prior to the IIROC Merits Hearing. The IIROC Hearing Panel erred in failing to make that decision.

(iii) IIROC failed to consider material evidence

[37] DBSL submits that because it applied the wrong precedent (*R.C.*), the IIROC Hearing Panel failed to consider the evidence before it about the prejudice DBSL would suffer as a result of its inability to make full answer and defence.

[38] In particular, DBSL submits that it provided evidence to the IIROC Hearing Panel that its ability to make full answer and defence would be undermined as follows (the "**Stay Motion Evidence**"):

(a) DBSL's defence that its role in the ABCP market was limited and distinguishable from that of other dealers implicated by the Joint Regulators, and that DBSL was not privy to the same information as those other dealers, is prejudiced because it cannot call:

(i) evidence from former Coventree employees that DBSL did not play a material role in the marketing, distribution and market-making of Coventree ABCP;

(ii) evidence from counterparties such as Mavrix that DBSL was an agency dealer with a limited role in the ABCP market; and

(iii) evidence from counterparties such as CDPQ that DBSL had a limited role in liquidity discussions and did not have a sufficient role in the market that it could impair liquidity.

(b) DBSL's defence that counterparties did not rely or reasonably rely on DBSL's advice is prejudiced because DBSL cannot call evidence from counterparties such as CUCO and CDPQ that they, as ABCP purchasers, did not rely on the advice of dealers, and DBSL in particular, in selecting which ABCP products to buy, but rather that they conducted their own due diligence and at all material times were aware of, among other things, conduit subprime content;

(c) DBSL's defence that it had a good faith, reasonable belief that the ABCP market would continue is prejudiced because it cannot call:

(i) evidence from representatives of Coventree of communications, which did not involve DBSL, in late July 2007 regarding CDPQ pulling back from the ABCP market and redeploying its resources; and

(ii) evidence from representatives of Coventree that the ABCP market may have been poised for a "liquidity event" in the days before the August 7 Call, and that DBSL was excluded from the group of participants with knowledge of the potential "liquidity event"; and

(d) DBSL's defence that the July 24 Email was immaterial to DBSL's counterparties is prejudiced because DBSL cannot call evidence from Coventree and CDPQ that the market freeze was driven not by the subject matter of the July 24 Email but rather by external global factors.

[39] DBSL submits that the IIROC Hearing Panel did not address DBSL's evidence of prejudice in the IIROC Decision and that this was a further error such that the IIROC Decision should be set aside.

(iv) There is compelling new evidence not available to the IIROC Hearing Panel

[40] DBSL submits, in addition, that the transcripts of the Coventree Hearing provide new and additionally compelling evidence that is available to the Commission but was not available to the IIROC Hearing Panel. The transcripts were not made available to DBSL until after the Stay Motion Hearing. DBSL identified thirteen witnesses, apart from DBSL personnel, that it requires in order to make full answer and defence to the Allegations, at least ten of whom are non-compellable. DBSL gave two specific examples of evidence given by Non-Members in the Coventree Hearing that supports DBSL's defences to the

Allegations (the "**Coventree Evidence**"). DBSL submits that the Coventree Evidence demonstrates that the evidence of Non-Compellable Witnesses is required to permit DBSL to make full answer and defence to the Allegations.

(v) Evidence of prejudice to DBSL

[41] DBSL submits that IIROC cannot provide it with an opportunity to make full answer and defence because IIROC lacks power to compel evidence that is "probative and potentially exculpatory" from Non-Members, including the Stay Motion Evidence and the Coventree Evidence. DBSL submits that there was no remedy available to IIROC short of a stay of proceedings or dismissal of the Notice of Hearing that would cure the prejudice to DBSL.

2. Stay of Proceedings

[42] DBSL submits that the IIROC Hearing Panel has a residual discretion to stay proceedings where going ahead "would violate those fundamental principles of justice which underlie the community's sense of fair play and decency" (*Shaughnessy*, *supra*, at p. 8; *Re Global Securities Corp.*, [2007] I.D.A.C.D. No. 42 (IDA), at para. 48). The IIROC Hearing Panel should have stayed the proceeding in this case, according to DBSL, because no remedy short of a stay can cure the prejudice to DBSL.

[43] DBSL submits that admitting the transcripts of the examinations of witnesses examined during the Joint Investigation will not provide DBSL with the ability to make full answer and defence. Because this evidence is hearsay, DBSL cannot know whether it will be admitted or given any weight by the IIROC Hearing Panel. In addition, because the examinations were conducted by the Joint Regulators, the transcript evidence is limited to the questions asked by the Joint Regulators and reflects their views and objectives. DBSL submits that it must have an opportunity to cross-examine these witnesses, who may have relevant evidence that supports DBSL's defences (*Re B and Catholic Children's Aid Society of Metropolitan Toronto*, [1987] O.J. No. 2614 (Div. Ct.); *Gilbert v. Ontario (Provincial Police)*, [1999] O.J. No. 4784 (S.C.J.), at para. 11). Finally, DBSL submits that, like the respondents in the OSC and AMF proceedings, it must be able to go beyond the documents and evidence obtained in the Joint Investigation to be able to make full answer and defence.

[44] DBSL submits that it is evident from the conduct of the Joint Investigation that the summons power is vital to DBSL's right to make full answer and defence. Most of the witness examinations conducted in the course of the Joint Investigation were compelled by summons.

[45] DBSL submits that proceeding to the IIROC Merits Hearing, at which time the IIROC Hearing Panel will be able to assess whether prejudice has been demonstrated, is unfair because, amongst other reasons:

(a) DBSL requires the ability to call individual and corporate witnesses evidently adverse to it, such as representatives of CDPQ; it stands to reason and attracts judicial notice that adverse witnesses will not voluntarily attend DBSL's hearing without compulsion;

(b) DBSL's right to make full answer and defence cannot rest on a non-party witness's non-binding decision whether or not to voluntarily attend at DBSL's hearing;

(c) DBSL's right to make full answer and defence cannot depend on witnesses with whom an attendance needs to be negotiated in any manner; and

(d) DBSL (and IIROC Staff) would be required to spend time and resources preparing for a hearing premised on the hope, rather than the certainty, that witnesses would appear.

[46] In summary, DBSL submits that to proceed with the IIROC Merits Hearing despite these limitations is not practical or fair. IIROC is without jurisdiction due to its inability to assure DBSL its right to make full answer and defence. The only solution is to stay or dismiss the Notice of Hearing.

3. Prematurity

[47] In response to the submission of IIROC Staff, supported by OSC Staff, that the Application is premature, DBSL submits that the Application is not premature because "IIROC is not going to get the power to summons" before the IIROC Merits Hearing, and therefore, DBSL's counsel says "We know now exactly what I'm going to be having to say to the panel hearing this in April. I have these witnesses, I can't get at these witnesses, and it's a structural problem in this case because this case essentially shouldn't be at a forum on these issues with these disabilities." (Hearing Transcript, p. 41).

[48] DBSL submits that this case, which concerns a jurisdictional issue – the inability of IIROC to provide DBSL with an opportunity to make full answer and defence – is distinguishable from *R.C.*, which concerned an evidentiary issue involving only one witness. DBSL submits that the issue was previously canvassed in Berry Disclosure, where the Commission intervened to stop a denial of natural justice and achieve a just and expeditious resolution of a dispute.

B. IIROC Staff

1. The Standard of Review

[49] IIROC Staff emphasizes the well-established principle that the Commission takes a "restrained approach" to applications for review under section 21.7 of the Act and submits that DBSL bears a heavy burden to demonstrate that this case satisfies the *Canada Malting* criteria. IIROC Staff submits that this case does not fall within the very limited circumstances in which the Commission will interfere with the decision of an SRO. In any event, IIROC Staff submits that the Application is premature.

[50] IIROC Staff submits that the Joint Investigation and the Notice of Hearing were authorized by IIROC's by-laws, to which DBSL agreed when it executed the Membership Application. IIROC submits that its investigatory powers are not limited in such a way as to prohibit IIROC Staff from obtaining evidence from persons who are not Compellable Witnesses in the course of an investigation – as, for example, when a complaint from a client of an IIROC Member results in an investigation and proceeding – or from relying on that evidence, whether or not it was obtained through an investigation conducted in conjunction with another regulator, or from a client, or from any other legitimate source.

[51] IIROC Staff submits that the IIROC Decision was correct and reasonable and should not be disturbed by the Commission.

[52] IIROC Staff asks that the Application be dismissed and the IIROC Merits Hearing be permitted to proceed.

2. Stay of Proceedings

[53] IIROC Staff relies on *R.C.* and on *Sam Lévy & Associés Inc. v. Mayrand*, [2006] 2 F.C.R. 543 (aff'd [2006] F.C.J. No. 867) ("**Lévy**").

[54] In *R.C.*, which was referenced in the IIROC Decision, set out at paragraph 18 above, the Ontario Court of Appeal quoted with approval an earlier decision which stated that showing "some prejudice" is not sufficient to obtain a stay:

> What must be demonstrated on a balance of probabilities is that the missing evidence creates a prejudice of such magnitude and importance that it can be fairly said to amount to a deprivation of the opportunity to make full answer and defence. The measurement of the extent of the prejudice in the circumstances of this case could not be done without hearing all the relevant evidence, the nature of which would make it clear whether the prejudice was real or minimal.

[55] In *Lévy*, certain holders of trustee licences granted by the Superintendent of Bankruptcy under the authority of the *Bankruptcy and Insolvency Act* applied for judicial review of decisions of Delegates of the Superintendent. At the hearing before the Delegates, the licensees sought a stay of the disciplinary proceedings against them on the basis that the Delegates had no power of summoning or compelling witnesses to testify, and that this "created a risk of infringing their right to make full answer and defence". The stay motion was refused. On judicial review, the Federal Court held that the Delegates did not err in determining that the stay motion was premature:

> In the case at bar, the problem of summoning witnesses and compelling them to testify seemed purely hypothetical. Thus, in the absence of evidence of actual and present harm, the Delegates were entitled to refuse to exercise their discretion to decide the question raised by the licensees.
>
> (*Lévy*, *supra*, at para. 179)

[56] In the present case, IIROC Staff submits that the problem of summoning witnesses and compelling them to testify is hypothetical at this stage. For example, with respect to DBSL's submission that it will not be able to advance a defence that its role in the ABCP market was limited and distinguishable from other dealers because IIROC cannot compel the attendance of certain potential witnesses, IIROC Staff submits that it bears the onus of proving its allegations. IIROC Staff further submits that it has not alleged that DBSL's role was indistinguishable from that of other dealers, but if IIROC Staff leads evidence to that effect, DBSL will be entitled to object to the evidence being entered and to cross-examine any witness put forward by IIROC Staff. Moreover, IIROC Staff submits that DBSL has not provided any evidence that any potential witness has refused to testify, and has not explained why its own employees would be unable to give evidence about DBSL's role.

[57] IIROC Staff submits that in the absence of evidence of actual and present harm, the IIROC Hearing Panel was correct in refraining from exercising its discretion to dismiss or stay the Notice of Hearing.

3. Prematurity

[58] IIROC Staff submits that the general principle concerning administrative proceedings is that they are to be completed before review is sought, absent extraordinary circumstances. IIROC Staff relies on *Berry Disclosure*, in which the Commission considered the case-law on prematurity at some length, referring to *Ontario College of Art v. Ontario Human Rights Commission* (1992), 11 O.R. (3d) 798 (Div. Ct.) ("**OCAD**"), *Coady v. Law Society of Upper Canada* (2003), 171 O.A.C. 51 (Div. Ct.) ("***Coady***"), and *Lifford Wine Agencies Ltd. v. Ontario (Alcohol & Gaming Commission)* (2005), 76 O.R. (3d) 401 (C.A.) ("***Lifford***"). IIROC Staff submits that, in this case, the issues raised by DBSL can only be resolved in the context of the IIROC Merits Hearing.

C. OSC Staff

1. Standard of Review

[59] Like IIROC Staff, OSC Staff submits that despite the Commission's broad powers of review on a section 21.7 application, the Commission has repeatedly stated that it will take a restrained approach when reviewing decisions of an SRO, and that the applicant has a heavy burden of showing that its case fits squarely within one of the five *Canada Malting* grounds.

[60] In this case, OSC Staff submits that none of the five factors is present that would normally form the basis for the Commission to interfere with the decision of the IIROC Hearing Panel. OSC Staff submits that the IIROC Hearing Panel did not err in principle or law by dismissing the Stay Motion until a full hearing could be held. The IIROC Hearing Panel properly applied the law and reserved its decision until the extent of the prejudice, if any, could be considered in the context of a full hearing.

2. Stay of Proceedings

[61] OSC Staff submits that the IIROC Hearing Panel properly applied the law on granting a stay of proceedings, dismissing the Stay Motion until the extent of the prejudice suffered by DBSL, if any, could be determined at the IIROC Merits Hearing.

[62] OSC Staff submits that a stay is an extraordinary remedy that is normally considered once prejudice has been clearly established and where there are no other reasonable means to remedy the prejudice suffered. (*R. v. O'Connor* (1995), 4 S.C.R. 411). Further, where a stay is sought based on alleged prejudice to the ability to make full answer and defence, it will be granted only where it is demonstrated that the actual prejudice suffered is of such a degree that it would violate those fundamental principles of justice which underlie the community's sense of fair play and decency (*R. v. Jewitt* (1985), 2 S.C.R. 128). Therefore, a stay is appropriately granted after the decision maker has had an opportunity to consider the evidence and assess prejudice in light of all the evidence admitted (*R. v. La* (1997), 2 S.C.R. 680 ("***La***"); *R. v. Bero* (2000), O.J. No 4199 (C.A.) ("***Bero***"); and *R. v. Henderson* (2004), O.J. No. 4157 (C.A.) ("***Henderson***")).

3. Prematurity

[63] OSC Staff agrees with IIROC Staff that the Application is premature. It relies on *OCAD*, *Universal Settlements International, Inc. v. Ontario (Superintendent of Financial Services)*, [2001] O.J. No. 4301 (S.C.J.) ("***USI***"), *Re TSX Inc.* (2007), 30 O.S.C.B. 8917 ("***TSX***"), and *ATI Technologies Inc.* (2004), 27 O.S.C.B. 6859 ("***ATI***"). OSC Staff submits that no exceptional or extraordinary circumstances exist in this case that require the Commission to exercise its discretion to interfere with the IIROC Decision and that interfering with the IIROC proceeding now would fragment the IIROC process.

V. ANALYSIS

A. Standard of Review: Does the Application meet the Canada Malting Criteria?

[64] DBSL submits that the Application satisfies four of the five *Canada Malting* criteria set out at paragraph 26 above. It argues that in dismissing the Stay Motion, the IIROC Hearing Panel proceeded on an incorrect principle, erred in law and failed to consider material evidence of prejudice to DBSL, and that new and compelling evidence that was not available to the IIROC Hearing Panel further demonstrates prejudice.

[65] We are not persuaded by DBSL's submissions. For the reasons stated at paragraphs 66 to 71 below, we find that the IIROC Hearing Panel correctly stated and applied the law on granting a stay of proceedings and did not err in dismissing DBSL's Stay Motion. We also find, for the reasons stated at paragraphs 72 to 76 below, that DBSL's request for an order setting aside the IIROC Decision is premature. Our order dismissing the Application would not preclude DBSL from bringing a motion for a stay of proceedings at a later stage of the IIROC Proceeding or from bringing an application for a hearing and review of any decision of an IIROC Hearing Panel in the future. In our view, it is unnecessary for us to address DBSL's submissions relating to IIROC's jurisdiction in these circumstances.

B. Stay of Proceedings

[66] The IIROC Hearing Panel noted, in the first paragraph of its reasons, that DBSL submitted that the Joint Investigation had identified a number of specific persons who are not IIROC Members who could give material support to DBSL's defence. As we read the IIROC Decision, the IIROC Hearing Panel found there was no need for a detailed discussion of the Stay Motion Evidence because it had concluded that the "the appropriate course is to allow the case to proceed to a hearing at which time the hearing panel will be able to assess whether prejudice has been demonstrated of such magnitude as to justify a stay."

[67] In dismissing DBSL's Stay Motion, the IIROC Hearing Panel relied on *R.C.*, which concerned pre-charge delay. The accused was charged with sexually assaulting his stepdaughter. At trial, he sought and obtained a stay of proceedings on the basis that his wife, who had died about 3 months before charges were laid, could have given evidence for the defence on important factual issues. The trial judge found that the accused had satisfied his burden of showing that his defence had been prejudiced by the pre-charge delay. As stated in the IIROC Decision, set out at paragraph 18 above, the Ontario Court of Appeal allowed the Crown's appeal from the stay order, concluding that the case should proceed to trial, at which time the trial judge could determine whether sufficient evidence of prejudice had been demonstrated of such magnitude as to justify a stay.

[68] Although, as stated at paragraph 34 above, DBSL attempted to distinguish *R.C.* on the basis that it concerned unavailable evidence rather than non-compellable evidence, and that it did not involve a challenge to jurisdiction, we find *R.C.* to be applicable on the central point, that is: the appropriate timing of a stay of proceedings.

[69] We find that there is a great deal of authority for the approach adopted by the IIROC Hearing Panel. We find the decision of the Supreme Court of Canada in *La* to be especially helpful on the process to be followed. In *La*, the trial judge granted a stay of proceedings because a police officer had lost a tape recording of his interview with a complainant, and therefore the tape was unavailable to be disclosed by the Crown. The Crown successfully appealed the stay order. In dismissing the accused's further appeal, the Supreme Court of Canada made the following comments about the timing of a stay decision:

> The appropriateness of a stay of proceedings depends upon the effect of the conduct amounting to an abuse of process or other prejudice on the fairness of the trial. This is often best assessed in the context of the trial as it unfolds. Accordingly, the trial judge has a discretion as to whether to rule on the application for a stay immediately or after hearing some or all of the evidence. Unless it is clear that no other course of action will cure the prejudice occasioned by the conduct giving rise to the abuse, it will usually be preferable to reserve on the application. This will enable the judge to assess the degree of prejudice and as well to determine whether measures to minimize the prejudice have borne fruit.
>
> (*La*, *supra*, at para. 27)

[70] The Ontario Court of Appeal followed *La* in *Bero*. In that case, the accused, who had been charged with impaired driving causing bodily harm, brought a stay motion on the ground that evidence (the vehicle involved in the accident) had been lost or disposed of. The trial judge considered the motion at the outset of the trial and dismissed it. On the accused's appeal from his conviction, the Ontario Court of Appeal held that the trial judge should have reserved on the motion until all the evidence had been heard:

> The trial judge should not have ruled on the motion at the outset of the trial. This Court has repeatedly indicated that except where the appropriateness of a stay is manifest at the outset of a proceeding, a trial judge should reserve on motions such as the motion brought in this case until after the evidence has been heard. The trial judge can more effectively assess issues such as the degree of prejudice caused to the accused by the destruction of evidence at the end of the trial.
>
> (*Bero*, *supra*, at para. 18; see also *Henderson*, *supra*, at para. 39)

[71] We find that the IIROC Hearing Panel correctly stated and applied the law on granting a stay of proceedings. We accept the submissions of IIROC Staff, set out at paragraph 56 above, that at the time the IIROC Hearing Panel heard the Stay Motion, the extent of any prejudice to DBSL as a result of IIROC's inability to compel evidence from Non-Members could not be determined, and therefore any stay of proceedings would have been premature.

C. Prematurity

[72] For the same reasons, we accept the submission of IIROC Staff and OSC Staff that DBSL's Application for an order setting aside the IIROC Decision is premature.

[73] The courts and the Commission have repeatedly expressed their reluctance to interfere with an ongoing proceeding absent extraordinary circumstances. The Commission reviewed the leading cases in *Berry Disclosure*, as follows:

The general legal principles regarding prematurity are set out in [*OCAD*, *supra*] at 799-800:

> [A court has] a discretion to exercise in matters of this nature. It can refuse to hear the merits of such an application if it considers it appropriate to do so. Where the application is brought prematurely, as alleged by the Attorney General in these proceedings, it has been the approach of the Court to quash the application, absent the showing of exceptional or extraordinary circumstances demonstrating that the application must be heard: see *Latif v. Ontario (Hospital Resources Commission)* (an unreported decision of this court of March 11, 1992; leave to appeal was denied on June 8, 1992 by the Ontario Court of Appeal) and *Hancock v. Ontario* (Human Rights Commission) (an unreported decision of this court of November 10, 1992).
>
> These decisions follow a long line of authority which has indicated the need to avoid a piecemeal approach to judicial review of administrative action. The board of inquiry in this case has jurisdiction to entertain and determine any of the issues that have been so ably advanced …
>
> For some time now the Divisional Court has, as I have indicated, taken the position that it should not fragment proceedings before administrative tribunals. Fragmentation causes both delay and distracting interruptions in administrative proceedings. It is preferable, therefore, to allow such matters to run their full course before the tribunal and then consider all legal issues arising from the proceedings at their conclusion.

The Divisional Court in [*Coady*, *supra*] further stated:

> When litigants before administrative tribunals seek the court's intervention in the midst of the litigation, the court is reluctant to do so except in very extraordinary circumstances. Experience has shown that the best course is to permit the hearings to be completed and then review the entire mater. Many apparent problems disappear in the light of further evidence; sometimes the result makes the application unnecessary. ([*Coady*], *supra* at paras. 9-11.)

The Commission has recognized these concerns. The recent Commission decision of *Re TSX Inc.* (2007), 30 O.S.C.B. 8917, noted that premature attempts to review tribunal decisions are rejected because the interruption would hinder the first instance tribunal from properly and effectively performing its function (at para. 181).

Nonetheless, the Court of Appeal has recognized:

> [The general rule] is not absolute and should not be applied rigidly if there is a prospect of real unfairness through, for example, the denial of natural justice. In these circumstances, which will arise infrequently, the courts will intervene before completion of an administrative hearing and prior to the exhaustion of all alternative remedies. ([*Lifford*], *supra* at para. 43.)

(*Berry Disclosure*, *supra*, at para. 107-111)

[74] In *Berry Disclosure*, the issue was whether Berry was entitled to disclosure of materials relating to the settlement between RS Staff and Berry's former employer, which was a co-respondent in the same proceeding. RS, in a preliminary decision, had dismissed Berry's disclosure motion. In the circumstances of that case, the Commission concluded that ordering disclosure of the settlement materials before the RS hearing on the merits began would expedite rather than delay or fragment the RS proceeding.

[75] There are no outstanding disclosure issues in this case. In our view, the extent of any prejudice to DBSL's ability to make full answer and defence can only be assessed by the IIROC Hearing Panel in the context of the IIROC Merits Hearing. At that time, IIROC Staff will have set out its theory of the case and disclosed the evidence on which it intends to rely, and DBSL will have prepared its defence, had an opportunity to attempt to secure the attendance of certain Non-Compellable Witnesses on a voluntary basis, and obtained transcript evidence from Non-Compellable Witnesses who refuse to attend on a voluntary basis. The IIROC Hearing Panel will then be able to consider the actual prejudice to DBSL's right to make full answer and defence caused by specific refusals of Non-Compellable Witnesses to testify. Any such decision made by an IIROC hearing panel would be reviewable by the Commission pursuant to section 21.7 of the Act at that time.

[76] At this stage, prior to commencement of the IIROC Merits Hearing, we find that the Application is premature. However, we note the comment of the Supreme Court of Canada, in La, that a stay motion that is unsuccessful at an early stage of a trial "may be renewed if there is a material change of circumstances. ... This would be the case if, subsequent to the unsuccessful application, the accused is able to show a material change in the level of prejudice" (*La*, *supra*, at para. 28). Our ruling on the Application does not preclude DBSL from bringing another stay motion before the IIROC Hearing Panel or from bringing another application before the Commission in the appropriate circumstances.

VI. CONCLUSION

[77] For these reasons, it is ordered that:

1. the Application is dismissed; and

2. the Interim Stay ordered on January 7, 2011 is revoked.

DATED in Toronto, Ontario this 30th day of September, 2011.

"Mary G. Condon"	"Paulette L. Kennedy"
Mary G. Condon	Paulette L. Kennedy

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS FOR THIS WEEK.

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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
08/26/2011 to 09/02/2011	47	7887523 Canada Inc. - Receipts	15,975,840.00	15,975,840.00
08/31/2011 to 09/01/2011	10	Accuretive 360 Holdings Ltd. - Common Shares	1,328,200.00	3,320,500.00
09/06/2011	22	Altima Resources Ltd. - Units	258,000.00	5,160,000.00
09/09/2011	44	Amato Exploration Ltd. - Common Shares	1,250,000.00	25,000,000.00
09/02/2011	5	Amber Petroleum Limited - Common Shares	250,282.50	2,550,000.00
09/19/2011	1	Argonaut Exploration Inc. - Common Shares	7,500.00	50,000.00
09/09/2011	1	Ateba Resources Inc. - Flow-Through Units	180,000.00	1,500,000.00
09/08/2011	23	Atikwa Resources Inc. - Units	2,802,789.82	N/A
08/05/2011 to 08/12/2011	47	Atlanta Gold Inc. - Units	1,552,299.61	22,175,706.00
09/15/2011	1	BAC Canada Finance Company - Note	6,100,000.00	1.00
09/19/2011	3	BC European Capital IX-2 LP - Limited Partnership Interest	608,670,000.00	3.00
09/19/2011	1	BC European Capital IX-6 LP - Limited Partnership Interest	135,260,000.00	1.00
09/19/2011	1	BC European Capital IX-8 LP - Limited Partnership Interest	135,260,000.00	1.00
08/31/2011	17	Birch Lake Energy Inc. - Units	788,000.00	4,368,750.00
08/31/2011	3	B.E.S.T. Active Fund 11 L.P. - Limited Partnership Units	450,000.00	450,000.00
08/29/2011	3	Canadian Coyote Energy Trust - Trust Units	150,000.00	150,000.00
09/09/2011	23	Canadian Horizons Blended Mortgage Investment Corporation - Preferred Shares	637,679.00	637,679.00
09/01/2011	7	Capital Direct I Income Trust - Trust Units	1,033,320.00	103,332.00
09/01/2011	7	Capital Direct I Income Trust - Trust Units	1,033,320.00	103,332.00
09/09/2011	28	CareVest Capital Blended Mortgage Investment Corp. - Preferred Shares	601,663.00	601,663.00
09/09/2011	3	CareVest Second Mortgage Investment Corporation - Preferred Shares	68,183.00	68,183.00
08/31/2011	64	Centurion Apartment Real Estate Investment Trust - Units	2,989,107.00	295,114.30

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
08/31/2011	27	Commonwealth Silver and Gold Mining Inc. - Common Shares	3,039,000.00	6,078,000.00
08/09/2011 to 08/29/2011	13	CommunityLend Inc. - Loan Agreements	59,500.00	N/A
08/09/2011 to 08/11/2011	6	Copper Point Mining Corp. - Common Shares	65,000.00	1,300,000.00
09/13/2011 to 09/19/2011	5	Creso Exploration Inc. - Units	1,001,000.00	7,333,333.33
08/29/2011	9	CWT Canada Limited Partnership - Limited Partnership Interest	1,999,999.99	1,999,999.99
08/30/2011	4	Diamond Hawk Mining Corp. - Common Shares	120,000.00	1,200,000.00
09/06/2011	1	Eagle Hill Exploration Corporation - Common Shares	38,000.00	200,000.00
09/22/2011	4	Exploration Aurtois Inc. - Units	175,000.00	1,400,000.00
09/22/2011	10	First Mexican Gold Corp. - Units	309,720.00	1,290,500.00
09/13/2011	1	First Nickel Inc. - Common Shares	500,000.06	3,571,429.00
09/15/2011	62	Galleon Energy Inc. - Units	6,463,000.00	2,300,000.00
08/22/2011 to 08/26/2011	28	IGW Real Estate Investment Trust - Units	1,963,218.53	N/A
08/29/2011 to 09/02/2011	84	IGW Real Estate Investment Trust - Units	2,991,065.77	N/A
09/16/2011	1	ISEE3D Inc. - Units	650,000.00	13.00
08/26/2011 to 09/02/2011	12	Iskander Energy Corp. - Special Warrants	6,537,502.50	4,358,335.00
09/15/2011	2	Kingwest Avenue Portfolio - Units	402,182.78	14,258.00
08/26/2011	16	Labrador Technologies Inc. - Units	1,015,000.00	20,300,000.00
07/22/2011	2	Liberty Silver Corp. - Units	660,000.00	1,200,000.00
09/01/2011 to 09/02/2011	3	Lord Lansdowne Holdings Inc. - Units	1,750,007.00	700.00
09/13/2011	1	Mag Copper Limited - Common Shares	1,000,000.00	8,225,000.00
08/29/2011 to 08/31/2011	7	Member-Partners Solar Energy Capital Inc. - Bonds	88,100.00	881.00
08/29/2011 to 08/31/2011	5	Member-Partners Solar Energy Limited Partnership - Units	100,000.00	100,000.00
09/07/2011	2	Member-Partners Solar Energy Limited Partnership - Units	13,000.00	13,000.00
09/12/2011	1	Micromem Technologies Inc. - Units	127,500.00	1,275,000.00
09/20/0211	1	Mineral Mountain Resources Ltd. - Common Shares	240,000.00	500,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
09/14/2011	7	Mukuba Resources Limited - Common Shares	166,200.00	1,108,000.00
09/01/2011	2	New Haven Mortgage Income Fund (1) Inc. - Special Shares	660,000.00	2.00
09/01/2011	1	New Solutions Financial (II) Corporation - Debentures	100,000.00	2.00
08/31/2011	6	Newstart Financial Inc. - Notes	220,000.00	6.00
09/16/2011	9	Northern Gold Mining Inc. - Common Shares	6,388,440.00	11,205,078.00
09/16/2011	25	Northern Gold Mining Inc. - Flow-Through Shares	4,482,031.20	14,519,182.00
07/04/2011 to 07/13/2011	25	Omniarch Capital Corporation - Bonds	721,774.87	721,774.87
09/08/2011	1	Open Access Limited - Units	240,000.00	9.60
09/07/2011	12	Origin Biomed Inc. - Common Shares	6,238,239.73	78,567,249.74
05/07/2010	9	Original Biomed Inc. - Notes	1,694,569.00	N/A
09/21/2011	5	PharmaGap Inc. - Units	175,210.00	2,190,000.00
08/29/2011 to 08/31/2011	3	Place Trans Canadienne Commerical Limited Partnership - Notes	88,000.00	88,000.00
09/13/2011	3	Probe Mines Limited - Common Shares	61,125.00	37,500.00
09/08/2011	1	ProMetic Life Sciences Inc. - Common Shares	399,690.00	3,636,000.00
01/09/2011 to 09/09/2011	67	Redwater Energy Corp. - Units	2,517,000.40	5,561,740.00
08/31/2011	3	REGEN Energy Inc. - Preferred Shares	6,046,787.81	10,412,339.00
08/31/2011	13	Rhone Offshore Partners IV L.P. - Limited Partnership Interest	492,578,536.00	N/A
09/19/2011	3	Sanatana Resources Inc. - Common Shares	50,249.43	239,283.00
09/02/2011	1	SelectCore Ltd. - Debenture	2,900,000.00	1.00
09/20/2011	58	SG Spirit Gold Inc. - Units	1,131,779.82	18,862,997.00
09/09/2011	1	Shoal Point Energy Ltd. - Units	9,000.00	30,000.00
09/15/2011	30	SIERRA MADRE DEVELOPMENTS INC. - Units	854,974.95	5,699,833.00
09/01/2011	2	Stacey Muirhead Limited Partnership - Units	27,500.00	827.00
09/01/2011	1	Stacey Muirhead RSP Fund - Units	500.00	56.00
09/08/2011	50	Telegraph Gold Inc. - Common Shares	5,405,000.00	10,810,000.00
08/22/2011	1	The Walt Disney Company - Note	1,954,794.03	1.00
08/22/2011	2	The Walt Disney Company - Notes	6,862,155.38	2.00
08/22/2011	2	The Walt Disney Company - Notes	2,946,715.82	2.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
09/15/2011	1	Trelawney Mining and Exploration Inc. - Common Shares	0.00	100,000.00
08/17/2011	1	UBS (LUX) Emerging Economies Fund - Global Fund - Units	8,526.51	120.00
08/31/2011	58	Vertex Fund - Units	5,386,488.10	184,336.00
09/09/2011	1	Viper Gold Ltd. - Common Shares	0.00	100,000.00
09/13/2011	3	VSS Communications Parallel Partners IV, L.P. - Limited Partnership Interest	743,908.00	761,109.00
09/09/2011	171	Walton Fletcher Mills Investments Corporation - Common Shares	4,226,260.00	423,626.00
09/02/2011	14	Walton Fletcher Mills LP - Units	1,038,000.00	103,800.00
09/09/2011	11	Walton Fletcher Mills LP - Units	4,613,260.00	461,326.00
08/19/2011	155	Walton MD Gardner Heights Investment Corporation - Common Shares	3,625,280.00	362,528.00
09/02/2011	9	Walton MD Gardner Heights Investment Corporation - Common Shares	182,500.00	18,250.00
09/02/2011	163	Walton MD Gardner Ridge Investment Corporation - Common Shares	3,881,890.00	388,189.00
09/09/2011	7	Walton MD Gardner Ridge Investment Corporation - Common Shares	266,710.00	26,671.00
09/02/2011	11	Walton MD Gardner Ridge LP - Units	3,940,922.06	403,441.00
08/26/2011 to 09/02/2011	78	Wind River Energy Corp. - Common Shares	3,299,999.95	9,428,571.00
08/26/2011 to 09/09/2011	13	WIP Investment Limited Partnership - Units	4,500,400.00	45,004.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
ACTIVEnergy Income Fund
Principal Regulator – Alberta
Type and Date:
Preliminary Short Form Prospectus dated September 23, 2011
NP 11-202 Receipt dated September 28, 2011
Offering Price and Description:
Offering of * rights to purchase a maximum of * Trust Units; Subscription Price: three Rights and $* per Trust Unit. The subscription price equals approximately *% of the closing price per Trust Unit on the Toronto Stock Exchange on *, 2011.
Underwriter(s) or Distributor(s):
MIDDLEFIELD CAPITAL CORPORATION
Promoter(s):
-
Project #1806779

Issuer Name:
Cominar Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated October 4, 2011
NP 11-202 Receipt dated October 4, 2011
Offering Price and Description:
$100,018,000.00 - 4,652,000 Units Price: $21.50 per Unit
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
DESJARDINS SECURITIES INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
MACQUARIE CAPITAL MARKETS CANADA LTD.
Promoter(s):
-
Project #1809081

Issuer Name:
NEI Income Corporate Class
Northwest Canadian Dividend Corporate Class
Northwest Canadian Equity Corporate Class
Northwest EAFE Corporate Class
Northwest Global Equity Corporate Class
Northwest Growth and Income Corporate Class
Northwest Select Canadian Balanced Corporate Class Portfolio
Northwest Select Canadian Growth Corporate Class Portfolio
Northwest Select Conservative Corporate Class Portfolio
Northwest Select Global Balanced Corporate Class Portfolio
Northwest Select Global Growth Corporate Class Portfolio
Northwest Select Global Maximum Growth Corporate Class Portfolio
Northwest Short Term Corporate Class
Northwest Specialty Equity Corporate Class
Northwest Specialty Global High Yield Bond Corporate Class
Northwest Specialty Innovations Corporate Class
Northwest Tactical Yield Corporate Class
Northwest U.S. Equity Corporate Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated September 29, 2011
NP 11-202 Receipt dated October 4, 2011
Offering Price and Description:
Series A, F and T Shares
Underwriter(s) or Distributor(s):
Credential Asset Management Inc.
Promoter(s):
Northwest & Ethical Investments Inc.
Project #1807928

Issuer Name:
Paramount Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated October 4, 2011
NP 11-202 Receipt dated October 4, 2011
Offering Price and Description:
$58,725,000 - 1,450,000 Flow-Through Class A Common Shares
Price: $$40.50 per Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Peters & Co. Limited
Stifel Nicolaus Canada Inc.
Cormark Securities Inc.
FirstEnergy Capital Corp.
RBC Dominion Securities Inc.
Scotia Capital Inc.
GMP Securities L.P.
TD Securities Inc.
Canaccord Genuity Corp.
Promoter(s):
-
Project #1809036

Issuer Name:
Allon Therapeutics Inc.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated September 28, 2011
NP 11-202 Receipt dated September 29, 2011
Offering Price and Description:
$4,300,000.00 (Minimum Offering); $7,500,000.00 (Maximum Offering) - A Minimum Offering of 9,321,084 Units (each Unit consists of one Common Share and one-half of one Warrant) and 7,878,916 Common Shares (with no Warrants) A Maximum Offering of 18,000,000 Units and 7,878,916 Common Shares and One (1) Subscription Receipt for a conditional purchase of 4,121,084 Common Shares and 6,000,000 Warrants Price: $0.25 per Unit
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #1802024

Issuer Name:
ARMISTICE RESOURCES CORP.
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated September 30, 2011
NP 11-202 Receipt dated October 3, 2011
Offering Price and Description:
$15,000,000.00 of Units (Minimum Offering)
$20,000,000.00 of Units and $5,012,000 of Flow-Through Shares (Maximum Offering) and A Minimum of 60,000,000 Units and a Maximum of 80,000,000 Units and 17,900,000 Flow-Through Shares Price: $0.25 per Unit and $0.28 per Flow-Through Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #1802059

Issuer Name:
BAC Canada Finance Company
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated September 29, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
Cdn.$5,000,000,000.00:
Debt Securities
Structured Warrants
Unconditionally guaranteed as to payment of all amounts payable thereunder by
Bank of America Corporation
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1808105

Issuer Name:
Canadian Premium Select Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 30, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
Maximum: $* (* Units) Price: $12.00 per Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
DESJARDINS SECURITIES INC.
RAYMOND JAMES LTD.
HSBC SECURITIES (CANADA) INC.
MACQUARIE PRIVATE WEALTH INC.
DUNDEE SECURITIES LTD.
INDUSTRIAL ALLIANCE SECURITIES INC.
Promoter(s):
Harvest Portfolios Group Inc.
Project #1808110

Issuer Name:
Damon Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated September 28, 2011
NP 11-202 Receipt dated September 29, 2011
Offering Price and Description:
Minimum Offering: $300,000.00 or 3,000,000 Common Shares; Maximum Offering: $500,000.00 or 5,000,000 Common Shares Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
Promoter(s):
JOSEPH ANDRE CHARLAND
Project #1807112

Issuer Name:
Diversified Alpha Fund II
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 30, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
Maximum $* (* Units); Minimum $* (* Units) - Price: $10.00 per Unit Minimum Purchase: 500 Units
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
GMP SECURITIES L.P.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
HSBC SECURITIES (CANADA) INC.
MACQUARIE PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
Promoter(s):
PROPEL CAPITAL CORPORATION
Project #1808154

Issuer Name:
Harmony Diversified Income Pool
Harmony Global Fixed Income Pool
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated September 28, 2011
NP 11-202 Receipt dated September 28, 2011
Offering Price and Description:
Embedded Series, Series T, Series V and Wrap Series Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1806580

Issuer Name:
iShares DEX Floating Rate Note Index Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 28, 2011
NP 11-202 Receipt dated September 29, 2011
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
BlackRock Asset Management Canada Limited
Promoter(s):
-
Project #1806875

Issuer Name:
Man GLG Emerging Markets Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 29, 2011
NP 11-202 Receipt dated September 29, 2011
Offering Price and Description:
Class A and F Units - $* Maximum Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
MACQUARIE PRIVATE WEALTH INC.
DUNDEE SECURITIES LTD.
HSBC SECURITIES (CANADA) INC.
MANULIFE SECURITIES INCORPORATED
RAYMOND JAMES LTD.
ROTHENBERG CAPITAL MANAGEMENT INC.
DESJARDINS SECURITIES INC.
Promoter(s):
MAN INVESTMENTS CANADA CORP.
Project #1807524

Issuer Name:
Matrix Covered Call Canadian Banks Plus Fund (Corporate Class)
Matrix Dow Jones Canada High Dividend 50 Fund (Corporate Class)
Matrix S&P/TSX Canadian Dividend Aristocrats Fund (Corporate Class)
Principal Regulator - British Columbia
Type and Date:
Preliminary Simplified Prospectuses dated September 26, 2011
NP 11-202 Receipt dated September 29, 2011
Offering Price and Description:
Series A, F, T and I Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Growth Works Capital Ltd.
Project #1807805

Issuer Name:
Mincom Capital Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated September 28, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
MINIMUM OFFERING: $500,000.00 (5,000,000 COMMON SHARES); MAXIMUM OFFERING: $2,000,000.00 (20,000,000 COMMON SHARES) Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Jones, Gable & Company Limited
Promoter(s):
Gary Economo
Project #1807629

Issuer Name:
Romarco Minerals Inc
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated September 30, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
$80,500,000 - 70,000,000 Common Shares
Price: $1.15 per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Paradigm Capital Inc.
Promoter(s):
-
Project #1808241

Issuer Name:
Stria Capital Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated September 28, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
MINIMUM OFFERING: $500,000.00 (5,000,000 COMMON SHARES); MAXIMUM OFFERING: $2,000,000.00 (20,000,000 COMMON SHARES) Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Jones, Gable & Compagnie Limited
Promoter(s):
Gary Economo
Project #1807637

Issuer Name:
Synchronica plc
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated September 29, 2011
Receipted on September 30, 2011
Offering Price and Description:
$7,325,000.00 - 29,300,000 Units issuable upon conversion of Subscription Receipts
(each Unit being comprised of one Ordinary Share and one-half of one Warrant)
Underwriter(s) or Distributor(s):
PARADIGM CAPITAL INC.
STONECAP SECURITIES INC.
CORMARK SECURITIES INC.
Promoter(s):
-
Project #1800378

Issuer Name:
Tartisan Resources Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 27, 2011
NP 11-202 Receipt dated September 29, 2011
Offering Price and Description:
$2,500,000.00 to $3,500,000.00 - 5,555,556 to 7,777,778 Units Price: $0.45 per Unit
Underwriter(s) or Distributor(s):
Kingsdale Capital Markets Inc.
Promoter(s):
D. Mark Appleby
Paul R. Ankcorn
Project #1807075

Issuer Name:
Tech Giants Covered Call ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 27, 2011
NP 11-202 Receipt dated September 29, 2011
Offering Price and Description:
Common and Advisor Class Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
XTF Capital Corp.
Project #1806466

Issuer Name:
Tempus Capital Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated September 29, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
Minimum Offering: $400,000.00 or 2,666,667 common shares; Maximum Offering: $600,000.00 or 4,000,000 common shares Price: $0.15 per Common Share Broker Warrants to acquire 266,667 Common Shares assuming the Minimum Offering is sold or 400,000 Common Shares assuming the Maximum Offering is sold, at a price of $0.15 per Common Share Incentive Stock Options to acquire 440,000 Common Shares assuming the Minimum Offering is sold or 550,000 Common Shares assuming the Maximum Offering is sold, at a price of $0.15 per Common Share
Underwriter(s) or Distributor(s):
Northern Securities Inc.
Promoter(s):
Peter M. Clausi
Brian Crawford
Project #1802163

Issuer Name:
Arcan Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated September 30, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
$50,140,000.00 - 9,200,000 Offered Shares and $85,000,000.00 - 6.50% Convertible Unsecured Subordinated Debentures due October 31, 2018 Price: $5.45 per Offered Share; $1,000 per Debenture
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
HAYWOOD SECURITIES INC.
SCOTIA CAPITAL INC.
NATIONAL BANK FINANCIAL INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
STIFEL NICOLAUS CANADA INC.
PARADIGM CAPITAL INC.
PI FINANCIAL CORP.
Promoter(s):
-
Project #1804887

Issuer Name:
Bloom Income & Growth Canadian Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 29, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
Maximum $100,000,000 (10,000,000 Units) @ $10.00 per Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
TD SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
HSBC SECURITIES (CANADA) INC.
DUNDEE SECURITIES LTD.
MACQUARIE PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
Promoter(s):
BLOOM INVESTMENT COUNSEL, INC.
Project #1790325

Issuer Name:
Series A and Series F Units of:
Excel India Fund
Excel China Fund
Excel Chindia Fund
Excel Income and Growth Fund
Excel Emerging Europe Fund
Excel Money Market Fund
Excel Latin America Fund
Excel BRIC Fund
Excel Emerging Markets Fund
Excel EM High Income Fund
Excel EM Capital Income Fund
Excel Blue Chip Emerging Markets Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated September 30, 2011
NP 11-202 Receipt dated October 4, 2011
Offering Price and Description:
Series A and Series F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Excel Funds Management Inc.
Promoter(s):
Excel Funds Management Inc.
Project #1798450

Issuer Name:
Canadian Imperial Bank of Commerce
Principal Regulator - Ontario
Type and Date:
Final Based Shelf Prospectus dated September 29, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
$2,000,000,000.00 - Medium Term Notes (Principal at Risk Structured Notes)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1798755

Issuer Name:
Series A, Series I and Series T Units (unless otherwise indicated) of:
MD Dividend Fund
MD Equity Fund
MD International Value Fund
MD American Value Fund
MD Conservative Portfolio (Series A Units)
MD Moderate Balanced Portfolio (Series A Units)
MD Balanced Growth Portfolio (Series A Units)
MD Maximum Growth Portfolio (Series A Units)
MDPIM US Equity Pool (Series A Units)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated September 19, 2011 to the Simplified Prospectuses and Annual Information Form dated June 20, 2011
NP 11-202 Receipt dated October 4, 2011
Offering Price and Description:
Series A, Series I and Series T @ Net Asset Value
Underwriter(s) or Distributor(s):
MD Management Limited
Promoter(s):
MD Physician Services Inc.
Project #1744446

Issuer Name:
RBC Dominion Securities U.S. Focus List Portfolio (Series A, Series F, Series B and Series G Shares)
RBC Dominion Securities Canadian Focus List Portfolio (Series A and Series F Units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated September 29, 2011
NP 11-202 Receipt dated October 4, 2011
Offering Price and Description:
Series A, Series F, Series B and Series G Securities @ Net Asset Value
Underwriter(s) or Distributor(s):
First Defined Portfolio Management Co.
Promoter(s):
FIRST DEFINED PORTFOLIO MANAGEMENT CO.
Project #1790623

Issuer Name:
Faircourt Gold Income Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated September 26, 2011
NP 11-202 Receipt dated September 28, 2011
Offering Price and Description:
Rights to Subscribe for up to 2,466,560 Class A Shares at a Subscription Price of $9.80 per Share
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
Promoter(s):
-
Project #1801194

Issuer Name:
Front Street MLP Income Fund II Ltd.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 30, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
Maximum $ (10,000,000.00 Equity Shares, Series C);
Maximum US$ (5,000,000.00 Equity Shares, Series U)
Underwriter(s) or Distributor(s):
CIBC World Markets INC.
Promoter(s):
Front Street Capital 2004
Project #1798319

Issuer Name:
Matrix 2011-II FT National Class
Matrix 2011-II FT Québec Class
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 30, 2011
NP 11-202 Receipt dated October 3, 2011
Offering Price and Description:
Maximum Offering: $25,000,000 2,500,000 Matrix 2011-II FT National Class Units)
$10.00 per Matrix 2011-II FT National Class Unit
Minimum Subscription: $2,500 (250 National Class Units or 250 Québec Class Units)
Underwriter(s) or Distributor(s):
DESJARDINS SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
BMO NESBITT BURNS INC.
DUNDEE SECURITIES LTD.
MANULIFE SECURITIES INCORPORATED
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
MACQUARIE PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
INDUSTRIAL ALLIANCE SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
M PARTNERS INC.
UNION SECURITIES LTD.
Promoter(s):
Matrix 2011-II National and Québec Flow Through Management Limited
Matrix Funds Management (a division of Growth Works Capital Ltd.),
Project #1799388, 1799387

Issuer Name:
Return on Innovation Fund Inc.
Type and Date:
Final Long Form Prospectus dated September 29, 2011
Receipted on September 30, 2011
Offering Price and Description:
Class A Shares, Series I, Class A Shares, Series II, Class A Shares, Series III andClass A Shares, Series IV @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Return On Innovation Management Limited
Project #1774786

Issuer Name:
ScotiaMcLeod Canadian Core Portfolio
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated September 28, 2011
NP 11-202 Receipt dated September 30, 2011
Offering Price and Description:
Series A and Series F Units @ Net Asset Value
Underwriter(s) or Distributor(s):
First Defined Portfolio Management Co.
Promoter(s):
-
Project #1792353

Issuer Name:
Spara Acquisition One Corp.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated September 28, 2011
NP 11-202 Receipt dated September 29, 2011
Offering Price and Description:
$700,000 .00 - 7,000,000 Common Shares Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Fin-XO Securities Inc.
Promoter(s):
Jason Sparaga
Project #1788648

Issuer Name:
Vector Resources Inc.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated September 28, 2011
NP 11-202 Receipt dated October 3, 2011
Offering Price and Description:
Minimum Offering: $200,000.00 (1,000,000 Common Shares); Maximum Offering: $500,000.00 (2,500,000 Common Shares) Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
MACQUARIE PRIVATE WEALTH INC.
Promoter(s):
Darryl Levitt
Keith Baptist
Richard Molyneux
Mike Nell
Project #1774877

Issuer Name:
The Children's Educational Foundation of Canada
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated September 29, 2011
NP 11-202 Receipt dated October 4, 2011
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
CHILDREN'S EDUCATION FUNDS INC.
Promoter(s):
CHILDREN'S EDUCATION FUNDS INC.
Project #1798486

Issuer Name:
Way Ventures Inc.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated October 3, 2011
NP 11-202 Receipt dated October 4, 2011
Offering Price and Description:
$300,000.00 - 3,000,000 Common Shares Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #1797736

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	Brompton Funds Management Limited	Investment Fund Manager, Exempt Market Dealer and Portfolio Manager	July 27, 2011
New Registration	Simplicity Investment Group Ltd.	Exempt Market Dealer	September 28, 2011
New Registration	RARE Infrastructure (North America) Pty. Ltd.	Portfolio Manager	September 29, 2011
New Registration	Crimson Capital Inc.	Exempt Market Dealer and Portfolio Manager	September 30, 2011
New Registration	Radin Capital Partners Inc.	Portfolio Manager	September 30, 2011
Change in Registration Category	Webb Asset Management Canada, Inc.	From: Investment Fund Manager To: Portfolio Manager and Investment Fund Manager	September 30, 2011
Change in Name	From: Norstar Securities Limited Partnership To: Sheridan Brothers Limited Partnership	Investment Dealer	September 30, 2011
Consent to Suspension (Pending Surrender)	Manning & Napier Advisors, Inc.	Portfolio Manager and Exempt Market Dealer	October 3, 2011
New Registration	Manning & Napier Advisors I, LLC	Portfolio Manager and Exempt Market Dealer	October 3, 2011

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 Maple Group Acquisition Corporation – Notice and Request for Comment

MAPLE GROUP ACQUISITION CORPORATION

NOTICE AND REQUEST FOR COMMENT

I. INTRODUCTION

On May 15, 2011, Maple Group Acquisition Corporation (Maple), a consortium of Canadian investment dealers, pension funds and other institutional investors (collectively, the Investors[1]), announced their intention to acquire TMX Group Inc. (TMX Group), which, through its wholly-owned subsidiary, TSX Inc. (TSX), operates the Toronto Stock Exchange. Following its proposed acquisition of TMX Group, Maple also proposes to acquire Alpha Trading Systems Limited Partnership (Alpha LP) and Alpha Trading Systems Inc. (collectively, Alpha) and The Canadian Depository for Securities Limited (CDS Ltd.) and, indirectly, CDS Clearing and Depository Services Inc. (CDS Clearing and, collectively, CDS) (collectively, the Maple Proposal).

In connection with the Maple Proposal, Maple has applied (the Application) to the Commission, requesting that it issue orders to:

(i) recognize Maple as an exchange, including applying to Maple a limitation restricting beneficial ownership of more than ten percent of the voting securities of Maple without the prior approval of the Commission;

(ii) approve the beneficial ownership by Maple of all the common shares of each of TMX Group and TSX;

(iii) amend and restate the recognition order of TMX Group and TSX;

(iv) approve the Investors and Maple acting jointly or in concert as beneficial owners of voting securities of TMX Group in connection with the Subsequent Arrangement (as defined below) and the Alpha and CDS acquisitions;

(v) approve the beneficial ownership by the Investors, individually, as applicable, of more than ten percent of the voting securities of Maple for a transitional period relating to the Subsequent Arrangement; and

(vi) amend and restate the recognition order of CDS.

Maple is also seeking amendments to the exemption orders previously granted by the Commission to TSX Venture Exchange (TSXV) and the Bourse de Montréal (MX).

In order to assist the Commission in assessing the Maple Proposal, staff of the Commission (Staff or we) are publishing this notice (Notice), together with the Application, to request public comment on all aspects of the Maple Proposal and the Application. In addition, we are also requesting comment on certain key issues relating to the Application, as identified in this Notice. There are certain specific instances where we request suggestions as well as comments. We also welcome suggestions on all of the issues raised, or any other issues brought to our attention through the comment process.

The purpose of this Notice is to:

- summarize the Maple Proposal (Section II);
- discuss the types of issues that can arise from changes in ownership, consolidation and governance of market infrastructure entities and outline issues for comment specifically related to the Maple Proposal (Section III); and
- provide information on the Commission's comment process (Section IV)

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[1] The Investors in Maple consist of Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., Desjardins Financial Corporation, Dundee Capital Markets Inc., Fonds de solidarité des travailleurs du Québec, GMP Capital Inc., The Manufacturers Life Insurance Company, National Bank Financial Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc. and TD Securities Inc.

We have also included in Appendix A some background information on the regulation of exchanges and clearing agencies in Ontario.

The Commission will review the Maple Proposal and the Application to consider the implications for the capital markets. In determining whether it is in the public interest to make the requested orders, the Commission will consider all available information and the public comments received and will also refer to the criteria for recognition and exemption for exchanges and clearing agencies (attached at Schedules A-1 and A-2 to Appendix A of this notice, respectively). In the context of exchange and clearing agency recognition, these criteria form the basis upon which the Commission considers how to fulfil its mandate to protect investors and foster fair and efficient capital markets and confidence in those markets.

In addition, if the Commission determines that the Maple Proposal is in the public interest, the Commission may impose terms and conditions on any orders issued that are necessary to address regulatory concerns arising from the Application and to ensure that there continues to be appropriate regulatory oversight over Maple, TMX Group, TSX, CDS and Alpha going forward.

The Maple Proposal raises complex and novel issues for the capital markets. The structure that would result from the Maple Proposal exists in some other jurisdictions, and we understand that there is no determinative evidence that suggests one structure is superior to another in all contexts. Our objective is to gather information to assist us and the Commission in evaluating whether the Maple Proposal is in the public interest.

We are publishing this Notice and the Application for a 30-day comment period. Please refer to Section IV of this Notice for information on how to submit written comments. Please note that in assessing the merits of any submissions made to us by commenters, we will take into account the extent to which the submissions are supported by relevant evidence.

The Commission will also hold an in-person consultation (Policy Hearing) to give members of the public who have submitted written comments an opportunity to clarify or expand on their written submissions and respond to any questions the Commission may have. Information on the Policy Hearing is set out in Section IV of this Notice.

II. THE MAPLE PROPOSAL

Maple is proposing to create an integrated group of businesses that provide trading, clearing, settlement and depository services for a broad array of financial instruments traded in Canada. In order to achieve this, Maple proposes to take the following steps:

(a) acquire TMX Group;

(b) acquire CDS Ltd., and indirectly CDS Clearing, and integrate their operations with the Canadian Derivatives Clearing Corporation (CDCC); and

(c) acquire Alpha.

Full details of the Maple Proposal can be found in Maple's Application. The following is a high level summary of certain key aspects of the Maple Proposal.

(a) TMX Group Acquisition

TMX Group is a holding company that, through its key subsidiaries, operates cash and derivatives markets trading products in the equities, fixed income, derivatives and energy asset classes. TSX, its wholly-owned subsidiary, operates the Toronto Stock Exchange and TSXV. Additional subsidiaries include MX, which owns CDCC, and Natural Gas Exchange Inc.

TMX Group is a publicly traded company, listed on the TSX. The shares of TMX Group are subject to a share ownership restriction, pursuant to which no person or company may beneficially own or exercise control or direction over more than ten percent of the voting shares of TMX Group, without the Commission's prior approval.[2]

TMX Group and TSX are regulated by the Commission pursuant to a Commission order recognizing each as an exchange (TSX Recognition Order). The TSX Recognition Order specifies the terms and conditions that both TMX Group and TSX must comply with on an ongoing basis.

Maple has commenced a two-step integrated transaction to acquire 100% of the outstanding shares of TMX Group. The first step is a take-over bid to acquire a minimum of 70% and a maximum of 80% of the TMX Group shares for $50.00 in cash per share (Offer). The second step is a plan of arrangement that provides TMX Group shareholders (other than Maple) with Maple shares in exchange for their remaining TMX Group shares (Subsequent Arrangement). Upon completion of the Subsequent

[2] Section 21.11 of the Act imposes a share ownership restriction of five percent on the shares of TSX. The five percent restriction was increased to ten percent by Ontario Regulation 261/02, September 3, 2002. The share ownership restriction was imposed on TMX Group as a condition of the Commission's approval for TMX Group to acquire all of TSX's shares in 2002.

Arrangement, TMX Group will be a wholly-owned subsidiary of Maple. Current TMX shareholders will own between 27.8% and 41.7% of the shares of Maple, with the Investors owning the remaining shares. The final percentages depend on how many TMX Group shares are tendered as part of the Offer. Upon completion of the TMX Group acquisition, no one shareholder will own more than ten percent of the voting securities of Maple.

Of the Investors, each of CIBC World Markets Inc., National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc. have agreed to hold a certain percentage of Maple shares for a period of five years following completion of the acquisition of TMX Group. The remaining Investors will be free to dispose of their Maple shares at their discretion.

Upon completion of the acquisition, Maple will become the parent holding company for TMX Group and its exchanges and related businesses. Maple will be the continuing public company, listed on TSX, and TMX Group will cease to be a reporting issuer. Maple is proposing to be recognized by the Commission as an exchange, along with TMX Group and TSX.

Maple is proposing to adopt the TMX Group's governance framework, including existing board and committee mandates and TMX Group's present board code of conduct. The Application also provides that Maple's governance arrangements are intended to ensure fair, meaningful and diverse representation on the Maple Board and its committees including representation of independent directors and a balance among the interests of the different persons and companies using TMX Group's services and facilities. The Application indicates that the composition of the Maple Board will respect the board composition requirements imposed by the recognition orders of TMX Group, TSX, TSXV and MX on a consolidated basis (which refers to the minimum representation requirements with respect to independent directors, directors that are residents of Québec, directors with Canadian public venture capital markets expertise and directors with derivatives expertise). Maple will also commit to having at least one member of the Maple board who is from Canada's independent investment dealer community (i.e. participants who are not affiliated with Canadian Schedule I banks). The Maple Board will be replicated at each of TMX Group, TSX, TSXV and MX to ensure consistency of governance at each of these exchanges.

Maple intends to enter into a nomination agreement (Nomination Agreement) with eight of the Investors, pursuant to which each of the eight Investors (or, in each case, an affiliate thereof) will have the right to nominate one director for election to the Maple Board. The Nomination Agreements will terminate in respect of an Investor at the earlier of (i) the sixth anniversary of the completion of the acquisition of TMX Group and (ii) such time as such Investor ceases to own a specified number of Maple shares. Each nominee will be subject to the approval of the Governance Committee of the Maple Board. Further details on the Nomination Agreement are set out below in item 1(c) of Section III.

Maple is proposing that the ten percent share ownership restriction be imposed on Maple, such that no person or company could own ten percent or more of Maple voting shares without the prior approval of the Commission. The Application states that Maple and its Investors support the rationale for the share ownership restriction, that no one shareholder or group of shareholders acting jointly or in concert should exercise substantial influence over an operating exchange without prior approval of the Commission.

In connection with Maple's acquisition of TMX Group, Maple is applying for an amended and restated recognition order for TMX Group and TSX, as well as a recognition order for Maple, to reflect the acquisition. Maple proposes to adhere to substantially the same terms and conditions currently applicable to TMX Group.

(b) CDS Acquisition

CDS Ltd. is a holding company that, through its subsidiary, CDS Clearing, operates the depository and the clearing and settlement system for equities and fixed income securities in Canada. Other subsidiaries include CDS Inc., CDS Innovations Inc. and CDS Securities Management Solutions Inc. CDS Ltd. is a privately owned company. Its shareholders are six Schedule I banks, the TMX Group and the Investment Industry Regulatory Organization of Canada (IIROC).[3] CDS Ltd. and CDS Clearing are regulated by the Commission pursuant to a Commission order recognizing each as a clearing agency (CDS Recognition Order).

Contemporaneously with, or following the completion of the acquisition of TMX Group, Maple intends to acquire CDS Ltd. Each of the Investors has agreed with Maple to use its commercially reasonable efforts to pursue and effect the acquisition of CDS Ltd. and to support the transaction. Affiliates of four of the Investors, namely, CIBC World Markets Inc., National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc., currently directly or indirectly hold shares of CDS Ltd.

Subsequent to completing the acquisition, the objective is to align more closely the products and services offered by TMX Group, in particular by its indirect subsidiary CDCC, and those offered by CDS, to create an efficient trading and clearing platform for all asset classes whether exchange-traded or over-the-counter (OTC). The clearing infrastructure of CDS and CDCC is intended to be integrated, but the clearing operations of each will remain in separate legal entities, albeit with overlap in personnel, resources and board membership. In addition, the settlement and depository functions of CDS will be operated

3 The Schedule I banks own 66.7%, TMX Group 18.1% and IIROC 15.2% of CDS Ltd.

through a separate legal entity. The separation of the legal entities is intended to isolate financial risk. The clearing, settlement and depository functions would remain open to other ATSs and exchanges operating in Canada.

Pending any integration of the infrastructure of CDS and CDCC, Maple intends to implement boards of directors at each of CDS and CDCC (the "Clearing Boards"), which will include a number of directors in common, and also a number of directors unique to each board. The Clearing Boards will be comprised of eleven directors; five independent directors, five directors appointed by the Maple Board and one director who will the chief executive officer of CDS and CDCC, respectively. It is also intended that at least four of the directors of each of the Clearing Boards will be representatives of users. For CDCC, Maple has committed that at least 25% of the directors will have derivatives experience. In addition, Maple is proposing that at least 25% of the directors be residents of Quebec.

Three board committees will be established, all chaired by independent directors, to assist the Clearing Boards to discharge their duties: the Risk Management Committee, Finance and Audit Committee and Governance Committee.

The Clearing Boards and management will establish external Market Participant Advisory Committees to continue to seek input from industry participants. It is currently anticipated that the Market Participant Advisory Committees will include a strategic development committee, a risk advisory committee and specific committees for each of the derivatives, equities and fixed income industries.

In connection with Maple's acquisition of CDS Ltd., Maple is applying for an amended and restated recognition order for CDS Ltd and CDS Clearing, to reflect a "for-profit" business model, the governance structure described in the Application, and the Market Participant Advisory Committees.

(c) Alpha Acquisition

Alpha currently operates as an alternative trading system (ATS) under National Instrument 21-101 *Marketplace Operation* (NI 21-101). Alpha facilitates the trading of equity securities listed on the TSX and TSXV through a transparent, continuous matching platform. Eight of the nine current limited partners of Alpha LP are investment dealers or entities that wholly own an investment dealer. Alpha has applied to the Commission for recognition as an exchange and its application was published for comment on April 15, 2011.[4]

Following the acquisition of TMX Group, Maple intends to acquire Alpha. The Application indicates that Maple envisions maintaining multiple trading platforms. They intend to consult with market participants prior to making any decision with respect to the best course of action for the platforms and services of Alpha and TMX Select, TMX Group's new ATS. Maple also indicates that the Maple board of directors will consider whether Alpha should withdraw or continue to pursue its application to be recognized as an exchange.

(d) Investor Agreements and Undertakings

The Application indicates that, other than in connection with facilitating the Alpha and CDS acquisitions, after completion of the acquisition of TMX Group, there will be no agreements, commitments or understandings between the Investors with respect to the voting of Maple's shares (other than the commitment by the bank-owned dealers to continue to own a percentage of Maple shares for a period of five years).

The Application, however, describes two agreements that the Investors have already entered into or have agreed to enter into. The first is a non-competition agreement (Non-Competition Agreement) that each Investor has agreed to enter into with Maple and the other Investors or their Parents. The Investors or their Parents (other than the pension fund Investors and Manulife Financial Corporation) will agree not to, and to cause their subsidiaries not to, engage in any business in Canada that competes with the business of TMX Group, CDS or Alpha, subject to certain exceptions. Further, each Investor or Parent (including the pension fund Investors and Manulife Financial Corporation) will agree not to, and to cause its subsidiaries for which it controls decision making authority not to, invest in any person engaged in establishing or operating an alternative trading system or recognized exchange in Canada, or in any person primarily engaged in the settlement and clearing of securities or derivatives trading transactions in Canada, subject to certain exceptions. The non-competition agreement will run for a term of five years from closing of the Maple Acquisition. The second agreement is a non-preferencing agreement (Non-Preferencing Agreement). In the event that the acquisition of Alpha does not occur, then CIBC World Markets Inc., Desjardins Securities Inc., National Bank Financial Inc., Scotia Capital Inc., and TD Securities Inc. (collectively, the Alpha Dealers) have agreed not to preference the trading on the facilities of Alpha, subject to complying with applicable regulatory requirements. The non-preferencing obligation of each Alpha Dealer would survive the sale by such Alpha Dealer of its shares in Maple and would continue to run in perpetuity.

[4] (2011) 34 OSCB 4555, April 15, 2011.

The Application also describes various undertakings that Maple will be making in other jurisdictions. The details of these undertakings can be found in section 7 of the Application.

III. ISSUES RAISED BY THE MAPLE PROPOSAL

The Maple Proposal raises a number of issues that the Commission will examine when considering the Application. This section highlights some key issues and raises some questions on which we wish to solicit public comment. These key issues relate to:

- exchange and clearing agency governance, particularly with respect to fair and meaningful representation of different stakeholders and the definition of independent directors;
- conflicts of interest at the exchange and clearing agency levels;
- concentrated exchange ownership, including the concentrated ownership by bank-owned dealer users and the potential resulting order flow concentration, and agreements among Investors;
- the acquisition of Alpha;
- vertical vs. horizontal model for clearing services;
- ownership structure of CDS;
- for-profit vs. cost recovery model for clearing agencies;
- fees;
- fair access;
- integration of CDS and CDCC; and
- market structure changes.

For each of these issues, we have provided some context and highlighted our observations based on research that we have conducted to date. We note that some of these issues are related, therefore some of the discussion in certain sections is also relevant to other sections. In addition to the issues and questions identified in this Notice, we also welcome comment on any other issues not discussed here, as well as suggestions to address these issues. In providing comments, Staff expressly request that commenters support their comments with available evidence.

Before discussing the specific issues, we wish to ask a question regarding Maple's requested Commission approvals.

> **Question 1: In the Introduction above, we outline the approvals requested by Maple. Do you believe that the Commission should consider the requested approvals all at the same time, or should the requested approvals be considered in stages?**

1. Exchange Governance

Directors of a corporation owe a duty to act in the corporation's best interests. Given the key role exchanges play in the capital markets, directors of an exchange must operate the exchange in a manner that is in the public interest and cause the exchange to properly discharge its regulatory responsibilities. The Commission has recognized the important role that the board of directors plays by requiring exchanges to meet certain criteria relating to corporate governance. Currently, the recognition criteria for exchanges includes the requirement that an exchange's governance structure provide for fair and meaningful representation of different stakeholders and appropriate representation of independent directors. The precedent in Canada is currently to require a minimum of 50% independent directors. Several specific issues concerning board composition are discussed below, but we would like to solicit comments more generally.

> **Question 2: What is the optimal composition of Maple's board, and why?**

(a) Fair and meaningful representation of different stakeholders

Exchanges have many different stakeholder interests. In the case of TMX Group these include shareholder interests. There are also several different types of users that are interested stakeholders; in particular listed issuers and market participants who trade on the exchange. There is also the broader public interest in ensuring that exchanges operate in a fair and efficient manner, given their role in the capital raising function and overall importance in the capital markets.

Fair representation of stakeholder interests on the board of an exchange may be an important tool to link board decision-making with the interests of the stakeholders affected by the exchange's operations. Fair representation of stakeholder interests on the board helps to ensure that the board, when fulfilling its fiduciary duties and its statutory duties to act in the best interest of the corporation and discharging its public interest mandate, has knowledge of and considers different interests in its decision making. As a result, the board may be better positioned to ensure that the exchange is properly managed and is operating in the public interest.

Yet there are also difficulties associated with having stakeholders represented on the boards of exchanges and the effectiveness of that representation. Nominees of institutional stakeholders may bring to the board a perspective that arises from their own institution, which may not align with the interests of the exchange.[5] This may give rise to a perception of conflict of interest. Conflicts between different stakeholder interests on the board may create difficulties with respect to effective board decision-making and supervision of management. There is also the need to ensure that the board has the requisite mix of skills needed to oversee effectively the management of an exchange.

Pursuant to the Maple Proposal, nine of the 15 directors of the board are proposed to be nominated by the Investors. This raises a concern that the board of directors may not have fair and meaningful representation of all stakeholders but will be dominated by shareholder interests and in particular a subset of shareholder interests, i.e. the Investors. Other shareholders could end up acquiring similar shareholdings to the Investors', through the public trading of Maple shares, but would not have a right to nominate a director to the Maple Board. We recognize that shareholder considerations are important, but we question whether the Maple board has an excessive focus on the shareholders' interests, and Investors' interests in particular, and we are concerned about the large number of nominees of the Investors on the board of directors, both in terms of absolute number and relative to the size of the board.

The Maple Proposal also raises a concern with respect to the representation of non-owner users on the board of directors. Fair representation of stakeholders includes representation of users of the exchange. In Maple's case, there will be dealer representation on the board, but they will all be nominees of the Investors.[6] The four bank-owned dealers that are shareholders in Maple are each entitled to nominate one director to the Maple Board. Maple has committed that at least one member of the Maple Board will be chosen from Canada's independent investment dealer community. However, it is proposed that a representative from an Investor that is a non-bank-owned dealer fill that position.[7]

Question 3: **Is fair and meaningful representation on the board of directors being achieved in the Maple Proposal or is the proportion of shareholder representation under the proposed nomination agreements too large?**

Question 4: **Is it appropriate that the shareholder representatives are nominated by only a certain subset of the shareholders, i.e. the Investors?**

Question 5: **Should there be representation of non-owner users on the board of directors?**

(b) Independent directors

(i) Importance of Independent Representation

An appropriate representation of independent directors on an exchange's board is important, in our view, for various reasons. Independent directors can be objective and evaluate the performance and interests of the company without any conflicts of interest or undue influence by interested parties. This objectivity helps to provide effective oversight of management. We also believe that independent directors are an important tool to ensure that the public interest is considered in exchange governance and decision-making – although we note that all directors are responsible for operating the exchange in the public interest and in a manner that fulfills its regulatory role.

We are of the view that an exchange should have directors that are not only independent of management but also from significant shareholders who may be able to exercise control. An appropriate governance structure may assist in mitigating potential conflicts of interest between the dealer-owners, or other shareholders, and the exchange's operations. In particular, a governance structure with a board of directors independent of both management and certain ownership interests may be better positioned to supervise management, free from any incentive to see that the exchange's operations primarily benefit its owners, to the possible detriment of other stakeholders, end users, or the public interest.

5 We recognize that a director's fiduciary duty is to act in the best interests of the corporation for which he or she is a director, however, there may still remain a perception of a conflict of interest.

6 Five directors will be representatives of dealer-owners. A sixth director will be from an independent Participating Organization, but that director is a nominee of one of the pension fund Investors.

7 We note that the non-bank owned dealer's share ownership level will only be between 0.5% and 0.7% of Maple shares.

It is also necessary to ensure that there is a sufficient number of directors that are independent of the users of the exchange, as exchanges exercise regulatory responsibilities over their users.

Having directors that are independent of the owners (as well as management) of the exchange is potentially more important when the owners of the exchange are themselves users. In such a case, additional provisions may be required to ensure that the interests of non-owner users are taken into account, as their interests may differ from the dealer owners. The separation between ownership and governance through independent representation also helps to ensure that a non-industry perspective that reflects the broader stakeholder group is considered. It is important to have representation that can speak for and represent non-industry stakeholders, investors and the public interest. We believe this is more likely to be achieved when independent representation is at least fifty percent.

(ii) Definition of "Independent"

Achieving the appropriate definition of "independence" for directors is important in light of the exchange's different stakeholders, its decision-making processes, and its regulatory responsibilities. In addition to the required independence standards that apply to directors of a public company, we have historically focused on the need for an exchange's board to have an appropriate degree of independence from the dealers who use its facilities, since the exchange has regulatory responsibilities over those dealers. However, to the extent that an exchange also exercises regulatory responsibilities over its listed issuers, it should be considered whether an appropriate definition of independence for the board of an exchange should also provide for independence from listed issuers.[8] Finally, where an exchange has one or more large shareholders, or where a group of shareholders may act jointly or in concert, the independence standards need to reflect an appropriate degree of independence from those shareholders who, together, could be in a position to exercise disproportionate influence or control over the exchange's decision-making and operations.

Despite this, there may be some challenges to the effectiveness of independent directors on a board of an exchange. If there are too many parties excluded from being "independent", it may be difficult to find individuals that are both independent and have the requisite skills or experience to participate in the decision-making of the board of the exchange in an informed way. In addition, there may be too much reliance by independent directors on management or industry directors for information to inform their decision-making. As a result, the need to ensure there is sufficient consideration of the public interest must be balanced with the need to ensure it is possible to find and appoint a sufficient number of members to the exchange's board that have the knowledge and expertise to make effective decisions.

TMX Group and TSX are currently required, pursuant to the TSX Recognition Order, to ensure that at least fifty percent of their directors are independent. For purposes of the TSX Recognition Order, a director is independent if he or she is independent within the meaning of section 1.4 of Multilateral Instrument 52-110 *Audit Committees* (NI 52-110).[9] The board of directors has also adopted standards, which may be amended with prior approval of the Commission, setting out criteria to determine whether individuals are independent. Representatives of dealer participants are not considered to be independent, on the basis that they are users of the exchange.

In the Application, Maple has stated that at least fifty percent of the directors will be "independent" within the meaning of section 1.4 of NI 52-110 and the currently existing independence standards adopted by the board of directors of TMX Group.

Staff are considering the current definition of independent director in light of the Maple Proposal, particularly the proposed ownership structure. We are considering whether, in addition to marketplace participants, the definition should exclude:

a. the founding non-dealer shareholders of Maple; and

b. issuers listed on any Maple owned exchange.

With respect to issuers, we note this is not a Maple specific concern, but rather reflects an opportunity to review which users of an exchange should be excluded from the definition of independent director.

Two specific questions relating to the definition of independence are set out below; however, we also want to obtain more general comment on the definition.

8 This exclusion is not currently imposed on recognized exchanges in Ontario to date.

9 Pursuant to s.1.4 of NI 52-110, a director is independent if he or she has no direct or indirect material relationship with the issuer. A "material relationship" is a relationship which could, in the view of the issuer's board of directors, be reasonably expected to interfere with the exercise of the member's independent judgement. In addition to the general guidance on the meaning of "material relationship", section 1.4 of NI 52-110 sets out some specific material relationships.

Question 6: How should independence be defined for purposes of the Maple Proposal?

a. <u>Founding shareholders of Maple</u>

Currently, individuals from the dealer Investors are excluded from being independent directors by virtue of their firms' being Participating Organizations of the exchange. However, the non-dealer Investors of Maple would be considered to be independent under the current definition of "independent director", as applied to the exchanges currently recognized by the Commission. The non-dealer Investors that are part of a group that have created a common vision and strategy for Maple will hold a significant percent of the shares of Maple[10], and they will, after the acquisitions of CDS and Alpha, continue to have a material interest in Maple in order to see their vision and strategy implemented. As a result, we question whether they should be considered independent.

Question 7: Should founding non-dealer shareholders of Maple be excluded from the definition of independent director?

b. <u>Listed Issuers</u>

When exchanges began to demutualize, the focus of the independent director definition was on the exclusion of directors representing dealer participants of the exchange, given that they were users of the exchange and subject to regulation by the exchange with respect to their trading activities. Representatives of listed issuers were not excluded from the definition of independent director; yet they are also users of the exchange and are also subject to regulation by the exchange, in terms of the initial and on-going listings requirements. This raises the question of whether representatives of listed issuers should be excluded from the definition of independent director, similar to dealer representatives. However, as discussed above, we recognize that excluding too many individuals from the definition of independent director can also cause difficulties in establishing an appropriate board composition.

Question 8: Should listed issuers be excluded from the definition of independent director?

(c) Duration of Nomination Agreements

Maple intends to enter into a Nomination Agreement with eight of the Investors, pursuant to which each of the eight Investors will have the right to nominate one director for election to the Maple Board. This means that the eight Investors hold eight out of the fifteen seats on the board, a majority, for the period of the Nomination Agreement. The eight Investors entering into the Nomination Agreement are: Alberta Investment Management Corporation, Caisse de depot et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., National Bank Financial Inc., Ontario Teacher's Pension Plan Board, Scotia Capital Inc. and TD Securities Inc.. The Nomination Agreements will terminate in respect of an Investor at the earlier of (i) the sixth anniversary of the completion of the acquisition of TMX Group; and (ii) such time as such Investor ceases to own a specified number of Maple shares.

In Maple's view, the directors nominated pursuant to the Nomination Agreement are representatives of participants of the exchange or organizations that are active in the capital markets industry, and therefore bring important expertise and skills to the Maple Board. Maple has also indicated that it is important to the Investors to have representation on the board of directors, in return for their significant investment in Maple.

Question 9: Is it appropriate that eight of the Investors be entitled to nominate one director each for a period of six years?

2. Conflicts of interest at the exchange level

Numerous conflicts of interest may arise in the context of an exchange's ownership and governance structure.[11] The potential conflicts associated with a specific ownership structure may impact how an exchange discharges its regulatory responsibilities. A key consideration in examining conflicts is whether an exchange's private incentives are aligned with its public interest regulatory responsibilities. We discuss two specific elements, below, that give rise to potential conflicts of interest: (a) an exchange's for-profit status and its regulatory mandate; and (b) the ownership of the exchange. In part (c), below, we discuss possible measures to address potential conflicts of interest.

[10] The non-dealer Investors will hold, collectively, up to 45% of the shares of Maple. The individual shareholdings of each non-dealer Investor will vary, with a range between approximately 3% up to potentially 8.5% each.

[11] See Lee, Ruben, *Running the World's Markets: The Governance of Financial Infrastructure*, Princeton University Press, 2011, pp.308-14 and Carson, J.W. *Conflicts of interest in self-regulation: Can demutualized exchanges successfully manage them?* World Bank Policy Research Working paper 3183 12/2003.

(a) Conflicts associated with an exchange's for-profit status and its regulatory mandate

An exchange that operates on a for-profit basis has a potential conflict of interest between its profit-making objectives and its regulatory role.[12] The exchange may focus excessive resources on profit-making areas, such as attracting listings business, as opposed to regulatory areas, such as developing and enforcing compliance with listing standards. For-profit exchanges have a direct incentive to maximize profits. They may also have an incentive to decrease regulatory requirements in order to do that.[13] For an exchange, the loss of revenue from fees may be a more immediate and tangible outcome than any lessening of reputation that may result from relaxing regulatory standards.

As demutualized exchanges tend also to be listed companies, the conflict between business and regulatory objectives may be exacerbated. As a listed company, an exchange may be under pressure from shareholders to deliver short-term financial results. Longer term regulatory objectives or programs may consequently not be a priority.

TMX Group and TSX currently operate on a for-profit basis, while also carrying out regulatory functions. In light of the potential for conflicts of interest, the Commission has imposed certain terms and conditions in the TSX Recognition Order. We also monitor for any potential conflicts of interest through our on-going oversight of TMX Group and TSX. Recently, there has been some public discussion of the issue of conflicts in the context of listings regulation, and concerns with the status quo have been raised.[14] Therefore, while the Maple Proposal does not change this particular conflict of interest, as TMX Group and TSX will continue to operate on a for-profit basis under Maple, we wish to raise this issue for public comment.

(b) Conflicts with respect to ownership

The ownership of an exchange can also give rise to various conflict of interest issues. Where an exchange is owned in part or completely by dealers that are also users of the exchange, there is a risk that the dealers will exercise a degree of control over the operations of the exchange, such that the exchange is operated primarily in the dealers' interest rather than in the public interest. This creates the potential for conflicts of interest where the dealers' interest may not be aligned with the public interest. These potential conflicts include:

- Dealer-owners may use the exchange to facilitate a trading strategy consistent with their own business objectives but detrimental to other dealers that are not owners (i.e. through the creation of new order types or new trading facilities designed to provide maximum benefit to the dealer-owner's order flow relative to other non-owner dealers).

- Dealer-owners may influence the development of trading or listing rules and policies or pressure staff of the exchange to exercise discretion in the application of trading or listing rules and policies for their own benefit.

- Dealer representatives on the exchange's board may have access to confidential information about the exchange's operations that could be used inappropriately for the benefit of the dealer.

- Dealer representatives may bring to the board a perspective that arises from their work at the dealer, which may not align with the interests of the exchange. This may give rise to a perception of conflict of interest.

- Dealer-owners may favour routing their clients' orders to their exchange, subject to best execution and order protection obligations.

Non-dealer owners of an exchange may also generate potential conflicts of interest in how a for-profit exchange is operated. Shareholders with a significant ownership interest in an exchange may have an interest in maximizing profitability of the exchange to provide for the greatest return on their investment. Depending on the extent of its investment, a shareholder could also bring pressure to bear on management of the exchange to deliver short term financial results at the potential expense of the exchange's regulatory responsibilities.

With respect to Maple, six of the Investors are investment dealers who are users of the exchange. Four of those investment dealers are each entitled to nominate one director for election to the Maple Board. Four of the non-dealer Investors are also entitled to nominate one director for election to the Maple Board. These four non-dealer owners will each own between 6.9 to 8.7% of the shares of Maple.

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12 We recognize that conflicts of interest may also arise with exchanges that operate on a non-profit basis as member-owned mutual companies. Conflicts arising from ownership are discussed in section (b). Given that TMX Group and TSX currently operate on a for-profit basis and the Maple Proposal will not change this, our focus in this section is on the for-profit status.

13 This issue was raised in a report by the Standing Committee on Government Agencies: Report on Agencies, Boards and Commissions, Ontario Securities Commission, March 2010, 2nd Session, 39th Parliament, 59 Elizabeth II. FAIR also issued a report studying this issue and making recommendations. See John W. Carson, *Managing Conflicts of Interest in TSX Listed Company Regulation*, July 23, 2010.

14 Ibid.

(c) Possible Measures to address conflicts of interest

With respect to addressing the potential for conflicts of interest, the Maple Application indicates that Maple will adopt TMX Group's present board code of conduct. Maple also submits that the possibility of perceived conflicts of interest is mitigated through the composition and mandate of Maple's board committees, in particular through the inclusion of independent directors on those committees.

As discussed above, we have concerns with the current definition of "independent" directors due to the potential conflicts of interest. We are also concerned that reliance on the board code of conduct and independent directors may not be sufficient to mitigate the potential conflicts of interest that may exist given the proposed structure. In addition to considering the appropriate definition of "independent" director, we are also considering what other measures may be necessary. We have identified a range of measures that could be considered, including the five set out below. We note that a decision to implement some of these measures may affect other recognized exchanges operating in Ontario that face similar conflicts.

(i) Enhanced conflicts of interest policies and procedures not only at the exchange level but also at the individual dealer shareholder level

This measure would require Maple to establish, maintain and ensure compliance with enhanced policies and procedures that would, among others things:

- identify and manage any conflicts of interest arising from the operation of the exchange or the services it provides, including those that may arise from the involvement of any dealer-owner or other significant shareholder in the management or oversight of the exchange operations or regulatory functions of the exchange and the services it provides; and

- require that information regarding exchange operations, regulatory functions or a participating organization or issuer that is obtained by a dealer-owner or other significant shareholder through their involvement in the management or oversight of exchange operations or regulatory functions be kept separate and confidential from the business or other operations of the dealer-owner or other significant shareholder and not be used to provide an advantage to the dealer-owner or other significant shareholder.

We are also considering whether policies and procedures dealing with confidentiality and conflicts of interest are required to be imposed on the individual dealer shareholders.

(ii) Requiring dealer-owners to provide transparency to their clients regarding the dealers' routing decisions and ownership in the exchange

As discussed above, a dealer with an ownership interest in a particular exchange may favour routing orders to that exchange, subject to any regulatory requirements. It is important to ensure that clients are aware of the potential conflict of interest and that there is transparency regarding the dealer's order routing decisions. One way to achieve transparency is through disclosure on the trade confirmations sent to clients. We will be considering whether there are other methods of transparency as well.

(iii) A regulatory oversight committee (ROC) at the board level

A ROC is a board committee responsible for overseeing the regulatory functions of the exchange. The duties of a ROC can range from overseeing conflicts of interest, hearing appeals from any regulatory decisions of exchange staff, overseeing the exchange's rule-making function, overseeing the exchange's regulatory and compliance programs, and setting a regulatory budget. The usefulness of a ROC depends in part on what activities it oversees. However, the value of a ROC also depends on whether its role is advisory in nature or whether it has decision making capabilities and to whom it reports, i.e. the board of the exchange or directly to the Commission. The composition of a ROC is also important, including whether it should be comprised entirely of directors that are independent of shareholders and users and whether it should have non-director representatives.

(iv) The establishment of a separate regulatory division or subsidiary

An option for dealing with these types of conflicts of interest is to place all regulatory functions of the exchange into a separate division or subsidiary of the exchange. This would ensure that regulatory functions are kept separate from the business functions of the exchange and are performed by different staff. With a separate division, it would be important to establish distinct reporting lines; however, a separate division would ultimately report to the same board of directors. A separate subsidiary could have a different board of directors. A direct reporting line to the Commission could be established in either case.

(v) Longer term, the outsourcing of the listings regulatory function

Equities exchanges in Canada already outsource the majority of the trading regulation function to IIROC. In theory, the exchange's listing regulatory function could be similarly outsourced to a self-regulatory organization or other entity. However, this would have to be more fully considered as a long term solution and cannot be imposed as part of our review of the Maple Application.

Question 10: Are Maple's proposed measures to mitigate potential conflicts of interest sufficient or are additional measures needed? If additional measures should be implemented, please indicate which ones and why.

3. Concentrated Exchange Ownership and Investor Agreements

Historically exchanges were owned and governed by their dealer users. It has only been over the last 15 to 20 years that we have seen a shift to demutualized and widely held, publicly traded, exchanges. Although Maple will continue to be publicly traded, and somewhat widely held, the Maple Proposal results in a movement back to more concentrated ownership and governance, including by dealer owners who are also users of the exchange. The dealer-owners also include four bank-owned dealers who control a majority of order flow in Canada. Pursuant to the Maple Proposal, eight of the Investors will be able to each nominate a director to the board and the four bank-owned dealers have made a commitment to hold their Maple shares for a period of 5 years. As noted above in Section II, the Investors have also entered into, or intend to enter into, two agreements: the Non-Competition and the Non-Preferencing Agreements.

Pursuant to section 21.11 of the *Securities Act* (Ontario) (Act), no person or company may beneficially own or exercise control or direction over more than ten percent of the voting shares of Toronto Stock Exchange Inc., without the Commission's prior approval.[15] Maple is seeking the Commission's approval to own 100% of the voting shares of TMX Group and TSX, and is proposing that the share ownership restriction be placed on Maple. No individual Investor will own ten percent or more of Maple's voting shares. However, combined, the Investors will own between 58% and 72% and the bank-owned dealer Investors together will own between 21.5% and 26.6%.

Staff believe there are some important questions that need to be considered with respect to these aspects.

Question 11: Do you have any concerns with a shift to a more concentrated ownership of the exchange, in particular by dealer users?

Question 12: Are the concerns exacerbated by the fact that the same dealers control the majority of order flow in Canada?

Question 13: Does this shift to a more concentrated ownership of the exchange raise other market structure issues in addition to the ones already identified in this Notice?

Question 14: Notwithstanding the percentage set out in section 21.11 of the Act, should the degree of ownership by each Investor be capped at the level proposed by Maple (or should it be capped at a lower level)?

Question 15: Do you have any concerns with the Non-Competition Agreement or the Non-Preferencing Agreement?

4. Alpha Acquisition

As described above, in Section II, Maple intends to acquire Alpha. In the Application, Maple indicates that it has not made any decisions regarding the operations of Alpha.

Question 16: Will the Alpha acquisition impact competition in the Canadian market or concentrate market power with respect to trading?

Question 17: More generally, what are other implications, both positive and negative, of the Alpha acquisition?

[15] Section 21.11 prescribes a five percent restriction but this has been increased to ten percent by regulation (Ont. Reg. 261/02, September 3, 2002). The restriction was also placed on TMX Group by Commission order.

5. Vertical vs. Horizontal Model for Clearing Services

Maple's vision is to create an integrated group of businesses that provides trading, clearing, settlement and depository services in Canada. It will mark a move to a vertical model for clearing services and integration of exchange and clearing agency that have not been seen in the Canadian cash market.

Vertical integration refers to the consolidation of the various functions associated with trading, clearing and settlement of a transaction under common ownership. These primary functions are comprised of a number of activities including: price discovery, trade execution, trade matching, affirmation and confirmation, reporting to a trade repository, securities position and fund netting, novation, collateral management, depository, and funds and securities delivery or settlement. In various markets these functions may be carried out by separate legal entities, or by an entity or a few entities providing multiple functions. In its simplest form, in a vertical organisation, a trade executed on a marketplace would be processed through to final settlement by affiliates of the marketplace. Often, in a vertical model, the clearing and settlement services are conducted through wholly-owned subsidiaries of a marketplace, giving the marketplace full control over these services, although the clearing and settlement services may be made available to other trading platforms or for bilateral OTC transactions.

A horizontal model of clearing, on the other hand, refers to the provision of clearing and settlement services, across different marketplaces and/or products. Horizontal organisations are typically owned by the participants or users of the services. In the case of a clearing agency, that could be the banks and dealers with obligations to settle or the marketplaces on which the trades are executed.

Both vertical and horizontal models exist in many jurisdictions and various markets. For example, the vertical model is seen in Europe, South America and Asia and the horizontal model is seen in both North America and Europe; the vertical model is also very common for futures markets. Currently in Canada, CDS operates as a horizontal organisation providing its services to all market participants and all marketplaces operating in Canada. CDS is considered a user-owned and user-governed entity, as it is largely owned by the banks and IIROC that represents the independent dealer community.

As between a vertical and a horizontal model, we understand that there is little evidence to show that one is inherently superior to the other in all environments. Benefits of vertical models may include: economies of scale (such as shared information technology facilities or enhanced opportunities for straight through processing) that could help reduce costs; easier monitoring of participants' risk exposure from improved information flow between the trade and post trade functions; easier harmonisation of rules and procedures between affiliates of the corporate group; and greater ease in introducing new products and services due to easier coordination between the marketplace and the clearing agency.

Potential risks of vertical models include: the possibility that loss/risk in one affiliate within the corporate group could negatively impact other entities within the group; the creation of a large vertically integrated organisation may give rise to a "too big to fail" mindset that may reduce the incentive to manage risks and potentially increase systemic risk; inadequate governance procedures to ensure the independence of risk management of the clearing agency from marketplace decisions, especially where the marketplace is operated on a for-profit basis; and a large vertically integrated organisation using its market power to engage in anti-competitive behaviour by, as is often argued, restricting access to clearing services by unaffiliated marketplaces and thus affecting competition among marketplaces. To the extent that different vertical marketplace/clearing agency silos remain separate from each other and do not interoperate in any form, participants' efficiency in managing their collateral obligations may be reduced and the settlement process may be delayed and made more complex due to the need to transfer collateral/assets between vertical silos.

On the other hand, the benefits of a horizontal model may include: economies of scale and scope for the clearing agency; reduced costs to markets and participants in only having to join a single clearing agency; greater benefits from netting of a larger number of transactions and a corresponding reduction in credit exposure for the clearing agency and participants; and improved transparency of participants' aggregate exposure allowing better monitoring by the clearing agency and regulators.

The risks that can arise from a horizontal model may include: increased complexity in risk management, including default procedures, if the model involves bringing together different markets with different products; the creation of a large horizontal organisation giving rise to a "too big to fail" mindset that may reduce the incentive to manage risks and potentially increase systemic risk; and if the organisation is a user-owned entity, existing user-owners setting eligibility requirements or limiting access from participants who do not operate similar businesses or deal in similar assets.

Both models can potentially benefit from economies of scale and/or scope and provide certain efficiencies to its participants and provide potential risk reduction and greater transparency either to its corporate affiliates or regulators for monitoring purposes. Both can also raise potential concerns from increases in size that may raise operational risks, from a reduced incentive to manage systemic risk properly, and from exacerbated conflicts of interest from varied objectives or goals. There is also a concern that either type of organisation as it grows in size may become a dominant entity in a particular market and may exploit its position by engaging in anti-competitive behaviour.

The Maple Proposal would transform CDS from a horizontal model of clearing to a vertical model. Maple commits that CDS will continue to maintain its open architecture and permit all market participants that satisfy applicable access criteria to become members, and permit all Canadian trading venues equal access to its clearing and settlement services. As such, even though CDS will become a vertically owned clearing agency, from a functional perspective it will continue to be horizontal in nature by providing open access to all marketplaces.

In response to the concern that interests of unaffiliated marketplaces may not be taken into account by CDS, Maple indicates that the Clearing Boards would establish (a) a Governance Committee, whose mandate would include ensuring fair and equitable resources are dedicated to development projects for competing ATSs and exchanges; and (b) various Market Participant Advisory Committees (MPACs), whose membership is open and on which unaffiliated marketplaces could participate. In addition, CDS would annually report to the Commission the recommendations made by the MPACs and whether and why any of the recommendations were rejected or only partially implemented; and the MPACs would advise the Commission whether and why they agree or disagree with CDS' report.

In their proposal, Maple noted that, other than TMX Group, none of the other marketplaces are currently represented on the CDS board of directors, and indicated that it is not proposing any changes in this regard. Staff, however, note that TMX Group currently has only two representatives on the CDS board of 15 directors, and subsequent to the Proposed Transaction TMX Group's parent company, Maple, would be able to appoint five of the 11 directors on Clearing Boards. Notwithstanding Maple's commitment regarding open architecture, staff question whether access to CDS by unaffiliated marketplaces would be an issue and whether additional measures are necessary.

Question 18: **What are the implications of the vertical integration of TSX and CDS, the monopoly clearing agency, to the capital markets, market participants and the provision of depository, clearing and settlement services? Please explain both positive and negative implications for Canada.**

Question 19: **Is the answer to question 18 above affected by the fact that the TSX currently has a dominant position in the market for trading systems? Please explain.**

Question 20: **Do you have any concerns with the move from a horizontal model of clearing to a vertical model of clearing? If so, please explain the issues and how they may be addressed through appropriate regulatory measures or why the concerns could not be mitigated.**

Question 21: **Is there a concern that the interests of unaffiliated marketplaces may not be taken into account? If so, are the mechanisms proposed by Maple adequate to address the concern? If not, what other mechanisms could be put in place?**

Question 22: **If you are of the view that unaffiliated marketplaces should be represented on Clearing Boards, what is the appropriate percentage representation? What should the nomination process be to ensure that different unaffiliated marketplaces are well represented on the Clearing Boards?**

6. Ownership Structure of CDS

In general, a clearing agency can be owned by the users of its services, by an exchange, by other private interests, by governmental entities, or by some combination of these different types of users or entities. The ownership structures currently in Canada are user-owned and non-user privately owned. CDS is currently a user-owned, user-governed clearing agency. Other clearing agencies in Canada (such as CDCC) are privately owned by an exchange.

In a user-owned entity, control rests with the users and thus, generally, the clearing agency's business and the clearing and settlement system are designed and operated to meet their needs. This would include the functionality of the system and the underlying risk model for the system. Users of clearing agencies have a vested interest in ensuring that they are adequately protected against the loss arising from default by another user especially when losses are mutualised among the surviving users. They therefore generally have a strong incentive to ensure that the risk model for the clearing and settlement system is appropriate and risks are managed properly. Users of clearing and settlement services would also look to the clearing agency to provide those services in the most efficient and cost-effective way possible, so as to keep clearing and settlement costs low.

To the extent that the owners of a clearing agency are different from the users of its services, there may be a divergence in their interests, which may result in conflicts between their objectives. The owners may seek to increase profit by setting risk standards that are less than optimal from the perspective of either the users or the regulators, but which may serve to attract more business.[16] They may choose to divert resources to other ventures instead of maintaining the core clearing agency functions. This may be especially so where the organisation does not face competition in the provision of clearing services but

[16] This is discussed below in *For-Profit vs. Cost Recovery Model for Clearing Agency - Risk management by the clearing agency*.

does in the trading sphere. There may be greater incentive to deploy more resources to business lines facing competition than to maintaining or improving the clearing services. The owners may also favour a certain group of participants (such as affiliated participants) by setting different access and on-going requirements.

Although a user owned model would not have the conflict of interest resulting from differences between the motives of the owners and the users, other potential conflicts could result. Indeed, conflicts could arise any time that the users are not a homogeneous group since the interests of the different constituencies may not be the same on certain matters. For example, different users (e.g. those who provide liquidity/credit to the system and those who do not) may have different risk appetites and, therefore, may have different views on the clearing agency's operations and its risk model; end users (e.g. investors) who require intermediated access to a clearing system, and direct participants in the clearing system, may have different views on the clearing agency's access standards and fees.

Under the Maple Proposal, CDS would change from a user-owned user-governed entity to one that could be owned ultimately by shareholders who may not be users. In addition, the composition of the CDS board would change. The CDS board currently has 15 directors: six represent banks or their affiliates, one represents independent dealers, two represent TMX Group, five are independent directors and one represents management. Directors who represent the banks and dealers would be considered user representatives. Under the Maple Proposal, the Clearing Board, which is different than the Maple Board, would be comprised of five independent directors, five directors appointed by the Maple Board and one management director.

Maple is proposing that a person be considered an independent director if the person is not an associate, partner, director, officer or employee of a shareholder of Maple (where the shareholder owns or controls more than 5% of the outstanding shares), or an officer or employee of Maple or its affiliates. This definition for an independent director is different from that under the CDS Recognition Order. Maple's proposed definition does not exclude persons connected with a participant. Maple proposes that at least two of the independent directors will not be an associate, partner, director, officer or employee of a participant. Only these two directors (18% of the total number of directors) would be considered independent if the existing definition of independent were applied.

Similar to exchanges, clearing agencies play a key role in the capital markets, and directors of a clearing agency must operate the clearing agency in a manner that is in the public interest and in a way that addresses the needs of various stakeholders. CDS' recognition order therefore includes a term and condition that the governance arrangements shall be designed to fulfill public interest requirements and promote the objectives of its shareholders and users of its services. The proposed Clearing Board will have reduced representation by users, which are arguably the most directly affected stakeholders, as well as a different mandate to maximise profit. This raises concerns about the ability of CDS to fulfill its public interest responsibility and promote the objectives of its users.

In order to address this concern, Maple proposes the following:

- it would commit that at least four of the 11 directors be representatives of users of CDS services;
- the Clearing Boards would include at least one director who would be nominated by an industry group or a self-regulatory organization to represent the industry;
- CDS would continue to utilize MPACs to obtain user input into their clearing operations; and
- CDS would annually report to the Commission the recommendations made by the MPACs and whether and why any of the recommendations were rejected or only partially implemented; the MPACs would also advise the Commission whether and why they agree or disagree with CDS' report.

Staff acknowledges that the above measures mitigate the risks caused by conflicts of interest between owners and non-owner users, and the annual reporting by CDS and the MPACs could increase CDS' accountability to consider users' points of view. Staff also note that Maple's commitment to include a minimum number of user representatives on the board is also consistent with existing requirement on CDS, which is for its governance arrangements to be designed to fulfill its public interest requirements and to promote the interests of CDS' shareholders and the users of its services. Nonetheless, we are considering whether these measures would be sufficient to address the concerns raised by reduced user representation and potential conflicts of interest between users and owners, and whether additional measures, are necessary. These measures could include:

(i) Requiring a higher percentage of user representation on the Clearing Boards; and

(ii) Imposing ownership restriction on CDS such that no one shareholder, or a group of shareholders acting jointly, have significant control over the entity.

Question 23: **What are your views on the user-owned and the non-user owned model for clearing agencies, including the pros and cons of each model?**

Question 24: **What criteria should be used to determine which model would be more appropriate for our capital markets?**

Question 25: **In your view, is one model preferable for our capital markets and why? If you believe that both models could work for Canada, please explain.**

Question 26: **Are there concerns related to the divergence of the interests of the users of CDS services and the interests of the owners of CDS and Maple? Why?**

Question 27: **Are requirements ensuring a minimum number of directors representing users on Clearing Boards effective to ensure that CDS services are appropriately designed and operated to meet the needs of users? If so, what would be the appropriate number of user representatives?**

Question 28: **Is the definition of independent director under the Maple Proposal appropriate? If not, how should an independent director be defined and why?**

Question 29: **What is the optimal composition of CDS' board and why?**

Question 30: **Are there other measures that should be considered to ensure that CDS services are appropriately designed and operated to meet the needs of market participants and the industry generally?**

7. For-Profit vs. Cost Recovery Model for Clearing Agencies

CDS currently operates as a cost recovery entity. Once it is acquired by Maple, it will be part of a for-profit corporate group and will operate on a for-profit basis. The issue of cost recovery vs. for-profit business model is closely tied to the issue of ownership (i.e. user-owned vs. non-user owned). Where a clearing agency is user-owned, it is likely to be operated as a cost recovery utility, as seen in CDS. Clearing agencies that are held by non-users are usually operated on a for-profit basis (including where a for-profit exchange acquires a clearing agency and creates a vertically integrated organisation), for example with CDCC.

We note that the business model of a clearing agency could have implications in the following areas: (a) capital markets development, (b) innovation, (c) clearing and settlement costs to users, and (d) risk management by the clearing agency. Each is discussed below.

(a) Capital market development

In a vertically integrated organisation where a marketplace, especially a dominant marketplace, acquires ownership of a monopoly clearing agency, there may be concerns that the resulting entity will attempt to exploit its dominant position through its control over the utility clearing services, and engage in anti-competitive behaviour to the detriment of competing marketplaces. For that reason there is a view that a horizontally integrated clearing agency operating on a non-profit or cost recovery basis may be beneficial to the development of financial markets in general. Such a clearing agency performs the role of a utility offering low cost clearing services. In addition, it would offer access to any marketplace on a equal basis without concerns as to the conflict of interest that may arise for a vertically integrated organisation in favouring its own trading facility. The advantage of a utility clearing agency is the creation of an environment to foster competition among marketplaces, which in turn benefits issuers and investors, and generally makes the financial markets more attractive to all market participants, domestic and foreign.

(b) Innovation

For-profit clearing agencies may have strong incentives to expand their products and services wherever there may be adequate demand and possibility for profit. Their focus on maximising returns for shareholders might make them willing to provide new and more innovative products and services, beyond core clearing and settlement services. In addition, where they operate in a competitive environment, they also have the incentive to continually invest and improve their systems and services in order to maintain their business.

However, for user-owned clearing agencies, their user-owners may prefer to maintain the existing functionality and risk tolerance of the clearing and settlement system, by not venturing into other areas (such as clearing different assets or accepting other participants with whom they do not share any common activities). The reluctance to expand may be due to concerns about increased risk from these activities that they may not fully understand or be prepared to accept. This could hinder innovation by the clearing agency. A cost-recovery model may also raise concerns about availability of resources to upgrade and maintain systems and other resources.

(b) Clearing and settlement costs to users

As noted earlier, for-profit clearing agencies are typically owned by non-users whose main objective would be to maximise profit, which may be achieved either by raising the fees for services or reducing costs. In a competitive environment, profits would likely be maximised by reducing costs because raising prices would be difficult to do. However, in a monopoly situation, it may be more expedient to raise prices to users at the expense and detriment of market participants and the markets in general.

User-owned clearing agencies, on the other hand, would likely operate in the most cost effective manner. The user-owners would have the control necessary to ensure that the clearing agency does not charge monopolistic prices. If a clearing agency is operating on a cost recovery basis, the fees for clearing services may be less than they would be in a for-profit environment even if there is competition. In addition, cost recovery clearing agencies generally provide open access to anyone who seeks access, which results in greater transactional volumes for the clearing agencies, which in turn provides greater economies of scale; both scenarios contribute to lower costs to the users. However, it can be argued that a cost recovery entity does not need to maximize profit, and so does not have the incentive to lower costs, and therefore clearing and settlement costs to users may not necessarily be lower.

(c) Risk management by the clearing agency

A key objective for a clearing agency is to manage the risks arising from the clearing and settlement activities it engages in, especially when it also provides central counterparty services. As noted above, in a user owned clearing agency, and in particular, when the risk model employed involves mutualising the risk of default among the surviving users of the service, users will bear the risk of loss not only through their ownership interest in the clearing agency but also through the loss sharing mechanism. The owners who are also users thus have strong incentives to ensure that the risk model adequately addresses the potential loss from a participant default notwithstanding the costs that the risk mitigation may entail such as, for example, the costs of higher collateral requirements.

When a clearing agency has a for-profit business model there can be concerns that the profit making goal may cause the clearing agency to compromise its risk management function resulting in a settlement system that does not adequately control risk in the clearing and settlement activities. In a for-profit model where the owners of the clearing agency are not the same as the users of the services, the incentives for risk management might be different. In this case, neither the shareholders of the clearing agency, nor its management, would want to see the entity fail due to inadequate management of risks. However, the value at risk for the shareholders may be limited to their equity investment in the clearing agency and may not include risk of loss from defaulting participants, which could be significant. Coupled with the profit maximizing goal of the shareholders, they may have higher risk tolerance than a similarly situated user-owner and this difference in risk tolerance may be reflected in the robustness of the risk management measures undertaken by the clearing agency. (It should be noted, however, that even user-owners may not have the same view of risk management as a regulator. Regulators have as one of their responsibilities the control of systemic risk. While users are concerned with the risk of a counterparty default, their focus may not extend to ensuring that the consequences from a participant default does not have a systemic effect on other participants or the capital markets in general. Thus regulators may take an even more conservative approach to risk management than a user-owner.)

Under the Maple Proposal, CDS will become a for-profit entity. Staff are concerned about the implication of this change to user costs and CDS' risk management. The issue on user costs is further examined in section 8 below. The remainder of this section focuses on the concern about the potential conflicts between profit-maximization and proper risk management.

Maple submits that conflicts can be managed, and proposes the following to address this issue:

- The Clearing Boards will establish a Governance Committee and a Risk Management Committee, both chaired by independent directors. The Governance Committee will be comprised of a majority of independent directors and will be responsible for dealing with conflicts of interest, among other things; the Risk Management Committee will be responsible for assisting the board in fulfilling its risk management responsibilities; and

- The Risk Management Committee will be advised by a MPAC that focuses on risk; and both MPAC and CDS would have an annual reporting obligation to the Commission as discussed earlier in this Notice.

Maple indicates that the risk management function of CDS will not change as a result of the Proposed Transaction; risk management decisions will continue to be made by the board with input from the industry through a MPAC.

Staff are considering whether it is necessary to impose additional measures such as the following:

(i) Requiring a higher percentage of user representation on Clearing Boards;

(ii) Requiring periodic independent assessment of the CDS risk model; and

(iii) Requiring Maple to provide additional equity to cover any liquidity shortfall in a crisis or stressed scenario to better align the interests of users and non-user shareholders.

Question 31: What are the implications of a for-profit CDS to the capital markets, market participants and for the provision of clearing and settlement services? Please describe both positive and negative implications; in particular, any implications for capital market developments, innovation, costs of clearing and settlement services, risk management or other areas affecting the public interest.

Question 32: Are the measures proposed by Maple adequate to address the conflicts that may arise, or are there other measures or specific requirements that are needed?

Question 33: What are your views on the additional measures outlined above? Should any other measures be considered, and if so, why?

8. Fees

There is a concern that the Maple Proposal could lead to a decrease in competition among marketplaces and an increase in exchange fees (trading, listings and/or data fees). Given that CDS is a monopoly there is also a concern that with the move from a cost-recovery model to a for-profit model, and from a user-owned model to a non-user-owned model, CDS would seek to charge monopolistic prices resulting in higher clearing and settlement fees for the market.

Maple, in its Application, indicates that it intends to maintain a competitive fee structure for TSX, and that its fees will not discriminate against any particular user or category of users. Maple commits that all fees that are imposed by TSX on its participating organizations will be equitably allocated, will not have the effect of creating barriers to access and will be balanced.

With respect to clearing, settlement and depository functions, Maple commits that all fees related to these services will be equitably allocated in relation to product types and volumes, and there will be unit pricing for each of these services such that all users will pay the same price for the same service. Maple represents that these fees will not have the effect of unreasonably creating barriers to access to such services and will be balanced with the need to have sufficient resources to operate the services effectively. Maple also commits that the fees, costs and expenses borne by users of the clearing, settlement and depository services will not reflect any cost or expense incurred by CDS in connection with any activity that is not related to such services.

Maple submits that fair and equitable pricing for clearing, settlement and depository services will be achieved through a combination of the following:

- Composition of the Clearing Boards would provide assurance that any fee setting decisions will take into account both users' needs and the public interest;

- The Finance and Audit Committee of the board would be composed of all independent directors and would be responsible for advising the board on the equitableness of CDS pricing and fees;

- User input into clearing and settlement would be obtained through the use of MPACs and annual reporting to the Commission (as discussed in previous sections of this Notice); and

- Benchmarking of fees for various products and services against relevant domestic and international counterparts.

While these mechanisms can assist with fair and equitable pricing, there are challenges. For example, benchmarking is often difficult because different entities provide different products and services and they often bundle them differently, making comparisons sometimes impossible. We also note that even when benchmarking is performed diligently, an entity can justify price changes as long as their pricing is comparable to other entities, which can make benchmarking less meaningful.[17]

More generally, there is also a concern not just with the setting of fees but the allocation of costs. In a vertically integrated organisation with more diverse businesses under common ownership there will likely be greater sharing of resources such as staffing and information technology systems. The fair allocation of costs becomes increasingly more difficult since allocations

[17] CDS commissioned an independent pricing analysis and the results were published in the spring of 2011. CDS pricing was benchmarked against eight central securities depositories and clearing organizations in markets with profiles similar to Canada. Costs used for comparison included both sides of a transaction and any volume discounts provided, but did not include any fixed monthly fees, central counterparty or communication charges. The study found that overall North America (i.e. CDS and DTCC) offers the lowest fees for clearing and settlement, and CDS ranked second just behind DTCC; and in the exchange trade category, the closest entity in the comparison group had fees many times higher than CDS or DTCC. The findings of this study suggest that it would be difficult to refute any potential price increases as current prices are relatively low compared to those of other clearing agencies.

are no longer just within the marketplace services or the clearing agency services but also between trading and clearing services. Improper allocation of costs could result in unfair pricing, especially where there is competition. For example, if the exchange is not bearing a fair allocation of costs it may be able to offer trading services at a level that competing marketplaces cannot.

For marketplaces, including exchanges, we currently review fee models and fee changes but primarily for the purposes of ensuring that fees do not unreasonably condition or limit access to services, and to ensure that fees are transparent. Since CDS is currently operating on a cost-recovery basis, our current regulatory approach does not involve fee review or approval, although CDS is subject to the general requirement that it equitably allocate its fees and costs for its services, and that its fees should not have the effect of unreasonably creating barriers to access to such services and should balance the need for sufficient revenues to satisfy its responsibilities. We are considering whether increased fee regulation for exchanges and clearing agencies by the Commission is required in light of the Maple Proposal.

Possible measures that could be introduced include:

(i) requiring any increases in clearing fees to be sufficiently explained and justified;

(ii) requiring proposals to change fees or to charge new fees to include a comparison to fees charged by other marketplaces or clearing agencies, as applicable (domestically and internationally);

(iii) requiring periodic fee benchmarking by Maple of fees and services offered;

(iv) requiring unbundling of fees for all services offered by Maple, i.e. trading, clearing, settlement, depository, data, etc.;

(v) imposing a cost-plus model for the services that are considered essential for the capital markets, i.e. clearing, settlement and depository; and

(vi) requiring that Maple justify and support the allocation of costs charged to the various clearing agencies and trading platforms for services shared by multiple affiliates.

Question 34: Are the measures proposed by Maple sufficient to prevent anti-competitive or monopolistic pricing? If not, what other measures should be put in place?

Question 35: Is increased fee regulation by the Commission warranted and, if so, what specific measures should be adopted and why?

9. Fair Access

NI 21-101 and National Instrument 23-101 *Trading Rules* (together, the Marketplace Rules) include a number of provisions designed to ensure fair access by market participants to the services of an exchange. Specifically, a marketplace, including an exchange, must not unreasonably prohibit, condition, or limit access by a person or company to services offered by the marketplace and it must not impose any burden on competition that is not reasonably necessary and appropriate.[18] Marketplaces in particular are responsible for ensuring that their fees for the services they offer do not unreasonably condition or limit access to those services.[19]

Where an exchange has dealer-owners that are also users of the exchange, it may be necessary to take steps to ensure that there is fair access for all users to all services offered by the exchange, including its trading facilities and listing services. Structures and processes or requirements must be closely examined to ensure that there are no additional benefits or different standards for access or fees applicable to dealer-owners and that there is compliance with the Marketplace Rules.

In the Application, Maple states that it is not proposing any changes to the recognition order of the TSX with respect to access. TSX's current recognition order contains terms and conditions relating to access, including that TSX establish written standards for access, that TSX not unreasonably prohibit or limit access and that the exchange keep records of decisions to grant, deny or limit access. The Application states that under Maple ownership, TSX will continue to permit all properly registered dealers that are members of a recognized self-regulatory organization and that satisfy TSX's criteria, to access the trading facilities of the TSX. Maple also states that it does not propose any changes to the TSX's criteria for access, which will continue to apply consistent with current practice.

Similar concerns also arise for a clearing agency when it has users that are its owners and some that are not. There is a possibility that user-owners may attempt to implement standards, whether it is initial or on-going standards, that are

[18] NI 21-101 *Marketplace Operation*, ss. 5.1(1) and (3), as amended

[19] Companion Policy 21-101CP to NI 21-101 *Marketplace Operation*, s.7.1(5), as amended.

discriminatory to those users that are not owners. An additional concern with a vertically integrated clearing agency is that the clearing agency may not provide equal access to unaffiliated marketplaces to its clearing and settlement platform.

CDS is currently subject to terms and conditions of recognition that require it to provide reasonable access to any person or company that meets the eligibility requirements for access to its services, and that prohibit CDS from setting rules (which cover eligibility requirements) that unreasonably discriminate among participants. Maple indicates in the Application that it is not proposing any changes to CDS' recognition order. It further indicates that it is not proposing any changes to the existing eligibility requirements of CDS.

In light of the requirements currently in place under the recognition orders of TSX and CDS and NI 21-101, and Maple's commitments, we believe that there are controls in place to address fair access by participants/users to the exchange and clearing agency services, although we believe this is an area that will require monitoring, as we currently do through our on-going oversight. In order to ensure that clearing services are not offered on a different basis depending on the marketplace on which the transaction was executed, we believe it is appropriate to include a term and condition in the CDS recognition order that requires open and fair access to all marketplaces.

Question 36: Are the current fair access requirements sufficient to mitigate any fair access concerns that arise with dealer-ownership of an exchange and non-user ownership of a clearing agency? Are additional requirements required? If additional measures are required, please provide examples.

Question 37: Are there concerns with access to clearing and settlement services by unaffiliated marketplaces? If so, what measures could be put in place to address the concerns?

10. Integration of CDS and CDCC

Maple has indicated that after the acquisition of CDS, its plan is to integrate the clearing operations and the information technology platforms of CDS and CDCC. Maple noted that such integration would provide meaningful cost synergies. In addition, Maple indicates that such integration would facilitate the current initiative to develop a central counterparty clearing solution for the Canadian dollar-denominated fixed income repo market; and the integrated platform could also be used for central counterparty clearing of other products, such as OTC derivatives on fixed income and equity securities. Maple also adds that volume brought by these additional products would add scale, which would benefit industry participants through reduced costs, improved capital management and the potential for cross-margining across asset classes.

Staff acknowledges that, if successfully implemented, the increased volume could lead to greater netting and increased benefits to market participants, since netting of settlement obligations provides operational efficiencies by reducing the number of payment and delivery obligations, and thus results in a corresponding risk reduction. The lower payment obligations may then result in reduced collateral requirements and lower costs for market participants.

The application by Maple provides only a high level description of the intention to integrate the operations and information technology platforms of CDS and CDCC. Any regulatory approval of the integration would require specific details of the integration plan which would not be available until the Clearing Boards are established and a reorganization plan is developed. Accordingly, there is no approval of the integration being considered in the current application. However, the proposed integration of CDS and CDCC would bring about a significant change in the structure of the post trade industry and staff are seeking the industry's views on the impact that such integration would have on users of the clearing and settlement services and the markets in general.

We are also mindful that information technology projects can be resource intensive, and wonder what the impact of the CDS/CDCC integration would be on market participants, especially existing users of CDS and CDCC.

Question 38: What are the benefits and costs of integrating CDS and CDCC?

Question 39: Would you support the integration of CDS and CDCC and why? If so, what, in your view, would be the optimal degree of integration?

Question 40: What would the impact of integration be to market participants?

11. Market Structure Changes

As the specific issues identified above indicate, the Maple Proposal will lead to significant market structure changes that will impact our capital markets. Should the Commission be of the view that the Maple Proposal and the resulting structure are in the public interest and grant the requested approvals, the Commission will need a mechanism to continue to monitor the impact of these changes on trading, clearing and the market in general. To this end, we are considering whether to impose a requirement on Maple to carry out regular international benchmarking of its operations to other exchange and clearing agency operations and to provide a report to the Commission. However, as indicated above, we recognize that benchmarking can be difficult because different entities provide different products and services making comparisons sometimes impossible.

Question 41: In addition to the specific issues identified above, do you have any concerns with the changes in market structure that the Maple Proposal introduces? If so, please provide examples of issues not already identified and whether the concerns can be mitigated by some of the measures already mentioned or others.

Question 42: Do you believe it would be useful to require Maple to perform regular international benchmarking of its operations? In answering, please explain why you believe it would or would not be useful.

IV. COMMENT PROCESS

(a) Written comments

We are seeking comment on all aspects of the Maple Proposal and the Application and are also seeking specific comment on the issues and questions identified above.

You are asked to provide your comments in writing, via e-mail and delivered on or before **November 7, 2011,** addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8, e-mail: jstevenson@osc.gov.on.ca.

Confidentiality of submissions will not be maintained and a summary of written comments received during the comment period will be published.

(b) Policy Hearing

The Application raises significant public policy issues that are important to market participants and the capital markets. As a result, the Commission has decided that a Policy Hearing should be held to give members of the public who have submitted written comments an opportunity to provide their views to the Commission in person, and to give the Commission an opportunity to ask questions.

At the Policy Hearing, the Commission will consider the public policy issues described in this notice together with any other public policy issues that are relevant to the Maple Proposal and the Application and that fall within the Commission's mandate. The consideration of these issues will assist the Commission in making its decision whether (1) to approve the acquisition by Maple of all the common shares of TMX Group, and (2) in determining the changes to the TMX Group, TSX and CDS recognition orders that are necessary to ensure that the exchange and CDS can continue to operate in the public interest.

Members of the public wishing to participate in the Policy Hearing must first provide written comments on the Application, following the written comment process set out above. If you are interested in participating in the Policy Hearing, please submit your request, with contact information, as part of your written comments. The Commission will establish the format of the hearing and reasonable time limits for each presentation, considering the time constraints of the hearing, the number of participants, and the complexity of the issues. Please also note that participants in the Policy Hearing will be expected to provide additional insight and detail regarding their comments, rather than repeating the substance of their written comments.

Date(s) for the Policy Hearing have not yet been established, although we anticipate that it will be held in December, 2011. Once the date(s) have been finalized, a notice to the public will be published with additional details, and parties who have expressed an interest in participating in the Policy Hearing will be contacted directly.

Questions on this Notice may be referred to:

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APPENDIX A

BACKGROUND ON REGULATION OF EXCHANGES AND CLEARING AGENCIES IN ONTARIO

(a) Recognition of Exchanges and Clearing Agencies

Both exchanges and clearing agencies play a fundamental role in the efficient operation of capital markets. Exchanges facilitate the efficient raising of capital by providing liquidity and price discovery. Exchanges may also carry out regulatory responsibilities by setting standards for the listing of securities and by imposing ongoing requirements on listed issuers. Clearing agencies, which include entities providing clearing, settlement, and depository services, ensure the safe and efficient clearing and settlement of market participants' obligations and can mitigate risks for market participants.

The (Act mandates the Commission to provide protection to investors and to foster fair and efficient capital markets and confidence in those markets. As part of that mandate, we are responsible for the oversight of marketplaces, including exchanges, and clearing agencies. Before an exchange or clearing agency can carry on business in Ontario, it is required to be recognized by the Commission. Recognition is similar to a licensing process where the Commission considers whether it is in the public interest that an exchange or clearing agency be permitted to operate in Ontario and under what conditions.

Securities regulators oversee exchanges and clearing agencies to ensure that they fulfill their roles in a manner consistent with the public interest. Regulatory oversight is critical to maintain confidence in the operations of an exchange and to support overall market quality, including liquidity, transparency and transaction costs. Clearing agencies provide essential post-trade services to the capital markets, and are viewed as utilities; oversight ensures fair access to these services, the efficiency, accuracy and reliability of the services, and appropriate management of risks in the settlement system. Since clearing agencies concentrate risk and are a source of systemic risk, oversight is an important tool for securities regulators to manage systemic risk. Systemic risk has been identified by the International Organization of Securities Commissions (IOSCO) as one of the three objectives of securities regulation, along with protecting investors and ensuring that markets are fair, efficient, and transparent.[20]

In considering whether or not to recognize an exchange or clearing agency, the Commission will examine the products and services it will offer and how they will be offered, understand its organizational structure and operations, and assess how it meets relevant criteria. Many of the criteria are similar for both exchanges and clearing agencies, while others apply specifically to an exchange t or clearing agency. The criteria that apply to both types of entities include that the exchange or clearing agency:

- has a governance structure with a board of directors that provides for fair and meaningful representation, one of the components of which is appropriate representation of independent directors;
- has policies and procedures to appropriately identify and manage conflicts of interest;
- provides for fair access to the services of the exchange or clearing agency, for example, by not charging fees that unreasonably condition or limit access to any service provided;
- establishes rules to govern and regulate all aspects of its business and affairs;
- has systems with appropriate capacity and integrity that are subject to regular testing and reviews;
- has sufficient financial resources for the proper performance of its functions and to meet its responsibilities; and
- cooperates and shares information with the OSC and other regulators.

Criteria more specific to exchanges include that the exchange:

- has arrangements in place to appropriately regulate listed issuers, for example, by requiring timely disclosure of certain information; and
- regulates the trading of its participants, either directly or indirectly through a regulation services provider.[21]

Recognized exchanges are also subject to the Marketplace Rules. Provisions of NI 21-101 impose requirements on recognized exchanges relating to fair access (fair access provisions)[22], barriers to entry and unreasonable discrimination. [23] In addition,

[20] *Objectives and Principles of Securities Regulation*, International Organization of Securities Commissions, May 2003, section 4.1, p.5.
[21] A Regulation Services Provider is a person or company that provides regulation services and is either a recognized exchange, a recognized quotation and trade reporting system or a recognized self-regulatory entity.

recognized exchanges cannot prohibit, condition or otherwise limit, directly or indirectly, a member from effecting transactions on another exchange or alternative trading system.[24]

Clearing agency specific criteria include that the clearing agency:

- design its clearing and settlement system to minimise systemic risk, including meeting certain objectives related to control of counterparty credit risk, settlement finality, settlement bank risk, default process and cross-border linkages; and

- control the risks that may arise from other non-core clearing and settlement activities that the clearing agency may engage in, to minimise spillover of risk and impact on the clearing and settlement services.

Copies of the current criteria for recognition of exchanges and clearing agencies are attached at Schedules A-1 and A-2, respectively, to this Appendix.

As part of the recognition process, the Commission will impose terms and conditions on the relevant entity. These terms and conditions impose ongoing requirements that reflect the criteria and impose requirements specific to the structure and operations of the exchange or clearing agency. Together with the requirements of Ontario securities law, they form the regulatory framework in which exchanges and clearing agencies operate and the basis for their ongoing oversight by the Commission. This framework is important so that market quality and market integrity are maintained, clearing and settlement services continue to be accessible to market participants and provided in an efficient, accurate and reliable manner, and systemic risk is monitored.

(b) On-going Oversight of Recognized Exchanges and Clearing Agencies

Once an exchange or clearing agency is recognized, the Commission continues to regulate and oversee its operations to ensure that the standards set at the time of recognition continue to be met.

Our ongoing oversight program has three main components:

- the review of information filed regarding operations of the exchange or clearing agency, for example, significant changes in the exchange's operations or any new business activity of the clearing agency;

- the review and approval of changes to the exchange's or clearing agency's rules; and

- periodic oversight reviews of the exchange or clearing agency.

In reviewing significant changes to the operations of an exchange or clearing agency, we consider the impact of the change to the capital markets.

We also have regular and ongoing dialogue with the exchange or clearing agency to identify issues and discuss operational matters that may arise from time to time. Taken together, this approach to ongoing oversight allows the Commission to evaluate, on an on-going basis, whether or not the exchange or clearing agency is complying with the terms and conditions of its recognition and whether or not those terms and conditions continue to be appropriate.

[22] Section 5.1(b) of NI 21-101 states that a recognized exchange "shall not unreasonably prohibit, condition or limit access by a person or company to the services offered by it". The services referred to include order entry, trading, execution, routing and data. In addition, it prohibits a recognized exchange from introducing fees that unreasonably condition or limit access to services (NI 21-101 Companion Policy, subsection 7.1(4).)

[23] Subsection 5.3(2) of NI 21-101 state that a recognized exchange "shall not (a) permit unreasonable discrimination among clients, issuers and members….or impose any burden on competition that is not reasonably necessary or appropriate".

[24] Section 5.2 of NI 21-101.

SCHEDULE A-1

CRITERIA FOR RECOGNITION

PART 1 COMPLIANCE WITH NI 21-101 AND N1 23-101

1.1 Compliance with NI 21-101 and NI 23-101

The exchange complies with the requirements set out in National Instrument 21-101 *Marketplace Operation* and in National Instrument 23-101 *Trading Rules*, each as amended from time to time, including, but not limited to, the requirements relating to:

(a) Access Requirements;

(b) Public Interest Rules;

(c) Compliance Rules;

(d) Information Transparency;

(e) Trading Fees for Marketplaces;

(f) Record Keeping Requirements for Marketplaces; and

(g) Capacity, Integrity and Security of Marketplace Systems.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange;

(b) that business and regulatory decisions are in keeping with the exchange's public interest mandate;

(c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including:

  (i) appropriate representation of independent directors, and

  (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest, and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

PART 3 ACCESS

3.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

PART 4 REGULATION OF PARTICIPANTS AND ISSUERS ON THE EXCHANGE

4.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants and issuers, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 5 RULES AND RULEMAKING

5.1 Rules and Rulemaking

(a) The exchange has rules, policies, and other similar instruments (Rules) that are designed to appropriately govern and regulate the operations and activities of participants and issuers.

(b) In addition to meeting the requirements of NI 21-101 relating to Public Interest Rules and Compliance Rules as referred to in paragraphs 1.1(b) and (c), respectively, the Rules are also designed to

(i) ensure a fair and orderly market; and

(ii) provide a framework for disciplinary and enforcement actions.

PART 6 DUE PROCESS

6.1 Due Process

For any decision made by the exchange that affects a participant or issuer, or an applicant to be a participant or issuer, including a decision in relation to access, listing, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for and provides for appeals or reviews of its decisions.

PART 7 CLEARING AND SETTLEMENT

7.1 Clearing and Settlement

The exchange has appropriate arrangements for the clearing and settlement of trades.

PART 8 SYSTEMS AND TECHNOLOGY

8.1 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

PART 9 FINANCIAL VIABILITY

9.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 10 FEES

10.1 Fees

(a) All fees imposed by the exchange are equitably allocated and are consistent with the Access Requirements referred to in paragraph 1.1(a) and the Trading Fees for Marketplaces requirements referred to in paragraph 1.1(e).

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 11 OUTSOURCING

11.1 Outsourcing

Where the exchange has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 12 INFORMATION SHARING AND REGULATORY COOPERATION

12.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission and its staff, recognized self-regulatory organizations, other recognized exchanges, investor protection funds, and other appropriate regulatory bodies, subject to the applicable privacy or other laws about the sharing of information and the protection of personal information.

SCHEDULE A-2

CRITERIA FOR RECOGNITION AND EXEMPTION FROM RECOGNITTION AS A CLEARING AGENCY

PART 1 GOVERNANCE

1.1 The governance structure and governance arrangements of the clearing agency ensures:

(a) effective oversight of the clearing agency;

(b) the clearing agency's activities are in keeping with its public interest mandate;

(c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;

(d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;

(e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;

(f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and

(g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

PART 2 FEES

2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 3 ACCESS

3.1 The clearing agency has appropriate written standards for access to its services.

3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of

(a) each grant of access including, for each participant, the reasons for granting such access, and

(b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

PART 4 RULES AND RULEMAKING

4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and

(a) are not inconsistent with securities legislation,

(b) do not permit unreasonable discrimination among participants, and

(c) do not impose any burden on competition that is not necessary or appropriate.

4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

4.3 The clearing agency monitors participant activities to ensure compliance with the rules.

4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

PART 5 DUE PROCESS

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

(a) an applicant or a participant is given an opportunity to be heard or make representations; and

(b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

PART 6 RISK MANAGEMENT

6.1 The clearing agency's settlement services are designed to minimize systemic risk.

6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

1. Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

2. The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

3. Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

4. Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

5. Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

6. If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.

6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

PART 7 SYSTEMS AND TECHNOLOGY

7.1 For its settlement services systems, the clearing agency:

(a) develops and maintains,

(i) reasonable business continuity and disaster recovery plans,

(ii) an adequate system of internal control,

(iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

(b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,

(i) makes reasonable current and future capacity estimates,

(ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

(iii) tests its business continuity and disaster recovery plans; and

(c) promptly notifies the regulator of any material systems failures.

7.2 The clearing agency annually engages a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 7.1(a).

PART 8 FINANCIAL VIABILITY AND REPORTING

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

PART 9 OPERATIONAL RELIABILITY

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

PART 10 PROTECTION OF ASSETS

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

PART 11 OUTSOURCING

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

PART 12 INFORMATION SHARING AND REGULATORY COOPERATION

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

13.2.2 Proposed Acquisition of TMX Group, Alpha and CDS by Maple Group Acquisition Corporation

October 3, 2011

BY EMAIL AND COURIER

Ontario Securities Commission
Suite 1903
20 Queen Street West
Toronto, ON M5H 3S8

Attention: Ms. Susan Greenglass, Director, Market Regulation

Dear Ms. Greenglass:

Proposed Acquisition of TMX Group, Alpha and CDS by Maple Group Acquisition Corporation

Maple Group Acquisition Corporation ("**we**" or "**Maple**") has commenced a two-step integrated transaction to acquire 100% of the outstanding shares of TMX Group Inc. ("**TMX Group**") (the "**Maple Acquisition**"). Maple has also proposed that, concurrently or following the acquisition of TMX Group, Maple will acquire Alpha Trading Systems Limited Partnership and Alpha Trading Systems Inc. (collectively, together with any successors thereto, "**Alpha**") and The Canadian Depository for Securities Limited ("**CDS Ltd.**") and, indirectly, CDS Clearing and Depository Services Inc. ("**CDS Clearing**" and, collectively, "**CDS**") (collectively, the "**Alpha and CDS Acquisitions**" and, together with the Maple Acquisition, the "**Transactions**").

By way of background to our application, Maple and the proposed Transactions arose from a unique opportunity and a common vision shared across a diverse collection of capital markets participants to improve on Canada's capital markets infrastructure to better serve the needs of all participants in the capital markets. In bringing forward our proposal, Maple is backed by a cross-section of Canadian capital markets leaders consisting of Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., Desjardins Financial Corporation, Dundee Capital Markets Inc., Fonds de solidarité des travailleurs du Québec (F.T.Q.), GMP Capital Inc., The Manufacturers Life Insurance Company, National Bank Financial Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc. and TD Securities Inc. (collectively, the "**Investors**"). The Investors are significant direct and indirect users of Canada's capital markets infrastructure generally and the facilities of TMX Group, CDS and Alpha specifically.

The proposed Transactions are a unique opportunity to create an integrated exchange and clearing group which Maple believes is the best structure for Canada's capital markets given their relatively small size, the close proximity of the U.S. capital markets, and the increasingly global nature of the exchange and trading business. The benefits of successfully implementing the Maple vision will accrue not only to the Investors but to all participants in the capital markets. In this regard, we believe that the interests of the Investors in the most efficient operation of Canada's capital markets infrastructure, as the most significant users thereof, combined with the proposed governance structure intended to address any potential conflicts of interest, are consistent with the public interest and the interests of all users, and therefore we respectfully submit that the Transactions should be approved.

The exchange business is currently in a state of flux. The proposed acquisition of TMX Group by London Stock Exchange Group plc ("**LSE**") served as a catalyst for the Investors to examine alternatives that could lead to a better exchange model for Canada's capital markets. We believe that the existing Canadian model of a stand-alone, listings-focused exchange can be improved, and that recent developments in the exchange industry present an opportunity for growth. Our vision is to build on TMX Group's many strengths to create an integrated exchange and clearing group that will be well positioned to pursue growth opportunities through innovative new product development, expanded distribution and international acquisitions or joint ventures. A more efficient and stable integrated exchange and clearing group will serve the public interest, and will increase the global competitiveness of Canadian capital markets and market participants. Indeed, TMX Group has previously attempted to acquire CDS and TMX Group's Chief Executive Officer has publicly stated that he supports the integration of CDS into TMX Group.[1] In addition, the ownership of Canadian Derivatives Clearing Corporation ("**CDCC**") by Montreal Exchange Inc. ("**MX**") is an example, albeit on a smaller scale, of the benefits that can be achieved from vertical integration. Streamlined trading, clearing and settlement on a common technology platform results in cost savings that benefit all users, and the integration of risk management systems facilitates the oversight of risk exposures for the benefit of users and regulators.

We propose to implement Maple's vision through the integration of CDS and Alpha into TMX Group's operations. To be successful in this vision, Maple must respect and serve the core elements of Canada's vibrant capital markets, by responding to and serving the interests of users, including listed issuers, both large and small, and public investors, ensuring fair practices free from real or perceived conflicts of interest, and respecting appropriate risk management practices. The integrated operations will

[1] We note that on September 2, 2011, LSE issued a press release confirming press speculation that LSE is in discussions to acquire LCH.Clearnet Group Limited, Europe's last independent clearing house.

also need to generate efficiencies, enhance speed of execution, maintain low costs and foster easy access. We understand that fees must continue to be fair and reasonable; open access must be maintained in both trading and clearing; and decisions within the organizations must be taken on a reasonable basis and in the interests of fostering confidence in the capital markets. Simply put, if Maple fails to sustain fair practices and produce these efficiencies, our vision will not be fulfilled.

We believe that the existing regulatory framework has served TMX Group, its subsidiaries and Canada's capital markets well, and that maintaining this framework is important to the continued growth and stability of Canada's capital markets. Our proposal respects the existing regulatory framework, and the changes proposed below with respect to applicable recognition orders will reinforce that framework and the oversight of the Ontario Securities Commission (the "**Commission**") and its fellow securities regulatory authorities.

We and our thirteen Investors share an interest with all other users of Canada's capital markets infrastructure: building a more dynamic, sustainable and globally attractive marketplace.

This application has been divided into seven parts:

1. Applications

2. Maple's Vision and Key Benefits

3. Acquisition of TMX Group

4. Acquisition of CDS

5. Acquisition of Alpha

6. Share Ownership

7. Undertakings in Other Jurisdictions and Confirmation of Exemption Orders

1. Applications

The Maple Acquisition is a two step integrated transaction. The first step is a take-over bid to acquire a minimum of 70% and a maximum of 80% of TMX Group shares for $50.00 in cash per share (the "**Offer**"). The second step is a plan of arrangement that provides TMX Group shareholders (other than Maple) with between 41.7% and 27.8% of the Maple shares (where between 70% and 80% of TMX Group shares are acquired under the Offer) in exchange for their remaining TMX Group shares (the "**Subsequent Arrangement**"). Upon completion of the Subsequent Arrangement, TMX Group will be a wholly-owned subsidiary of Maple.

In connection with the Maple Acquisition, Maple hereby makes application to the Commission for orders, in each case conditional upon the take-up of TMX Group shares under the Offer:

a) recognizing Maple, as the proposed holding company parent of TMX Group and TSX Inc. ("**TSX**"), as an exchange, for the purpose of applying to Maple a limitation restricting beneficial ownership of more than ten percent of the voting securities of Maple except with the prior approval of the Commission;

b) approving the beneficial ownership by Maple of more than ten percent of the voting securities of each of TMX Group and TSX;

c) amending and restating the recognition order of TMX Group and TSX to reflect changes as proposed herein; and

d) approving the Investors and Maple acting jointly or in concert as beneficial owners of voting securities of TMX Group in connection with the Subsequent Arrangement and the Alpha and CDS Acquisitions.

Provided that Maple is recognized by the Commission as an exchange, Maple also hereby makes application to the Commission for orders:

a) approving the beneficial ownership by the Investors individually, as applicable, of more than ten percent of the voting securities of Maple for the transitional period between take-up under the Offer and completion of the Subsequent Arrangement; and

b) approving the Investors acting jointly or in concert as beneficial owners of the voting securities of Maple in connection with the Subsequent Arrangement and the Alpha and CDS Acquisitions.

In connection with the direct or indirect acquisition by Maple of CDS, Maple hereby makes application to the Commission for an order, conditional upon the acquisition of CDS, amending and restating the recognition order of CDS to reflect the changes as proposed herein.

We are also making applications to the Autorité des marchés financiers (the "**Autorité**"), the Alberta Securities Commission (the "**ASC**") and the British Columbia Securities Commission ("**BCSC**") with respect to recognition orders in those jurisdictions. As described more fully in part 7 "*Undertakings in Other Jurisdictions and Confirmation of Exemption Orders*" below, we hereby seek such amendments to the exemption orders previously granted by the Commission in respect of such recognition orders to reflect any changes therein as a result of such applications.

2. Maple's Vision and Key Benefits

Our vision is to create an integrated group that provides trading, clearing, settlement and depository services for a broad array of financial instruments traded in Canada. The Maple Acquisition and the concurrent or subsequent Alpha and CDS Acquisitions represent a unique opportunity to capitalize on TMX Group's strengths to build this more efficient integrated exchange and clearing group – and by doing so to secure and enhance the future growth and ongoing integrity of the Canadian capital markets. The resulting integrated exchange and clearing group will: (i) make Canada's capital markets infrastructure more stable and robust; (ii) be better positioned to pursue growth opportunities through innovative new product development and expanded distribution; (iii) increase the global competitiveness of Canada's capital markets and market participants; and (iv) be in a stronger position to pursue international acquisitions and joint ventures.

The proposed integrated exchange and clearing group has proven itself in other jurisdictions as a stable and robust system, in particular during the market crisis of 2008. It is important to note, however, that this opportunity is uniquely available to Maple by virtue of the significant ownership interests of certain of the Investors and their affiliates in Alpha and CDS and a common desire by the Investors to make TMX Group a more efficient and dynamic entity.

The Maple Acquisition will also ensure that the business of TMX Group will continue to be responsive to the distinctive needs of capital market participants in Canada, with a particular ongoing commitment to maintain the unique characteristics of Canada's venture, resources and derivatives markets, as well as to maintain its position as the leading global exchange for resource companies. Our business model is aimed at building on TMX Group's position as the marketplace where global mining, oil & gas, and public venture companies list and trade. Additionally, we will remain focused on supporting the unique needs of small- and medium-sized enterprises, which represent the backbone of the Canadian economy, as well as Canada's derivative and energy markets.

TMX Group already competes globally from a position of strength and, as described below, the completion of the Transactions would enhance that position.

Key Benefits

<u>Enhanced system integrity and a simplified Canadian-controlled solution for derivatives clearing</u>

The creation of an integrated exchange and clearing group should provide for greater control by Canadian regulators over systemic risk and the solutions specific to the Canadian context that are in keeping with the rapidly evolving international regulatory environment. Our vision is to provide improved and easier management of systemic risk by providing more transparency for operators and regulators end-to-end across the trading chain thereby permitting better counterparty risk management. Risk may be more effectively identified and managed within an integrated organization for clearing and settlement that is local and transparent.

We believe market participants will, over time, benefit from having a central counterparty able to provide clearing of Canadian dollar-denominated fixed-income repurchase agreements (or repos), MX listed and over-the-counter fixed-income and equity derivatives and through net margin determination, whereby the central counterparty calculates the net capital required by each market participant for all of its outstanding trading positions across all asset classes. Following the acquisition of CDS, the integrated technology infrastructure that we expect will ultimately result from the integration of CDS' and CDCC's technology platforms will streamline market participants' risk management technology requirements for Canadian dollar denominated products.

We believe that the vertically integrated model will be an improvement over the status quo from the perspective of both provincial and federal regulators. Closer integration between the trading, clearing and settlement of equities through the common ownership of TMX Group and CDS will improve information flow and reporting capabilities, which will benefit market participants and regulators.

We intend to integrate the information flow and risk management systems of CDS and CDCC. This will allow market participants who trade both equities and derivatives to net their aggregate positions and better understand changing exposures, positions and margin requirements. Currently, a brokerage house that trades both equities and derivatives cannot see its net position on one computer screen. We intend to change that. Streamlining this information flow and providing for cross margining across different asset classes will benefit both market participants and regulators.

In response to the global financial crisis, leaders from the G20 countries agreed to improve the functioning, transparency and regulatory oversight of the over-the-counter derivatives market. As part of the response, the G20 countries have committed to move clearing of standardized derivatives to a central counterparty clearing system. Additional incentives to move to a central counterparty clearing system exist in the form of significantly greater capital requirements with respect to non-centrally cleared over-the-counter derivatives under the Basel III regulatory standard on bank capital adequacy and liquidity, which are scheduled to be implemented in January 2013. Canadian financial institutions are developing a solution for the Canadian dollar-denominated fixed-income repo market in conjunction with CDS and CDCC. The integration of CDS and CDCC would facilitate this initiative as all the required functionalities (clearing, settlement and the central counterparty) would be found under one umbrella. Although the focus is currently on the fixed-income repo market, the integrated platform could also be used for central counterparty clearing of other products, such as over-the-counter derivatives on fixed-income and equity securities, thereby reinforcing Canada's response to the G20 commitment. If successfully implemented, volume brought by these additional products would add scale which will benefit industry participants through reduced costs, improved capital management and the potential for cross-margining across asset classes, a key to maintaining liquidity in the capital markets given heightened collateral requirements under Basel III. The capital efficiency achieved by more accurately reflecting an enterprise's economic risk profile is significant. As an example, in connection with cross-margining interest rate futures cleared by New York Portfolio Clearing with broker dealer repos cleared by Fixed Income Clearing Corporation in the United States, NYPC is targeting 15-30% improvement in capital efficiencies for its customers.[2]

The benefits of an integrated exchange and clearing group as proposed by Maple would become more important to capital market users as global regulatory constraints relating to clearing and reporting of over-the-counter derivatives evolve. In this context, an integrated CDS and CDCC platform could provide the functionalities and business solutions required by market participants to comply with new over-the-counter clearing standards. Such functionalities will include risk management tools which will provide a global view of all positions held at CDS and CDCC at any point in time to support enhanced risk management at the user level. Moreover, the creation of a Canadian based publicly traded integrated exchange and clearing group facilitates greater control by Canadian financial regulators, institutions and market participants over the solutions specific to the Canadian context and in keeping with a rapidly evolving regulatory environment.

In addition, the Maple ownership proposal for CDCC may accommodate the range of options currently being considered by the Canadian Securities Administrators Derivatives Committee discussed in CSA Consultation Paper 91-402 *Derivatives: Trade Repositories*. The Derivatives Committee stated that there may be concerns with not having a central collector and aggregator of Canadian derivatives data in Canada. A central derivatives repository based and managed in Canada could permit more effective regulatory oversight than would be the case if the repository were not based and managed in Canada. The role played by CDCC today and its future direction may represent an important response to the current and emerging issues in both the exchange traded and over-the-counter derivatives markets. Maple's proposal for the development of CDCC may assist in addressing Canadian concerns for Canadian dollar denominated products in the derivatives marketplace.

Given the size and scale of Canada's capital markets, the formation of a Canadian based integrated exchange and clearing group could be one means by which to achieve the regulatory and commercial goals associated with the over-the-counter derivatives market in Canada for Canadian dollar denominated products and enhancing ongoing innovation as that market, and the global regulatory environment, continues to evolve.

<u>Retention of regulatory oversight over a critical element of Canada's capital markets and economy</u>

The Canadian regulatory framework has been fundamental to TMX Group's success, particularly with respect to small- and medium-sized businesses, enabling it to be locally responsive through, among other things, listing standards which foster regional growth. Under the Maple Acquisition, we propose that Maple and TMX Group will be recognized and regulated by the Autorité and OSC. In addition, TSX will continue to be subject to full oversight of the Commission, TSX Venture Exchange Inc. ("**TSX Venture**") will continue to be subject to full oversight by the ASC and BCSC, Natural Gas Exchange Inc. ("**NGX**") will continue to be subject to full oversight by the ASC, CDS will continue to be subject to full oversight by the Commission and the Autorité, and CDCC and MX will continue to be subject to full oversight by the Autorité, in each case as they are today. This general Canadian regulatory overlay applicable to the operations of TMX Group covers all aspects of operations, from fees to access, and we believe that maintaining this overlay is important to the continued growth of Canadian businesses and the continued growth and stability of Canada's capital markets.

[2] New York Portfolio Clearing (2011) "Frequently Asked Questions" www.nypclear.com/FAQs.

Ten percent share ownership restriction

Under the current regulatory framework, no person or company or combination of persons or companies acting jointly or in concert may, without the prior approval of the Commission, beneficially own or exercise control or direction over more than 10% of the voting securities of TMX Group (the "**Share Ownership Restriction**").[3] The Commission has described the purpose of the 10% ownership restriction as being:

> "To prevent any one shareholder or group of shareholders from exercising substantial influence over the Toronto Stock Exchange without prior approval of the Commission."[4]

Similarly, the TSX has characterized the purpose of the restriction as follows:

> "As the Toronto Stock Exchange is the primary stock exchange in Canada for senior issuers, and TSX Venture Exchange is the primary stock exchange for junior issuers, TSX Inc. believes that it is in the public interest that it not become controlled by any one person, domestic or foreign."[5]

We believe that the 10% ownership restriction is important to ensuring that TMX Group and its operating exchanges may continue to operate in a manner consistent with the public interest, free from undue influence from a single entity or group of joint actors and, accordingly, we propose that the Share Ownership Restriction be extended to apply to the voting securities of Maple.

Upon completion of the Transactions, the Investors will no longer be acting jointly or in concert with respect to Maple, TMX Group or TSX. None of the Investors is or will be an affiliate or associate of another Investor or Maple, TMX Group or TSX. In addition, following completion of the Transactions, the Investors will have no agreements, commitments or understandings with respect to the acquisition of securities of Maple, TMX Group or TSX or the voting of any such securities. In particular, while certain provisions of the acquisition governance agreement entered into by the Investors in connection with the Transactions (as amended and restated on June 10, 2011, and as further amended on June 22, 2011, the "**Acquisition Governance Agreement**") will survive the completion of the Transactions, none of these provisions relates to the acquisition or voting of securities of Maple, TMX Group or TSX. Rather, the provisions of the Acquisition Governance Agreement that will survive completion of the Transactions are limited to non-competition obligations (as described further under part 5 of this application), hold periods on resales of Maple shares and orderly resale obligations. The Investors have no shareholders' agreement and, while certain Investors (or an affiliate thereof which will own Maple shares) will enter into separate nomination agreements with Maple that will entitle each of them to individually nominate one director to the board of Maple, this nomination right is an individual right of each such Investor (or such affiliate) and there is no obligation, agreement, commitment or understanding that any other Investors will vote their Maple shares in favour of such nominee. In the event of some extraordinary transaction or other matter that requires a vote of shareholders, there is no agreement, commitment or understanding among the Investors as to how they must vote. The Investors are a diverse group, and each will be free to decide on all matters relating to Maple according to its own views and interests.

In addition, although the Investors have co-operated in the preparation of a high-level business plan for Maple, which describes the proposed corporate governance structures and some broad strategic objectives, much more detailed budgets and strategic and operational business plans will be prepared post-closing by the management of TMX Group, CDCC, CDS and Alpha, under the supervision of the board of directors of each company. The Investors are content that these matters will be dealt with in the ordinary course by management and by the applicable board of directors. In such circumstances, Maple submits that the Investors will not be acting "jointly or in concert" following the completion of the Transactions even with an expansive definition of that term.

Preservation of TMX Group's existing governance structure

Following completion of the Maple Acquisition, the governance structure of the board of directors of Maple (the "**Maple Board**") and its committees will represent a fair balance between the diverse interests of capital market participants across Canada and those of its shareholders. The composition of the Maple Board will continue to comply with the requirements of the existing recognition orders and undertakings of TMX Group and its subsidiaries on a consolidated basis. At least half of the Maple Board will be independent, at least 25% of the directors will be residents of Québec at the time of their election or appointment, and at least 25% of the directors will have expertise in, or be associated with, the Canadian public venture market. In addition, we propose that at least 25% of the directors will have expertise in derivatives and that at least one director will be chosen from

3 Pursuant to section 21.11 of the Securities Act (Ontario) (the "**Act**"), Ontario regulation 261/02 made thereunder, the order of the Commission made thereunder on September 3, 2002 and section 7 of the recognition order of TMX Group and TSX, there are restrictions attached to the shares of TMX Group and TSX. In addition, these restrictions have been incorporated into the articles of TMX Group. Pursuant to a letter of undertaking dated April 9, 2008 from TMX Group to the Autorité, these restrictions were extended for the benefit of the Autorité.

4 (2011) 34 OSCB 5716.

5 (2002) 25 OSCB 6132.

Canada's independent investment dealer community. Maple's strategic vision and direction will be set under the direction of a Canadian-based board of directors.

The Maple Board will be replicated at each of TMX Group, MX, TSX and TSX Venture to ensure consistency of governance at each of these exchanges.

Support for continued growth in Canada

Maple will invest in the continued growth of TMX Group's derivatives trading and clearing business and will fulfill the undertakings given by TMX Group to the Autorité in 2008, including the commitment to keep TMX Group's derivatives trading and clearing business in Montréal. Under Maple, MX will continue as the exclusive business unit responsible for exchange traded derivatives and related products. In addition, a key business priority for Maple is the development of new over-the-counter derivatives products and if Maple establishes an exchange or clearing agency for trading or clearing derivatives that are presently over-the-counter derivatives, that exchange or clearing agency will be based in Montréal. MX, and any such future business unit responsible for the creation and implementation of Maple's strategic plan with respect to derivatives and derivatives related products, along with annual operating plans and budgets for that business unit, and the mind and management thereof, will remain headquartered in Montréal. MX will continue to export its expertise in the trading and clearing of derivatives, and such international activity will be directed from Montréal. The most senior executive officer with direct responsibility for the derivatives business unit, and the executives responsible for managing the development and execution of the policy and direction for that business unit sufficient to permit such senior executive to execute his or her responsibilities, will be located in Montréal.

Maple is committed to continuing to foster the growth and development of TSX Venture and to responding to the unique needs of small and medium-sized enterprises. We believe that small and medium-sized enterprises foster job growth and regional development and represent a key component of the Canadian economy. Under Maple, TSX Venture will continue to provide meaningful access to capital for small- and medium-sized enterprises in a manner that is locally responsive to regional capital markets' needs through operational centers of excellence in Calgary and Vancouver. Small and medium-sized enterprises will also remain important to the dynamic of the Canadian exchange structure as the graduation of issuers from TSX Venture to TSX provides a steady source of new listings for TSX.

The head office of TMX Group and associated finance and technology jobs will remain in Canada, and the key policies and business strategies will continue to be set in the office of the Chief Executive Officer of Maple for the benefit of TMX Group and Canadian capital markets. The Maple Acquisition will preserve substantially all of TMX Group's senior management under the direction of its current Chief Executive Officer, as well as high-tech, finance and other capital market jobs ancillary to the presence of a leading exchange based in Canada.

An integrated platform providing additional growth opportunities

Under Maple, TMX Group will benefit from additional growth opportunities associated with providing the clearing and settlement of fixed income repos and, in the longer term, over-the-counter equity and fixed income derivatives. In addition, we anticipate that revenue synergies will be achieved through the enhanced positioning of the combined TMX Group and CDS for the clearing of listed and over-the-counter products, as well as through the development of innovative products utilizing the integrated platform. Under Maple, we envision growing CDS and CDCC substantially by migrating the bilateral over-the-counter derivatives market into CDCC and CDS over time. The result is the transition of a large part of the capital markets from an unregulated over-the-counter environment into entities regulated by the Commission and the Autorité. Under Maple, the role of CDS and CDCC will be expanded and the regulatory supervision of the Commission and the Autorité will be enhanced.

Support for high quality jobs in Canada which are dependent on the businesses of TMX Group's exchanges

The exchanges operated by TSX and TSX Venture are the top exchanges for public metals and mining and oil and gas companies to list their stocks and raise capital. Capital raising activities support high quality professional jobs including financial, legal and accounting professionals and related jobs. The Maple Acquisition will better enable Canada to retain its concentration of world class talent and remain the number one choice for resource listings globally.

A more diversified, efficient and integrated exchange and clearing group

CDS' clearing, settlement and custodial business will add stability and diversification to TMX Group's businesses. In addition, we believe that the creation of a vertically integrated trading and clearing exchange for equities, bonds, energy products and derivatives in both exchange traded and over-the-counter markets, a proven and highly valued business model which currently exists at Deutsche Börse, BM&F Bovespa and the Australian Securities Exchange, would dramatically broaden TMX Group's business activities, generate substantial growth opportunities, and create significant synergies (including cost rationalization) for the benefit of TMX Group, its shareholders and Canada's standing as a global financial centre of excellence.[6]

<u>Meaningful cost synergies</u>

We are confident that the combination of TMX Group with Alpha and CDS will result in meaningful cost synergies. While Maple has not been able to perform a detailed estimate of likely synergies because it has not had access to customary due diligence, we believe these synergies will be substantial and result from, among other things: (a) the closer integration between CDS' equities clearing, settlement and depository operations and the cash equities operations of TMX Group; (b) the closer integration between the clearing operations of CDS and CDCC; and (c) the integration of CDS' and CDCC's information technology platforms, initially using straight through processing. Additional information about the types of synergies likely to be realized are addressed in more detail below.

Guiding Principles

Our commitment to a successful and competitive integrated exchange and clearing group will be guided by four key principles

<u>Improved risk management</u>

Prudent risk management will be our top priority to ensure that systemic risk is well managed. We will improve on existing tools and establish new tools for ourselves, for market participants, and for regulators to enhance risk management and to minimize risks to Canada's capital markets. Our vision for an integrated exchange and clearing group will lead to an end-to-end view over the trading value chain which can be used to closely monitor risk throughout the system and establish early warning triggers to quickly identify risks and prevent their escalation.

We commit to a constant dialogue with our regulators to ensure full transparency regarding risk management practices, and to provide data streams to regulators to permit direct insight into, and monitoring of, systemic risk. We believe this level of transparency will represent a material benefit to the stability of Canada's capital markets and a significant step forward in the protection of the public interest.

<u>A customer-centric business model</u>

We will apply equitable pricing for our products and services – there will be unit pricing at CDS Clearing for clearing, depository and settlement services such that all participants will pay the same price for the same service, there will be no discrimination in trading pricing between inter-listed and non-inter-listed securities, and so long as Alpha continues to operate as an alternative trading system (an "**ATS**") Alpha data will continue to be available on an unbundled basis separate and apart from TMX data. Importantly, our fees will continue to be subject to regulatory review.

We will maintain fair and equitable access to our products and services. Following the acquisition of Alpha, we expect that Alpha and/or TMX Select will continue to operate as ATSs. Moreover, at CDS and CDCC we will build upon the existing advisory committees comprised of market participants to provide direct access for market participants and ensure responsiveness to their needs for new and improved products and services.

<u>Independent, effective governance</u>

We are committed to maintaining the highest standards of corporate governance and ensuring that the boards of Maple and its applicable subsidiaries cause exchange and clearing functions to be carried out in a manner consistent with the public interest. The composition of the boards of Maple and its operating exchanges will ensure fair, meaningful and diverse representation, including appropriate representation of independent directors and a proper balance among the interests of the different persons and companies using TMX Group's services and facilities. In particular, we believe that balancing independent directors with knowledgeable directors who understand the industry and have an interest in the successful and efficient operation of the business, and the evolution thereof to address the needs of the Canadian capital markets, is important to ensuring best operating practices for a recognized exchange. Our proposed governance structure accomplishes this goal while maintaining appropriate checks against any one shareholder or group of shareholders exercising undue influence.

The boards of CDS and CDCC will have a number of overlapping directors and will operate separately from the board of Maple. Our proposed governance arrangements will ensure fair and meaningful representation on those boards, including appropriate representation by directors who are persons independent of Maple with relevant subject matter expertise. In addition, we propose to build upon existing market participant advisory committees (by establishing or maintaining committees with respect to each of the equity, fixed income, and derivatives industries as well as a strategic development committee and a risk advisory

[6] Set out at Appendix A to this application are overviews of integrated exchanges and clearing groups which currently exist at Deutsche Börse, BM&F Bovespa and the Australian Securities Exchange.

committee) so that market participants will have a direct voice in making recommendations relating to the products and services of CDS and CDCC to ensure that they are responsive to the market's needs.

A commitment to market innovation and competition

We will maintain an open architecture for clearing infrastructure to allow competing exchanges and ATSs to connect thereto. In addition, we will establish board committees at CDS and CDCC that are responsible for identifying and resolving conflicts of interest and responsible for ensuring fair and equitable resource allocation to product development with competing exchanges and ATSs.

A More Robust and Stable Model

In summary, we believe that a vertically integrated exchange and clearing group will be more robust and stable than the status quo in Canada for a number of reasons:

(a) Revenue Diversification. The volatility of earnings for integrated exchanges is typically lower than for non-vertically integrated exchanges, in particular during crisis periods, because of the broader diversification of revenues into clearing, settlement and custodial services.

(b) Improved Risk Management. The vertical integration will improve risk management as risk will be better monitored and managed when contained in a single integrated structure. An integrated model would permit regulators and participants to have a broader view into the risk profile of participants through a single entry-point and better reporting of risk positions. The resulting enhanced understanding of risk profile will inherently lead to greater stability by enabling regulators to intervene earlier in risk situations to prevent broader contamination. In addition, the integration of CDS and CDCC would facilitate the consolidation of risk positions to increase transparency, and to provide more effective collateral management opportunities through cross-margining across multiple asset classes.

(c) Product Development. An integrated CDS/CDCC will provide the best opportunity for clearing OTC derivatives in Canada. It will also create additional opportunities for product innovation and strategic development, for example in respect of collateral management products and high end custody services.

(d) Increased Scale. The vertical integration will result in increased scale of operations. This will enable cost savings from duplicated overhead costs. It will also reduce the risks that a significant portion of the clearing and settlement functions, particularly in respect of the clearing of OTC derivatives, would be conducted outside of Canada. Similarly, increased scale will reduce the likelihood of an acquisition of Maple by a foreign acquiror which, in turn, will enhance regulatory oversight and reduce the risks of a loss or diminution of regulatory jurisdiction by Canadian regulators.

(e) Straight-Through Processing. Vertical integration allows easier straight through processing which will assist in reducing inter-operational errors and complexities.

We do not believe that any additional concentration that arises as a result of the proposed Transactions is detrimental to the stability and robustness of the market infrastructures in Canada. For example, risk in the clearing functions of CDS and CDCC will continue to be ring fenced from Maple's other operations to avoid any spill-over of risk.

We expect that efficiencies will be achieved for the benefit of shareholders, the brokerage community and public investors in two broad categories by virtue of the proposed Transactions. Just as there are synergies from operating derivatives trading and clearing together through MX and CDCC, we believe there are synergies to linking within the same organization both the trading and clearing of cash settled equities by better integrating TSX and TSX Venture with CDS. Closer integration of computer systems, for example, will materially improve information flow and reporting capabilities to everyone's benefit.

We also expect that improvements can be achieved through the integration of CDCC and CDS. While the clearing of cash settled equities is fundamentally different from clearing derivatives contracts, there is complementary expertise within these organizations with respect to risk management systems, technology solutions, capital deployment and product development that, when combined, will make the aggregate organization stronger than CDS and CDCC operating independently.

Indeed, one of the most important benefits of a single integrated exchange and clearing group is that it will permit more efficient and effective development of needed products and services in Canada's capital markets infrastructure by eliminating impediments to cooperation among key components of such infrastructure which currently exist as a result of the separate ownership and management of TMX Group and its subsidiaries (including CDCC) on the one hand and CDS on the other. The improved cooperation and alignment of interests that can be expected to result from common ownership may be expected to reduce product development time and costs by housing the required expertise under the same management and ownership umbrella.

3. Acquisition of TMX Group

Maple was formed on April 28, 2011 and has not carried on any material business prior to the date hereof other than in connection with matters related to the proposed Transactions. As a result of the Maple Acquisition, Maple will become a reporting issuer in jurisdictions across Canada. Upon completion of the Maple Acquisition, Maple will be the holding company parent for TMX Group and its exchanges and related businesses. Maple will not carry on any active business operations; the business activities of TMX Group will continue to be carried on by TMX Group and through TMX Group's subsidiaries. Maple will be the continuing public company and TMX Group will cease to be a reporting issuer. Maple's corporate office will be located with the corporate office of TMX Group.

Consistent with the Commission's previous analysis and conclusions with respect to the public interest, we believe that the holding company parent for TMX Group and its exchanges and related businesses should be recognized by the Commission as an exchange and regulated in a manner consistent with the historical regulation of TMX Group for the purpose of applying the limitation restricting beneficial ownership of more than ten percent of the voting securities of Maple except with the prior approval of the Commission.

Corporate Governance

Maple is committed to maintaining the highest standards of corporate governance and ensuring that the Maple Board causes exchange functions to be carried out in a manner consistent with the public interest. As such, Maple will adopt for itself TMX Group's governance framework, including substantively identical board and committee mandates. Maple's governance arrangements will ensure fair, meaningful and diverse representation on the Maple Board and its committees, including appropriate representation of independent directors and a proper balance among the interests of the different persons and companies using TMX Group's services and facilities.

Composition of Board of Directors

The Commission and other Canadian securities regulatory authorities have recognized the need for a strong and effective governance structure for stock exchanges that operate in Canada and, through recognition orders and undertakings, have previously mandated an effective governance structure for TMX Group and its operating exchanges. The boards of directors of Maple, TMX Group, TSX, MX and TSX Venture will be comprised of the same individuals to ensure consistency of governance at each of the exchanges. As such, the Maple Board will respect the recognition orders of TMX Group, TSX, TSX Venture and MX on a consolidated basis, including:

(a) at least 50% of the directors will be “independent” within the meaning of s. 1.4 of NI 52-110 and the currently existing independence standards adopted by the board of directors of TMX Group;

(b) at least 25% of the directors will be residents of Québec at the time of their election or appointment; and

(c) at least 25% of the directors will be persons that have expertise in or are associated with the Canadian public venture capital markets.

In addition, in our application to the Autorité we will propose that at least 25% of the directors of MX will be persons that have expertise in derivatives. This pool of directors would be expected to include directors with expertise in derivatives trading, derivatives clearing, and risk management. We believe that this commitment will provide the derivatives business with significant representation while permitting Maple to ensure that its board of directors is as strong and knowledgeable as it can be, in each of the areas it requires expertise, in order to make necessary strategic decisions and guide the company accordingly. By virtue of the mirror board concept, these persons would also be directors of Maple, TMX Group, TSX and TSX Venture.

Finally, we will commit that at least one member of the Maple Board will be chosen from Canada's independent investment dealer community (i.e., participants who are not affiliated with Canadian Schedule I banks) and that the chair of the Maple Board will be an independent director.

The existing requirements have proven effective at ensuring a strong and independent board at TMX Group with diverse representation. We believe, however, that the presence of a minority of directors drawn from both participants affiliated with Canadian Schedule I banks (pursuant to the nomination agreements described below) and the independent investment dealer community (pursuant to the new commitment), each of whom will be knowledgeable of the industry and have an interest in the successful and efficient operation of TMX Group's businesses and the evolution thereof, will serve to enhance the ability of the Maple Board as a whole to provide effective oversight of the operations of TMX Group, ensure that business and regulatory decisions are in keeping with the public interest, and are not unduly influenced by any one segment of capital markets participants. The nominees of the participants affiliated with Canadian Schedule I banks on the Maple Board will be a minority of the Maple Board and will be balanced by the "buy side" nominees and other directors. The board composition as a whole will ensure a diversity of voices across the capital markets spectrum.

The Maple Board will adopt the standards of TMX Group with respect to the selection of directors and will take reasonable steps to ensure that each director of Maple, TMX Group, TSX, TSX Venture and MX is a fit and proper person and that the past conduct of each director affords reasonable grounds for belief that the director will perform his or her duties with integrity.

Initially, the boards of directors of Maple, TMX Group, TSX, MX and TSX Venture will be comprised of 15 directors selected as follows: 4 nominees of pension fund Investors (Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board), 4 nominees of the bank-owned dealer Investors, 4 additional independent individuals (potentially including representatives from the current board of directors of TMX Group), one representative of Canada's independent investment dealer community, the Chief Executive Officer and the independent Chair. Individuals are being selected for these boards who have the appropriate skill sets and stature within the community and to ensure the boards meet all existing regulatory requirements (including requirements for Québec residents, derivatives expertise and public venture experience). Maple believes the boards will appropriately balance the interests of the users of the exchanges, including the bank-owned dealers, and other owners that are entirely at arm's length from the exchanges.

In selecting these individuals, Maple will adopt and comply with TMX Group's existing specialized definition of "independence". Under this existing standard, executives of dealer Investors, who are "participating organizations", will not be considered independent directors. Under this standard, the initial boards of directors of Maple, TMX Group, TSX, TSX Venture and MX will have eight independent directors: three of the four pension fund nominees (AIMCO's nominee, George Gosbee will not be considered independent as he is President and Chief Executive Officer of a "participating organization"), four additional independent directors (potentially including independent directors from the current board of directors of TMX Group) and the independent chair. Maple is presently undertaking a process to identify an independent chair and that person will not be a nominee of an Investor nor will he or she be an existing director of TMX Group.

As described in part 4 "*Acquisition of CDS*" below, CDS and CDCC will have separate governance procedures.

Board Committees

The Maple Board will establish committees of the board with mandates substantively identical to the Finance and Audit Committee, Governance Committee, Human Resources Committee and Public Venture Finance Committee presently in place at TMX Group. In brief:

- **Finance and Audit Committee** – This committee will be comprised of at least four directors, all of whom will be independent. It will be charged with, among other things, assisting the board in fulfilling its oversight responsibilities regarding (a) the integrity of the corporation's financial statements, (b) the internal control systems of the corporation, (c) the external audit process, (d) the internal audit and assurance process, (e) business planning, (f) investment opportunities and the raising of funds by the corporation, (g) the administration, financial reporting and investment activities of the corporation's pension plan(s), and (h) the corporation's compliance with legal and regulatory requirements. This wholly independent committee will also be charged with assisting the board in fulfilling its risk management responsibilities, including reviewing and assessing Maple's risk management policies and procedures with regard to the identification of principal risks and the adequacy of the implementation of appropriate procedures to mitigate and manage such risks. Each of the Finance and Audit Committees at Maple, TMX Group, TSX, TSX Venture and MX will be comprised of the same individuals and, as such, will be well positioned to best understand such risks and any interrelationship thereof.

- **Governance Committee** – This committee will be comprised of at least five directors, all of whom will be independent. It will be charged with providing the Maple Board with recommendations relating to corporate governance in general, including, without limitation: (a) all matters relating to the stewardship role of the board in respect of the management of the corporation, (b) board size and composition, including the candidate selection process and the orientation of new members, (c) board compensation, and (d) such procedures as may be necessary to allow the board to function independently of management and non-independent directors. This committee will design and oversee compliance with policies associated with an efficient system of corporate governance, including policies relating to conflicts of interest.

- **Human Resources Committee** – This committee will be comprised of at least four directors, all of whom will be non-management. It will be established to take steps on behalf of the Maple Board as are necessary regarding: (a) appointing and compensating executive officers and approving succession plans for the Chief Executive Officer and other executive officers, (b) approving and reporting to the board in respect of human resources policies for executive officers, and (c) overseeing the administration of compensation and benefits plans.

- **Public Venture Market Committee** – This committee will be comprised of at least four directors, all of whom will be non-management. It will be established to advise and make recommendations to the board with respect to all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of the corporation and/or TSX Venture in relation thereto.

Selection of Future Directors

The Governance Committee of the Maple Board, comprised of at least five directors, all of whom will be independent, will be charged with nominating directors. The Governance Committee will review on an ongoing basis the composition of the Maple Board, including the current strengths, skills and experiences on the Maple Board and its strategic direction. The Governance Committee will be charged with identifying any gaps in the Maple Board's composition and seeking to fill those gaps. Qualities such as integrity, good character and high regard in his or her community or professional field will always be basic criteria for Maple Board members. The Governance Committee will also consider independence, professional or board expertise, and experience in a number of areas including capital markets, venture exchange markets, derivatives, energy, clearing, technology, public companies, sales and marketing, corporate governance, human resources, settlement, broker/dealers and international dealings. As well, representation from geographic regions relevant to Maple's strategic priorities and Québec residency requirements will be taken into consideration. The objective will be to ensure the Maple Board's composition provides the appropriate mix of skills and experience to guide the strategies and business operations of Maple and TMX Group's exchanges. The Governance Committee will be authorized to retain outside consultants to assist in conducting searches for appropriate nominees. In addition, the Governance Committee will be charged with maintaining a list of potential director candidates for its consideration, to be reviewed annually. Independent directors may also be proposed by Investors as their nominees pursuant to the nomination agreements described below. Nominees brought forward pursuant to the nomination agreements will be subject to the approval of the Governance Committee.

Nomination Agreements

Prior to the initial take-up of TMX Group shares under the Offer, Maple will enter into separate nomination agreements with each of Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board, CIBC World Markets Inc., National Bank Financial Inc., Ontario Teachers' Pension Plan Board, Scotia Capital Inc. and TD Securities Inc. (or, in each case, an affiliate thereof) pursuant to which each such Investor (or its applicable affiliate(s)) will have the right to nominate one director for election to the Maple Board. Each Investor will ensure that its nominee has the appropriate skills to serve on the Maple Board and has the full support of the nominating Investor. The persons nominated to the board of Maple pursuant to the nomination agreements will be subject to, and will be expected to comply with, their fiduciary duties owed to Maple and must act in the best interests of Maple regardless of any personal affiliations with the nominating Investor or any other corporations.

Following completion of the Maple Acquisition, to ensure compliance with applicable recognition orders and to permit the Maple Board to be satisfied that any nominee proposed pursuant to a nomination agreement is a fit and proper person, such nominee will be subject to the approval of the Governance Committee of the Maple Board, acting reasonably in the discharge of its mandate. The Governance Committee will have the power to reject a proposed nominee, in which case the Investor would be required to propose an alternate nominee.

The nomination agreement will terminate in respect of an Investor (or its applicable affiliate(s)) at the earlier of (i) the sixth anniversary of the completion of the Maple Acquisition and (ii) such time as such Investor (or such affiliate(s)) ceases to own that number of common shares of Maple (or any successor entity resulting from the combination of Maple and TMX Group) equal to 5% of the total issued and outstanding common shares of Maple as at the date of, and after giving effect to, the acquisition of 100% of the shares of TMX Group. The nomination agreement will be personal to such Investor (or its applicable affiliate(s)) and non-transferable (other than to affiliates). Maple (and any successor entity) will take into account the rights of the Investors (or their applicable affiliate(s)) party to the nomination agreements in connection with ensuring its compliance with applicable recognition orders.

The nomination agreements are not among the Investors as there is no connection between an Investor's individual nomination right and any other individual Investor. There is no agreement, commitment or understanding among the Investors to vote in favour of any other Investor's nominee and the election of each such nominee will remain subject to consideration and approval by Maple's shareholders at any meetings at which directors of Maple are to be elected.

Public Interest and Duties to Maple

As described above, the composition of the Maple Board (and similarly the boards of TMX Group, TSX, TSX Venture and MX) will include independent directors comprising at least half of the board and will reflect a balance among the interests of the different persons and companies using TMX Group's services and facilities. The Maple Board (and similarly the boards of TMX Group, TSX, TSX Venture and MX) will benefit from the inclusion of individuals who have an interest in the successful and efficient operation of TMX Group's businesses and its evolution. We believe that the composition of the Maple Board (and similarly the boards of TMX Group, TSX, TSX Venture and MX) will enhance the ability of Maple and its subsidiaries to carry out their exchange functions in a manner consistent with the public interest while inherently addressing any perception of potential conflicts of interest by balancing the participation of nominees drawn from a cross section of users of TMX Group's services with highly respected and skilled independent directors.

With respect to directors individually, Maple will adopt a board code of conduct substantially identical to TMX Group's. Each director of Maple, including the directors nominated pursuant to the nomination agreements, will be expected to:

(a) act honestly and in good faith with a view to the best interests of the corporation;

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

(c) exercise his or her director's powers for the purpose for which they were intended;

(d) ensure that the director's personal interest and his or her duty to the corporation are not brought into conflict;

(e) ensure that the director does not obtain or receive, directly or indirectly, a personal profit, gain or benefit as a result of his or her relationship with the corporation; and

(f) exercise his or her director's powers having regard to the public interest mandate of a recognized exchange.

The board code of conduct will also address situations where a director of Maple (and/or its applicable subsidiaries) may find himself or herself with a potential conflict of interest. Each director will be expected to furnish annual declarations of interest and the corporate secretary will have the responsibility for monitoring conflicts. In addition, each director will be expected to self-identify conflicts of interest or potential conflicts of interest which he or she may have from time to time. The Governance Committee will at the request of a director or the corporate secretary, and may on its own initiative, consider whether a director is in a material conflict of interest. In circumstances where a director has a material conflict of interest that director will not participate in the decision taken by the board or committee with respect thereto.

The possibility of perceived conflicts of interest is also mitigated through the composition and mandate of Maple's board committees. For example, the Finance and Audit Committee will be comprised entirely of independent directors and will be charged with overseeing risk management and Maple's annual business plan as well as ensuring compliance with all applicable legal and regulatory requirements (including the requirements of the recognition orders applicable to Maple and its subsidiaries). In addition, the Governance Committee will be comprised entirely of independent directors and will be charged with overseeing procedures to allow the board to function independently of management and non-independent directors, including policies relating to conflicts of interest.

Maple believes that the proposed ownership structure for Maple does not increase the risks of real or perceived conflicts of interest at the operating exchanges. Following the acquisition of TMX Group by Maple, the four bank-owned dealers that are Investors will have nomination rights with respect to only four out of 15 directors on the Maple Board. These directors will have no participation at the management level of an exchange. To the extent the Maple Board has to consider an issue that raises a conflict for a nominee, that nominee would abstain from the vote, all in the normal fashion and based on established conflict of interest standards and procedures. The Maple Board will be made up of experienced directors and the Governance Committee has a mandate to monitor conflicts, all of which Maple believes will be sufficient to address any real or perceived conflict.

Responsive Governance for all Stakeholders

Maple intends to maintain a director qualification policy which will provide that, in an uncontested election[7] of directors at its annual shareholders' meeting, any nominee, including those put forward pursuant to a nomination agreement, who receives a greater number of votes "withheld" than votes "for" will tender his or her resignation to the Maple Board promptly following such annual meeting. The Governance Committee would be expected to recommend that the Maple Board accept the resignation, except in extenuating circumstances. The Maple Board will make its decision and announce it in a press release within 90 days following the election, including the reasons for rejecting the resignation, if applicable. The Maple Board may fill a vacancy created by such a resignation. Where the resigning director was the nominee of an Investor, that Investor will be entitled to nominate a new individual to serve subject to the approval of such individual by the Governance Committee as more fully described above.

[7] An "uncontested election" means the number of nominees for election at the annual meeting is the same as the number of directors to be elected to the Maple Board.

The proposed governance arrangements for Maple and its operating exchanges will ensure fair, meaningful and diverse representation, including appropriate representation of independent directors and a proper balance among the interests of different persons and companies using TMX Group's services and facilities, including with respect to TSX, TSX Venture and MX. In addition, the exchanges operated by Maple will take into the account the interests of their participants (including participants who are not shareholders) in the same manner as they do today. For example, the exchanges today obtain input from participants through committees that seek full and open debate on policy issues in an open consultation process encompassing a diversity of opinions. These committees are comprised of knowledgeable individuals representing various industry groups and regions, as applicable. These committees will be maintained.

Initial Board and Management

It is our intention that, upon take-up under the Offer, the Maple Board (and subsequently the boards of TMX Group, TSX, TSX Venture and MX) will be comprised of the following individuals, each of whom has agreed to serve as a director, together with the Chief Executive Officer of TMX Group and additional independent directors which may include certain members of TMX Group board of directors (if such TMX Group directors agree to serve):

- Luc Bertrand, Vice Chair of National Bank Financial Group;
- Marie Giguère, Executive Vice-President, Legal Affairs and Secretariat of Caisse de dépôt et placement du Québec;
- George Gosbee, Chairman, President and Chief Executive Office of AltaCorp Capital Inc.;
- Sarabjit (Sabi) Marwah, Vice-Chairman and Chief Operating Officer of The Bank of Nova Scotia;
- Frank McKenna, Deputy Chair of TD Bank Group;
- Jim Prentice, Senior Executive Vice-President and Vice Chairman of Canadian Imperial Bank of Commerce;
- William Royan, head of Relationship Investing at Ontario Teachers' Pension Plan Board;
- Kevin Sullivan, Deputy Chairman of GMP Capital Inc.; and
- Eric M. Wetlaufer, Senior Vice-President, Public Market Investments at Canada Pension Plan Investment Board.

We note that six of these nine initial directors, Messrs Gosbee, Marwah, McKenna, Prentice, Sullivan and Wetlaufer, have had no direct involvement in the development of the proposed Transactions. Maple is also presently undertaking the process of identifying an individual to serve as an independent chair. The chair will not be any of the foregoing individuals nor will he or she be an existing director of TMX Group. Of the 15 initial directors, only three will have participated in the development of the proposed Transactions.

It is our intention that the existing senior management of TMX Group, including its Chief Executive Officer, will become the senior management of Maple following take-up under the Offer.

TSX Fees and Access

We intend to maintain a competitive fee structure for TSX, and our fees will not discriminate against any particular user or category of users. To provide added assurance of competitive trading fees, trading fees will not discriminate as between inter-listed and non-inter-listed securities. We commit that all fees that are imposed by TSX on its participating organizations will be equitably allocated, will not have the effect of creating barriers to access and will be balanced with the criteria that TSX shall have sufficient revenues to satisfy its responsibilities. We note that competitive market forces, as described in part 5 "*Acquisition of Alpha Group – Vigorous Ongoing Competition*" below, and regulations such as the "order protection" and "best execution" rules will continue to operate as a constraint on trading fees. Moreover, a number of Investors in Maple are significant consumers of the services of TSX and uncompetitive fees would have adverse cost implications for their businesses. We believe this consideration aligns such Investors with market forces and will further sensitize TSX to the needs and concerns of its participants with respect to fees. Under our proposal, the process for setting fees will remain fair and appropriate, consistent with the current practice of TSX. The Finance and Audit Committee, comprised entirely of independent directors, will be responsible for making recommendations to the board with respect to fees and ensuring that that they do not create barriers to access. In addition, fees will continue to be subject to regulatory oversight as we are not proposing any change to the Commission's ongoing public interest oversight with respect to fees.

Maple also intends to maintain a competitive structure for setting listing, data and other fees. Fees will be set in a manner that is consistent with the present process for setting fees at TSX. With respect to data fees, Maple is aware that industry participants, in particular the Investment Industry Association of Canada ("**IIAC**"), have expressed concerns with respect to the overall level of data fees. Maple understands that the overall data fees paid by market participants are impacted by the market structure mandated by the current regulatory environment, including order protection and best execution rules which effectively require market participants to obtain data from multiple trading venues, including TMX Group exchanges and ATSs. As a result, Maple's view is that the issue of data fees needs to be examined in the context of the overall market structure, and is not an issue that is specific to the proposed Transactions. Following the completion of the Transactions, Maple is prepared to work cooperatively with industry participants and the securities commissions to identify solutions that will result in fair and equitable data fees. At a minimum, Maple will make data services available on a non-discriminatory (as between market participants) and unbundled basis (i.e., the total price for bundled packages will not be less than the individual components purchased separately).

Similarly, we do not propose any changes to the recognition order of TSX with respect to access. Maple's intention is to maintain an open platform which will continue to permit all properly registered dealers that are members of a recognized self-regulatory organization and that satisfy TSX's criteria to access the trading facilities of TSX. Maple has no intention to make any changes to such criteria. Decisions regarding access will be made in accordance with the current practices and policies in place at TSX with a view to promoting access in accordance with its recognition order. Consistent with TSX's existing recognition order, any future changes to the written standards for access will be assessed against the requirement that they not unreasonably prohibit or limit access by a person or company to the services of TSX. TSX will continue to maintain written records of each grant or denial of access and the reasons for such grant or denial of such access. These records will remain open for review by the Commission.

Additional information with respect to fees in respect of CDS and Alpha is set out in part 4 "*Acquisition of CDS*" and part 5 "*Acquisition of Alpha*" below.

Non-Competition Agreement

Consistent with standard commercial practice, the participation by each of the Investors in the Maple Acquisition was conditional upon such Investor (or its parent entity) agreeing to enter into a limited non-competition agreement with Maple and the other Investors (or their parent entities) upon the closing of the Maple Acquisition. A description of such agreement is included in part 5 of this application under "Non-Competition Agreement".

Self-Listing Conditions

Maple contemplates listing its shares on TSX. In 2002, to address issues that could arise due to the listing of TMX Group on TSX, TSX established a reporting structure whereby it notified the Commission of conflicts of interest or potential conflicts of interest. This structure is set out in section 22 and Appendix I of the TMX Group/TSX recognition order.

We submit that it would be appropriate for the Commission to apply the continued listing arrangements set out in section 3 of Appendix I of the TSX recognition order to the continued listing of the Maple shares following the Maple Acquisition. These arrangements will enable Commission staff and Maple to address any conflict of interest arising as a result of Maple's listing on the TSX.

Share Ownership

Upon completion of the Maple Acquisition, we expect that the shares of Maple will be owned as set out in the following table. Consistent with the existing Share Ownership Restrictions applicable to TMX Group, Maple's shares will be widely held with no one shareholder holding more than 10% of the outstanding shares.

Shareholder	Percentage of Maple shares upon completion of the Subsequent Arrangement: If 70% of TMX shares are acquired in the Offer(1)	If 80% of TMX shares are acquired in the Offer(2)
Alberta Investment Management Corporation	7.1%	8.7%
Caisse de dépôt et placement du Québec	6.9%	8.6%
Canada Pension Plan Investment Board	7.2%	8.8%
CIBC World Markets Inc.	5.5%	6.7%
Desjardins Financial Corporation	2.8%	3.4%
Dundee Capital Markets Inc.	0.5%	0.7%
Fonds de solidarité des travailleurs du Québec (F.T.Q.)	2.7%	3.3%
GMP Capital Inc.	0.5%	0.7%
The Manufacturers Life Insurance Company	2.8%	3.4%
National Bank Financial Inc.	6.1%	7.1%
Ontario Teachers' Pension Plan Board	6.9%	8.6%
Scotia Capital Inc.	6.2%	7.2%
TD Securities Inc.	5.4%	6.7%
Other former TMX Group shareholders	39.2%	26.1%
Total	100%	100%

Notes:

(1) Assumes Investors receive 70% cash and 30% Maple shares for TMX shares currently held by certain Investors.

(2) Assumes Investors receive 80% cash and 20% Maple shares for TMX shares currently held by certain Investors.

Maple and its Investors support the rationale for the Share Ownership Restriction – that no one shareholder or group of shareholders acting jointly or in concert should exercise substantial influence over an operating exchange without prior approval of the Commission. To that end, other than in connection with facilitating the Alpha and CDS Acquisitions, after completion of the Maple Acquisition there will be no agreements, commitments or understandings between the Investors with respect to the voting of Maple's shares and each Investor will deal with its interest in Maple in accordance with its own self-interest, objectives and concerns.8

Moreover, we believe it appropriate that the Share Ownership Restrictions be applied to Maple as part of its recognition as an exchange. Where the Share Ownership Restrictions are applied to Maple, Maple would amend its articles to provide for the Share Ownership Restrictions within its articles and to add comprehensive enforcement mechanisms, substantively identical to the existing enforcement mechanisms set out in TMX Group's articles, that would be applicable in the event of a contravention of the Share Ownership Restrictions.[9]

8 We note that each of CIBC World Markets Inc., National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc., has agreed that for a period of five years following completion of the Maple Acquisition, it will continue to own at least the lesser of: (a) during the first year of such period, 6.25%, and thereafter, 5.625%, of the total issued and outstanding Maple shares as at the date of, and after giving effect to, the completion of the Maple Acquisition; and (b) such percentage of the total issued and outstanding Maple shares acquired by it as a result of its subscription for Maple shares pursuant to its equity commitment letter, as at the date of, and after giving effect to, the completion of the Maple Acquisition. The remaining shareholders of Maple will be free to dispose of their shares as they see fit.

9 Schedule B to TMX Group's articles provides for comprehensive enforcement mechanisms that are applicable in the event of a contravention of the Share Ownership Restrictions. After a determination of contravention by TMX Group directors, some of the enforcement mechanisms are that no person may vote the voting shares of the contravening persons or companies, dividends on the voting shares are limited or prohibited and TMX Group is required to send a notice requiring the sale of voting shares held in contravention. In the event that such a required sale is not made, the further enforcement mechanisms then applicable include the prohibition of the exercise of any right or privilege attached to the voting shares and the right of TMX Group to sell or redeem voting shares held in contravention and to remit the net proceeds to the holder. In addition to the enforcement mechanisms in TMX Group's articles, there are sanctions and remedies for the offence of a contravention of section 21.11 of the Act, including fines, imprisonment and remedial orders of the Commission and the courts.

Other Obligations

Consistent with Maple's respect for the existing regulatory framework in respect of TMX Group and TSX, to ensure continuity of the existing recognition order, Maple agrees to adhere to substantially the same terms and conditions currently applicable to TMX Group in all other aspects of its recognition order.

Amended and Restated Recognition Order

On September 3, 2002, the Commission issued an amended and restated recognition order in respect of the TSX and also granted TMX Group recognition as a stock exchange pursuant to section 21 of the Act, as amended and restated on August 12, 2005 and as amended December 16, 2005, August 10, 2006 and June 1, 2008. We respectfully request that the Commission amend the existing recognition order of TMX Group to recognize Maple as an exchange, to implement the Share Ownership Restrictions and the governance and other obligations described herein, and to otherwise update the representations supporting such order, all in the form to be agreed between Maple and the Commission. In that regard, Maple proposes that the recognition of Maple and the amendments to the recognition orders of TMX Group and TSX would become effective contemporaneously with the take-up by Maple of the voting securities of TMX Group under the Offer.

4. Acquisition of CDS

Contemporaneous with or following completion of the Maple Acquisition, Maple intends to acquire CDS. Maple intends to form a committee of directors who are independent of Maple shareholders with an interest in CDS to oversee the process of evaluating and consummating the acquisition of CDS, including ensuring that the consideration to be offered is fair, from a financial point of view, to shareholders of Maple (excluding Investors with an interest in CDS).

Each of the Investors has agreed with Maple to use its commercially reasonable efforts to pursue and effect the acquisition of CDS and to support such transaction. Maple understands that, in circumstances where Maple controls TMX Group, with the support or abstention of any one of the Investment Industry Regulatory Organization of Canada ("**IIROC**"), The Bank of Montreal or Royal Bank of Canada (as direct or indirect shareholders of CDS), the Investors or their affiliates would be able to cause the completion of the acquisition of CDS.

Affiliates of each of CIBC World Markets Inc., National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc. currently directly and indirectly hold shares of CDS and would be expected to receive its proportion of any consideration payable therefor in connection with an acquisition of CDS concurrently with or following the successful completion of the Maple Acquisition.

Integration Objectives

Our objective is to more closely align the products and services offered by TMX Group, in particular by its indirect subsidiary CDCC, and those offered by CDS to create an efficient trading and clearing platform for all asset classes, whether exchange traded or over-the-counter. We believe that this alignment, combined with external market forces and the common ownership of CDS and CDCC, will enable more efficient and effective new product development for clearing and settlement, increase the ease of access and use for clients, enable the creation of innovative new risk management tools and facilitate improved collateral management, including cross-margining across asset classes.

As described in greater detail above in part 2, "*Maple's Vision and Key Benefits*", by aligning the operations of CDS and CDCC under Maple, the combined enterprise will be better able to grow and develop new solutions for the Canadian capital markets and will be able to develop products and solutions that CDS and CDCC would individually be unable to develop independently. Furthermore, it is our intention to open a dialogue with regulators with a view to establishing trade repository services under the combined enterprise. This alignment, and the provision of trade repository services, will bring distinct benefits for regulators through the provision of data streams providing meaningful insight across the trading chain and enhancing transparency on systemic risk to enable such regulators to more effectively discharge their systemic risk mandates.

Under our proposal, the clearing infrastructure of CDS and CDCC would be integrated. To maintain separation of financial risk, under the legal structure we expect that the clearing operations of each of CDS and CDCC would remain housed in separate legal entities, with material overlap in personnel, resources and board membership. To further isolate risk, the depository and settlement functions of CDS would be housed in a separate subsidiary of TMX Group. Initially, technology would be integrated by means of straight-through processing between the technology platforms of CDS and CDCC with the goal of moving to one common platform over time. That integration is a long term project, requiring careful planning, which will be commenced by appropriate experts within the applicable organizations following the completion of the Transactions. The common information technology infrastructure would remain open to other ATSs and exchanges operating in Canada in order to continue to foster innovation of new products and an ongoing competitive trading environment.

The services, policies and procedures (such as the margin requirements, the applicable membership requirements, etc.,) of CDCC and CDS will continue to be maintained in the ordinary course consistent with current practice. Following the completion of the acquisition of CDS, management and the boards of CDS and CDCC will develop a reorganization plan to accomplish the integration of the clearing infrastructure of CDS and CDCC and the separation of the settlement and depository functions into a separate legal entity. Among other things, this reorganization plan will address the ownership of each such legal entity within the Maple group of companies, which has not been determined at this time.[10] The reorganization plan will be presented to applicable regulators for their approval prior to the implementation thereof and will include proposed amendments to applicable recognition orders and undertakings, if required.

CDS will remain headquartered in Toronto and CDCC will remain headquartered in Montréal. Consistent with existing regulatory requirements, the most senior officer of CDCC would be a resident of Québec at the time of his or her appointment and for the duration of his or her term of office and will work in Montréal.

Corporate Governance

We are proposing a governance structure that we believe will ensure that the best interests of CDS and CDCC are met, taking into consideration input from members, market participants and regulators and with due consideration of the public interest. Under our proposal, the boards of directors of CDS and CDCC (the "**Clearing Boards**") will include a number of directors who will be common to each board and also a number of directors unique to each board taking into account the specific technical and other expertise required in respect of each clearing operation. Maple's proposed governance arrangements will ensure fair and meaningful representation on the Clearing Boards and their committees, including appropriate representation by directors who are persons independent of Maple. It is also our desire to ensure continuity on the Clearing Boards through the inclusion of existing CDS and CDCC directors, respectively (if they agree to serve).

Maple believes that adopting overlapping boards at CDS and CDCC will facilitate consistent governance and direction at CDS and CDCC and enhance Maple's ability to efficiently integrate their clearing infrastructure.

Maple will annually make a regularly scheduled meeting of the Clearing Boards open to observers from the Bank of Canada, the Commission and the Autorité, as applicable, and will furnish each such regulator with copies of all board and committee minutes to ensure transparency for regulators.

Composition of the Clearing Boards

We believe it is critically important that the Clearing Boards include directors with technical expertise, industry experience and an interest in the successful and efficient operation of the business and the evolution thereof. The board of directors of each of CDS and CDCC will be comprised of 11 directors, including 5 directors appointed by Maple, 5 independent directors[11] and the Chief Executive Officer of CDS and CDCC, respectively.

Under Maple ownership, CDS and CDCC will each take reasonable steps to ensure that each director of CDS and CDCC, respectively, is a fit and proper person and that the past conduct of each director affords reasonable grounds for belief that the director will perform his or her duties with integrity. The selection criteria for persons to serve as directors will focus on identifying knowledgeable persons who understand the industry and, wherever appropriate, have an interest in the successful and efficient operation of the business and to ensure that the risks to the clearing and settlement system are properly managed.

The Clearing Boards will be comprised of persons with relevant subject matter expertise and industry experience, including persons with expertise in derivatives clearing at CDCC (including risk management and the technology requirements related to derivatives clearing) and equities clearing at CDS (including risk management and the technology requirements related to equities clearing). We commit that at least 25% of the directors of CDCC will be persons that have expertise in derivatives clearing. In addition, at least 25% of the directors of CDCC will be residents of Québec at the time of their election or appointment.

We commit that at least 4 of the 11 directors of each of CDS and CDCC will be representatives of users of the clearing services of CDS and CDCC, respectively. We will also invite IIAC and IIROC to propose to the Governance Committees of each of CDS and CDCC a list of potential independent director candidates to serve on the CDS and CDCC boards, and those Governance Committees will, subject to being satisfied that the applicable nominee is a fit and proper person, select at least one of the proposed candidates to act as a director of CDS and CDCC, respectively. These industry directors would also serve on the risk

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10 For example, CDCC is presently a wholly-owned subsidiary of MX. As part of the reorganization, CDCC may remain a wholly-owned subsidiary of MX, it may become a direct wholly-owned subsidiary of TMX Group, or it may become a wholly-owned subsidiary of another subsidiary of TMX Group.

11 For purposes of the CDS and CDCC boards, a director will be "independent" if the director is not: (a) an associate, partner, director, officer or employee of a shareholder of Maple where such shareholder beneficially owns or exercises control or direction over more than 5% of the outstanding shares of Maple; or (b) an officer or employee of Maple or its affiliates or an associate of such officer or employee. In addition, at least two of the independent directors will not be an associate, partner, director, officer or employee of a participant of CDS or member of CDCC or their affiliates or an associate of such director, partner, officer or employee. The threshold of 5% above may be adjusted if other persons become additional investors in Maple.

management committees of CDS and CDCC, respectively, to ensure user input into any risk management decisions, including collateral requirements. We believe that this structure, together with the use of Market Participant Advisory Committees as described below, will ensure user representation in the governance and operations of CDS and CDCC, and properly balance the need to ensure that an appropriate level of expertise is provided by industry participants while also ensuring a diversity of views from independent directors who are not associated with Maple, CDS or CDCC.

Board Committees

The Clearing Boards will each establish three committees, all chaired by independent directors, to assist the Clearing Boards in the discharge of their respective duties. In brief:

- **Risk Management Committee** – This committee will be comprised of at least four directors. It will be charged with, among other things, assisting the board in fulfilling its risk management responsibilities, including reviewing and assessing CDS' or CDCC's (as applicable) risk management policies and procedures and the adequacy of the implementation of appropriate procedures to mitigate and manage such risks. Members of the committee will be required to possess experience or expertise in one or more of the following areas: internal risk controls, risk assessments and reporting, legal matters, government and public policy, accounting, risk management and corporate governance.

- **Finance and Audit Committee** – This committee will be comprised of at least four directors, all of whom will be independent. It will be charged with, among other things, monitoring the financial performance of CDS or CDCC (as applicable), providing financial management and direction to the business and affairs of CDS or CDCC (as applicable) and advising the board on the equitableness of its pricing and fees.

- **Governance Committee** – This committee will be comprised of at least four directors, at least a majority of whom will be independent. It will be charged with assisting the board on matters related to corporate governance, including, without limitation: (a) the candidate selection process for the identification of independent directors and the orientation of new members; (b) oversight of policies and procedures for the identification and resolution of conflicts of interest; (c) the operation of the Market Participant Advisory Committees (as described below); and (d) ensuring fair and equitable resources are dedicated to development projects for competitive ATSs and exchanges.

In connection with the process for the acquisition of CDS, Maple anticipates working with CDS and CDCC to develop formal mandates for the Clearing Boards and committees. Such formal mandates will be submitted to the Commission for approval prior to the implementation thereof.

Selection of Future Independent Directors

The Governance Committee of each of CDS and CDCC will be charged with nominating independent directors. Each Governance Committee will review on an ongoing basis the composition of the applicable board, including the current strengths, skills and experiences on the board and its strategic direction. Each Governance Committee will be charged with identifying any gaps in its board's composition and seeking to fill those gaps. Qualities such as integrity, good character and high regard in his or her community or professional field will always be basic criteria for board members. Each Governance Committee will also consider independence, professional or board expertise, and other relevant expertise and experience. The objective will be to ensure that the board's composition provides an appropriate mix of skills and experience to guide the strategies and business operations of CDS and CDCC, as applicable. As previously discussed, we will also invite IIAC and IIROC to propose to the Governance Committees lists of potential independent director candidates, and each of the Governance Committees will, subject to being satisfied that such nominee is a fit and proper person, select at least one of the proposed candidates to act as a director.

Public Interest and Duties to CDS and CDCC

The Clearing Boards will be specifically focussed on discharging their duties having due regard to the public interest. We intend to adopt a board code of conduct which establishes similar expectations for directors appointed to the Clearing Boards as are described in part 3 "*Acquisition of TMX Group – Public Interest and Duties to Maple*" above. The code of conduct will also include conflict of interest disclosure provisions.

On a more general basis, Maple will ensure that CDS and CDCC and their respective subsidiaries are appropriately partitioned from Maple and its other subsidiaries to avoid situations of real, potential or apparent conflicts of interest that may arise, and to ensure that confidential information currently or potentially held by CDS or CDCC concerning their functions, activities and files remain confidential and are not communicated, disclosed or exchanged inappropriately to Maple or its applicable subsidiaries or to third parties.

Further, Maple will ensure that it and CDS and CDCC strive to minimize any risk of conflict of interest between risk management functions and other operations of CDS and CDCC, respectively. The clearing operations of each of CDS and CDCC are presently part of larger organizations with existing risk management policies intended to address the risk of conflict of interest between risk management functions and other operations (in the case of CDS, the depository and other operations, and in the case of CDCC, the exchange and other operations). We do not believe that the completion of the Transactions would require that any new mechanisms be introduced in this regard. These organizations presently assess the adequacy of their risk management policies and procedures at least annually and each organization benefits from the advice and guidance of a market participant risk advisory committee. We propose that these prudent risk management practices would continue to be adhered to consistent with past practice and that amendments and improvements to risk management policies and practices would be implemented where necessary or desirable.

We do not believe that the business model of the organization (i.e., cost recovery or for-profit) inherently leads to any difference in risk profile. CDCC has for several years operated on a for-profit basis under TMX Group's ownership, with an internal risk management committee of the CDCC board that is advised by a market participant risk advisory committee. Following the completion of the Transactions, CDCC would continue to do so utilizing the same policies and procedures as it does today. Similarly at CDS, CDS will continue with a risk management committee of the CDS board that is advised by a market participant risk advisory committee following its acquisition. Maple expects that CDS will successfully make the transition to a for-profit model just as CDCC did and without impairment of risk management policies and procedures. All decisions with respect to risk management regarding clearing services will continue to be made by the CDS and CDCC boards, respectively, taking into account the advice of the market participant risk advisory committees.

Advisory Committees

CDS and CDCC presently utilize market participant advisory committees to obtain participant input into their clearing operations. Maple believes that the existing process is effective at obtaining this input. CDS for example highlights at page 36 of its 2010 Annual Report that:

> "CDS has developed processes that provide for extensive consultation and input from all stakeholder groups. Membership on these committees extends to a wide range of stakeholders and ensures that there is extensive understanding and input regarding CDS policies and operations."

We propose to enhance the committee mechanism by formally enshrining it in CDS' recognition order and mandating annual reporting obligations to the Commission with respect to the recommendations made by such committees. In such annual report to the Commission, CDS would be required to explain any rejection of a recommendation or any partial or modified implementation of a recommendation of such committees with respect to its clearing operations. Each market participant advisory committee would be provided a copy of CDS's report and such market participant advisory committee would be required to advise the Commission if it accepts CDS's report or, where it disagrees with such report, provide reasons for such disagreement. A similar mechanism is proposed for CDCC. In this manner the board would be obligated to proactively consider the issues and suggestions raised by the market participant advisory committees, the Commission would be made aware of such issues and suggestions, and the Commission would be made aware of the dispositions thereof.

Accordingly, we intend to establish external Market Participant Advisory Committees with the participation of industry executives to advise on, among other things, matters of service development in order to (a) ensure that systems development initiatives are prioritized based on industry consensus, (b) arrange for provision of industry data related to services, such as operating volumes, (c) facilitate the provision of expert industry resources for projects and arrange for agreed upon resources to be made available, and (d) assist management in improving industry understanding of functions and benefits for CDS and CDCC services. We currently anticipate that the Market Participant Advisory Committees will include a strategic development committee, a risk advisory committee and specific committees for each of the derivatives, equities and fixed income industries.

The CDS and CDCC Governance Committees would be charged with responsibility for overseeing their respective Market Participant Advisory Committee process to ensure it is properly implemented and that adequate resources in the form of logistical support are furnished to the committees. To facilitate this mandate, the Governance Committees would be expected to meet at least annually with the chairs of their respective Market Participant Advisory Committees to, among other things, obtain feedback on the committee process with a view to optimizing such process.

Participation on the Market Participant Advisory Committees would be open to all interested parties within the industry, including members of IIROC and IIAC. We also propose that the Bank of Canada, the Commission and the Autorité would be entitled to participate on all Market Participant Advisory Committees.

Management

We expect that the senior executive position for CDS and CDCC will be maintained, but that certain management and other functions will be reviewed as part of the integration analysis to achieve an efficient organizational structure. The specific details of such integration will be determined by CDS and CDCC senior management, under the supervision of the CDS and CDCC boards, following the completion of the Transactions.

CDS Fees

Under Maple ownership, CDS Clearing will offer a for-profit customer-centric proposition which balances cost and service. We intend to operate an equitable pricing structure – there will be unit pricing for clearing, depository and settlement services such that all participants will pay the same price for the same services. We commit that all fees imposed by CDS Clearing for clearing, depository and settlement services will be equitably allocated in relation to product types and volumes, will not have the effect of unreasonably creating barriers to access such services and will be balanced with the criterion that CDS Clearing has sufficient revenues to satisfy its responsibilities, including to its shareholder. In addition, the process for setting fees will remain fair, appropriate and transparent. CDS Clearing will have a practice of benchmarking its fees for its various products against relevant domestic and international counterparts and CDS' Finance and Audit Committee, comprised entirely of independent directors, will be responsible for advising the CDS board with respect to the equitableness of its fees, taking into account the interests of market participants, including as articulated by the Market Participant Advisory Committees. In addition, we commit that the fees, costs and expenses borne by participants in the clearing, depository and settlement services will not reflect any cost or expense incurred by CDS Clearing in connection with any activity that is not related to such services.

Access

Maple understands that ensuring fair access to CDS is essential to an efficient marketplace and does not intend to make any changes in this regard.

CDS presently maintains an open architecture and permits all market participants that satisfy applicable criteria to access its clearing services, no matter the Canadian trading venue where the trade is executed. Maple does not propose any changes to the recognition order of CDS with respect to access, and intends to maintain CDS's open architecture following the completion of the Transactions with a view to continuing to fulfil CDS's public interest mandate. In addition, Maple has no intentions to make any changes to such access criteria or eligibility requirements. Under Maple ownership, CDS will provide any person or company reasonable access to the clearing, settlement and depository services of CDS where that person or company satisfies the applicable participation standards. CDS will continue to maintain written records of each such grant or denial or limitation of access and the reasons for such grant or denial or limitation of such access. These records will remain open for review by the Commission.

Competition

CDS does not provide any services provided by TMX Group, Alpha or any of their respective subsidiaries (including CDCC). Accordingly, an acquisition of CDS by Maple following the Maple Acquisition will not reduce competition in any market for clearing, settling, custody or any other services provided by CDS. DTCC in the United States will remain CDS Clearing's closest competitor.

We recognize that CDS will become 100% controlled by TMX Group pursuant to the proposed Transactions and that Canadian-based competitors of TMX Group in the provision of equities trading platforms in Canada will continue to use CDS Clearing for clearing services. However, as the principal Canadian clearing system for equities trading (in which TMX Group and affiliates of major bank-owned investment dealers already have a significant interest), CDS is already subject to extensive regulatory oversight designed to ensure access to its clearing system on non-discriminatory terms and conditions.[12] In addition to that continued regulatory oversight, the above-noted substantial independent director representation on the CDS board and its committees, partitioning of CDS from Maple and its other subsidiaries, Market Participant Advisory Committees (to which operators of competing Canadian-based ATSs will be invited to join), and the unit pricing model under which all participants will pay the same price for the same clearing, settlement and depository services, will further assist in addressing any such concerns about TMX Group controlling the clearing system in Canada.

The proposed acquisition of CDS also will <u>reduce</u> the percentage ownership of CDS by affiliates of the bank-owned investment dealers. Individually, affiliates of Schedule I Canadian banks currently own on average about an 11% interest in CDS, with one bank affiliate owning over 20% of CDS. As a group, such bank affiliates currently own over two-thirds of CDS. Following the proposed transactions, no Schedule I bank-owned dealer or its affiliates will own more than 7.5% of the combined TMX Group/CDS, and the Investors who are such bank affiliates will own less than 28%. Indeed, the above-noted Share Ownership

[12] For example, section 13 of the Ontario Securities Commission's recognition order of CDS Clearing requires CDS Clearing to equitably allocate its fees for settlement and requires that such fees not have the effect of unreasonably creating barriers to access to such settlement services. Section 13 also requires such fees to be fair, appropriate and transparent. In addition, pursuant to section 20.3 of the recognition order, CDS Clearing rules may not permit unreasonable discrimination among participants. More generally, the Commission has the authority under section 21.2(3) of the Ontario Securities Act to make decisions in the public interest with respect to any by-law, rule, regulation, policy, procedure, interpretation, or practice of CDS Clearing and the manner in which CDS Clearing carries on business.

Restrictions will ensure that no one exercises control or direction of more than 10% of CDS's controlling parent company following completion of the proposed transactions.

Amended and Restated Recognition Order

On October 17, 2006, the Commission issued an amended and restated recognition order in respect of CDS, as amended on August 9, 2007. We respectfully request that the Commission amend and restate the recognition order to reflect a "for profit" business model, to implement obligations described herein and to reflect the Market Participant Advisory Committees, all in the form to be agreed between Maple and the Commission.[13] Maple proposes that the amendments to the recognition orders of CDS and CDS Clearing would become effective only upon the direct or indirect acquisition by Maple of a majority of the outstanding voting shares of CDS Ltd.

To ensure continuity of the existing recognition order in respect of CDS, Maple proposes that the recognition order will also require Maple to do everything within its control to cause CDS Ltd. (and CDS Clearing) to satisfy their obligations pursuant to the recognition order and to perform the obligations set out in sections 4.0 (Risk Controls), 5.0 (Allocation of Costs), 6.0 (Allocation of Resources), and 9.0 (Information Sharing).

5. Acquisition of Alpha Group

Contemporaneous with or following completion of the Maple Acquisition, Maple intends to acquire Alpha. Maple intends to form a committee of directors who are independent of Investors with an interest in Alpha to oversee the process of evaluating and consummating the acquisition of Alpha, including ensuring that the consideration to be offered is fair, from a financial point of view, to shareholders of Maple (excluding Investors with an interest in Alpha).

Each of the Investors has agreed with Maple to use its commercially reasonable efforts to pursue and effect the acquisition of Alpha and to support such transaction. Maple understands that the Investors who hold (or whose affiliates hold) ownership interests in Alpha would be able to cause the acquisition of Alpha to be completed.

Each of CIBC World Markets Inc., CPP Investment Board Private Holdings Inc. (an affiliate of Canada Pension Plan Investment Board), Desjardins Securities Inc. (an affiliate of Desjardins Financial Corporation), National Bank Financial Inc., Scotia Capital Inc. and TD Securities Inc. owns securities of Alpha and would be expected to receive its proportion of any consideration payable in connection with the acquisition of Alpha concurrently or following the successful completion of the Maple Acquisition.

Integration Objectives

We envision maintaining multiple equities trading platforms within Maple for providing complementary services and to cater to the differing needs of some market participants. Users are not homogenous and we believe that the ability to potentially offer multiple trading venues serving different constituencies may represent an opportunity to increase Maple's trading volumes. We intend to consult with market participants prior to making any decision with respect to the best course of action for the platforms and services of Alpha and TMX Select, TMX Group's new ATS, recognizing that it may not be necessary to meet the needs of market participants for TMX Group to operate multiple ATS platforms.

If Maple is successful in acquiring Alpha, the board of directors will consider whether Alpha should withdraw or continue to pursue (i) its proposal to be recognized as an exchange by the Commission and to provide listing services, and (ii) its application for an exemption from the Autorité with respect to (i).

Vigorous Ongoing Competition

We believe the provision of trading services for equities listed on TMX Group's operating exchanges is an area that will continue to be subject to vigorous competition following the combination of Alpha with TMX Group.

Trading of TMX listed equities takes place on several types of platforms:

(a) "lit platforms", such as the equity exchanges operated by TMX Group, NYSE, and NASDAQ and ATSs such as Alpha, Chi-X Canada, Omega ATS and Pure Trading, as well as U.S.-based ATSs such as BATS and Direct Edge;

(b) "dark pools", platforms typically used by institutional investors to trade large blocks of equities without providing pre-trade transparency; and

(c) over-the-counter", where equities are traded between two parties, away from any structured venue.

[13] Maple has also proposed to the Autorité parallel changes to the Autorité's recognition order applicable to CDS.

Over the six months ended May 31, 2011, the lit platforms represented 87% of the total volume traded globally (taking into account international volumes) for the 248 constituents of the S&P TSX Composite Index.[14] TMX Group, Alpha and many others compete for trading volume in the lit platforms. TMX and Alpha combined represented 51% of the total volume traded globally, and 46% of the total value of those trades, for the constituents of the S&P TSX Composite Index in the 6-month period ended May 31, 2011. (Alpha itself represented 12% by volume and 9% by value.)

Market Shares

In some industries, especially those characterized by significant excess capacity, for the purposes of assessing likely competitive impact, it is most appropriate and meaningful to measure competitors' market shares based on capacity.[15] In equities trading, each trading system has not only significant, but effectively unlimited, capacity. Accordingly, in the context of equities trading, the above-noted combined TMX/Alpha shares overstate the competitive influence of a combined TMX/Alpha. We also note that equities trading volumes are able to easily shift among trading platforms given the abundance of available capacity, low switching costs and technological features inherent to the equities trading business. A more meaningful factor is the existence and ready availability of three other lit ATSs in Canada, several U.S.-based exchanges and lit ATSs, "dark" trading platforms in Canada and the U.S., and the ability to quickly and easily establish additional ATSs to which users could rapidly divert sufficient trading volume to make unprofitable any attempt by a combined TMX/Alpha to raise trading fees above competitive levels, or otherwise engage in anti-competitive conduct.[16]

In any event, market share is only one factor in the analysis of competitive effects. For example, market share is not determinative of the Competition Bureau's analysis of a merger, and section 92 of the Competition Act expressly states that the Bureau's analysis cannot be based only on market shares. Other important factors that the Bureau takes into account include whether barriers to entry and expansion are low (which they are here), the ability of customers to easily switch suppliers (which is costless in this case), and the disruptive role of innovation (which also operates here).

Even if we consider only the lit trading platforms, following the integration of TMX and Alpha, vigorous and effective competition for equities trading of TMX-listed securities will continue to be provided by:

(a) other Canadian-based ATSs, each of which has a sophisticated trading platform, effectively limitless capacity, and the ability to draw bids and trades to its platform with advantageous pricing of trading fees and other features;

(b) U.S. exchanges and ATSs, such as NYSE, NASDAQ, BATS and Direct Edge, on which a large volume of inter-listed TMX securities already trade;

(c) the threat of entry by new Canadian-based ATSs with similar capabilities to Alpha, particularly given the ease of entry, including from a technological and regulatory perspective – for example, all Canadian dealers are required by law (under the order protection rule) to have direct or indirect access to each new ATS and trade on any ATS which offers the best price; and

(d) the threat of regulatory intervention by provincial securities regulatory authorities in response to any conduct deemed not to be in the public interest (anti-competitive conduct is unlikely to be considered to be in the public interest).

Canadian-Based ATSs

Chi-X Canada, Pure Trading and Omega ATS are Canadian-based lit ATSs that compete for trading volume, have effectively unlimited capacity to handle increased volumes of trades, and have been increasing their share of overall trading of TMX-listed equities. Each of these ATSs offers equities trading services, possesses significant excess trading capacity, and exerts a comparable competitive constraint upon TMX Group and Alpha.

In considering the competitive impact and potential impact of these ATSs, it is useful to keep in mind that Alpha itself is a relatively small business that has been in operation for only about three years. Alpha has benefited from varying degrees of support from its current owners, but as smaller percentage shareholders in a combined TMX/Alpha those owners may have less incentive to trade on TMX than they currently have to trade on Alpha. Accordingly, Chi-X, Pure and Omega will be even better

[14] All statistical data in this section is derived from Fidessa Fragmentation Index and the TSX eReview and is for the six months ended May 31, 2011.

[15] See, for example, the Commissioner of Competition's *Merger Enforcement Guidelines*, at para 4.7: "Where firms producing homogenous products have excess capacity, market shares based on capacity may best reflect a firm's relative market position and competitive influence in the market."

[16] A recent example of rapid entry by an established foreign ATS into Canada is SIGMA X, which is owned by Goldman Sachs. Goldman Sachs intends to support its ATS with its own clients' trading volumes. See below for additional information about SIGMA X.

positioned to attract greater trading volumes following a TMX/Alpha combination, and to represent an even greater competitive discipline on trading fee pricing by TMX.

Traders can and do switch between trading platforms without incurring any cost. Rapid switching of platforms used by dealers in favour of the best price or advantageous fee opportunities takes place all the time – for example, Chi-X recently opened its platform to trading for TSX-V stocks, offering attractive fee levels to "active side" traders, and within two weeks captured more than 4% by volume and 9% by value of all trading of TSX-V equities in Canada.

U.S. Trading Platforms

As noted above, competition is not limited to Canadian-based ATSs. U.S. exchanges and ATSs offer additional trading platforms for Canadian-based securities also listed in the U.S. For example, although inter-listed Canadian-based securities account for only 8% of the securities listed on the TSX, these inter-listed Canadian-based securities account for 25% of the total volume and 54% of the total value of trading on the TSX over the same six month period. Indeed, 38% of the total volume and 40% of the total value for these inter-listed securities traded on U.S. platforms, compared to 37% and 38% collectively on TSX and Alpha.[17] The U.S. platforms directly constrain pricing for equities trading in Canada. If such Canadian pricing were ever to exceed competitive levels, migration of the trading volume for inter-listed Canadian equities (and associated revenues) to trading platforms in the United States would accelerate to a point that would make such an attempted uncompetitive price increase unprofitable.

As noted above, we commit that TMX equity trading fees will not discriminate as between inter-listed and non-inter-listed securities. This commitment will provide added assurance of the ongoing competitive constraint on all TSX listed equities created by the option to trade in the U.S. In the absence of discrimination in trading fees for listed and non-interlisted equities, the risk of losing substantial inter-listed trading volume in the event of an attempted uncompetitive price increase will keep the trading fees for all TSX listed equities competitive.

Ease of Entry

As noted above, the threat of new entry will be an additional competitive constraint on a combined TMX/Alpha. In this regard, it should be kept in mind that Canadian equities trading regulations support the establishment of new entrant ATSs. For example, Canadian dealers are obligated to maintain direct or indirect access to all ATSs and must observe the order protection and "best execution" rules, which require that trades be routed to such an ATS when it presents the most attractive opportunity for a particular trade. Technology requirements are also modest and an ATS can be profitable even with relatively small volumes traded on its system. If the combined TMX/Alpha entity attempted to significantly raise trading fees following the proposed Transactions, it would face a real risk of inducing other foreign ATSs to enter Canada.

Established U.S. ATSs, for example, have the management, reputation and advanced technology necessary to quickly establish a material presence in Canada. They also maintain relationships with high frequency traders, who are already familiar with the technologies these ATSs operate. In late August, Goldman Sachs announced that it would expand its dark pool ATS, SIGMA X, into Canada for trading in TSX listed stocks.[18] Goldman Sachs indicated that its ATS would make use of Goldman Sachs' electronic trading technology and be supported with its own and its clients' liquidity. Analysts reported that, "*Goldman is betting on demand from its own clients, a pricing model that it believes will be cheaper, and the fact that it is adding other technology to its Canadian offering, including a locally-placed smart order router that will be faster and attract clients.*"[19]
The leading U.S. ATSs, which account for approximately 10% each of trading in lit U.S. equity markets, are BATS and Direct Edge. BATS has publicly commented about its desire to enter Canada. Operation of a Canadian-based ATS would make either of these firms an even stronger competitive threat to a combined TMX/Alpha.

User Incentives

Users of TMX and ATSs are sophisticated entities who have a good understanding of the costs of using the various available trading platforms. If a combined TMX/Alpha were to attempt to impose anti-competitive price increases on trading fees, traders (including the minority investors in TMX/Alpha) would have a strong incentive to move a substantial portion of their own trades (subject to the order protection and best execution rules) to other ATSs, U.S. trading platforms or new entrants. Even the investment dealers with share ownership positions in TMX/Alpha (each with less than 7.5%), would benefit by directing their trades to lower priced platforms. While a 7.5% investor in TMX may regain some value from paying a higher trading fee to TMX, any such benefit is clearly outweighed by paying 100% of an uncompetitive fee when that dealer has the option of using other platforms. In this environment, uncompetitive trading fee levels would create a strong incentive for all users to move significant

[17] See Maple's Offer to Purchase and Circular dated June 13, 2011 at page 48.
[18] "Goldman Sachs Launches Sigma X™ Canada", Goldman Sachs Electronic Trading press release, August 18, 2011, available online: http://gset.gs.com/cgi-bin/upload.dll/file.pdf?z03860f0azffdd0179528d4cde88555e6bdd4ffdad.
[19] Boyd Erman, "Goldman sees opportunity in tough market for dark trading", The Globe and Mail, August 19, 2011, available online: http://www.theglobeandmail.com/globe-investor/investment-ideas/streetwise/goldman-sees-opportunity-in-tough-market-for-dark-trading/article2134847/.

volumes to other existing ATSs and exchanges and would create incentives for rapid establishments of new trading venues such that an attempted TMX/Alpha uncompetitive price increase would be unprofitable and unsustainable.

Regulation

Finally, all aspects of the provision of equities trading services, including fees and access, are subject to regulation by provincial securities authorities. Among other things, securities regulatory authorities could regulate equity trading fees if they determine that to be in the public interest. Even absent actual price regulation, the threat of regulatory activity will continue to be a significant discipline on the activities of TMX/Alpha and a further influence to keep its equity trading fees competitive.

Efficiencies

The combination of TMX Group and Alpha will create more efficient and diversified trading venues that will allow TMX Group to better serve its customers and thereby better compete with other ATSs and exchanges, including U.S. trading systems with respect to Canadian inter-listed equity securities. The resulting repatriation of trading volume would benefit TMX Group's equity trading platforms, as well as MX's derivatives platform (since derivatives are traded where the underlying security is trading).

Alpha Fees and Access

We intend to maintain a competitive fee structure for Alpha (including as between inter-listed and non-inter-listed securities, for which there will be no price discrimination). Fees will be set in a manner that is harmonious with the present process for setting fees at TSX. With respect to data fees, Maple will continue to offer Alpha data on a non-discriminatory and unbundled basis – separate and apart from other TMX data.

We also intend to maintain appropriate standards for access to trading on Alpha that do not unreasonably prohibit, condition or limit access by persons or companies to Alpha's services.

Non-Competition Agreement

Consistent with standard commercial practice, the participation by each of the Investors in the Maple Acquisition was conditional upon such Investor (or its parent entity, and each such entity, a "**Parent**") agreeing to enter into a limited non-competition agreement with Maple and the other Investors or their Parents upon the closing of the Maple Acquisition. The Investors or their Parents (other than the pension fund Investors and Manulife Financial Corporation) will agree not to, and to cause their subsidiaries not to, engage in any business in Canada that competes with the business of TMX Group, CDS or Alpha, subject to certain exceptions. Further, each Investor or Parent (including the pension fund Investors and Manulife Financial Corporation) will agree not to, and to cause its subsidiaries for which it controls decision making authority not to, invest in any person engaged in establishing or operating an alternative trading system or recognized exchange in Canada, or in any person primarily engaged in the settlement and clearing of securities or derivatives trading transactions in Canada, subject to certain exceptions. The non-competition agreement will run for a term of five years from closing of the Maple Acquisition.[20]

The non-competition agreement is directly related to and necessary for the implementation of the Transactions. It limits the ability of the Investors and their affiliates (including those Investors with nominees on the Maple Board[21]) to undermine the significant investments in Maple of each of the Investors through competition with TMX Group in Canada for a limited period of time.

Maple submits that the non-competition agreement will not give rise to the Investors acting jointly or in concert after completion of the Transactions. The non-competition obligations in no way amount to any agreement between any of the Investors with respect to the future direction or development of Maple's business, and the obligations do not commit any of the Investors to take any positive action with respect to Maple's business or the conduct of an Investor's own trading activities. Moreover, the obligations under the non-competition agreement of each Investor or Parent will be independent of and entirely unrelated to (i) the continued ownership or acquisition of securities of Maple by such Investor or Parent during the term of the agreement, or (ii) the voting of any such securities. For instance, a pension fund Investor could sell all of its shares in Maple shortly after closing of the Maple Acquisition, but would continue to be subject to the non-competition obligation for the full five-year term.[22]

[20] A summary of the non-competition agreement is included at page 75 of Maple's Offer to Purchase and Circular dated June 13, 2011.

[21] Although the nomination rights will not expire until after six years, if at any time an Investor competed with TMX Group after the expiry of the non-competition agreement, such Investor's nomination right would expire immediately.

[22] The right of Maple to enforce each Investor's or Parent's obligations under the non-competition agreement will continue for the full term of the non-competition agreement. The right of each other party to enforce such obligations under the agreement will terminate on the date on which such party and its subsidiaries no longer owns at least that number of Maple common shares that represented 2% of the total issued and outstanding Maple common shares on the date that the non-competition agreement is entered into.

Non-Preferencing Obligations (in the event Alpha is unable to be acquired)

The Acquisition Governance Agreement contemplates the possibility that Maple might be unable to acquire Alpha even if all necessary regulatory approvals for the acquisition of Alpha are obtained. To account for this contingency, and with the same overall objective of not undermining the significant investments in Maple by each of the Investors, the Maple offer entails certain non-preferencing obligations that would arise in only specified limited circumstances. In particular, in the event that Maple completes the Maple Acquisition and receives approval from the Commissioner of Competition to acquire Alpha, but is unable for any other reason to acquire Alpha (or the ownership interests in Alpha held by CIBC World Markets Inc., Desjardins Securities Inc., National Bank Financial Inc., Scotia Capital Inc., TD Securities Inc. (collectively, the "**Alpha Dealers**") and CPP Investment Board Private Holdings Inc.), then each Alpha Dealer will agree with Maple that it will not preference trading on the facilities of Alpha with respect to its trading volumes in securities listed or traded on such facilities.[23] However, given that the Alpha Dealers and CPP Investment Board Private Holdings Inc. have committed to sell their ownership interests in Alpha to Maple at a price to be agreed upon or resolved by arbitration, Maple is of the view that it is highly unlikely that this non-preferencing obligation would ever come into effect.

The purpose of this contingent non-preferencing obligation is consistent with the rationale for the non-competition agreement. It provides assurance to the shareholders of Maple (other than the Alpha Dealers) that, in the event that Maple is unable to acquire Alpha (or the ownership interests of the Alpha Dealers and CPP Investment Board Private Holdings Inc.) in the circumstances described above, the Alpha Dealers will not (as a result of their ownership interests in Alpha providing them with an incentive to do so) preference their trades through Alpha to the disadvantage of trading platforms owned by TMX Group.

Each Alpha Dealer's non-preferencing obligation would be subject, of course, to applicable "order protection" and "best execution" rules and all other applicable securities regulatory requirements. Moreover, the obligation would not arise unless the Commissioner of Competition had previously approved both the acquisition of Alpha by Maple and the non-preferencing obligation. The non-preferencing obligation would have no additional competitive effects relative to an acquisition of Alpha.

For the same reasons described above in respect of the non-competition agreement, Maple submits that these non-preferencing obligations would not give rise to the Investors acting jointly or in concert after completion of the Transactions. The obligations would in no way amount to any agreement between any of the Investors with respect to the future direction or development of Maple's business, and the obligations would not commit any of the Investors to take any positive action with respect to Maple's business. Subject to the obligation not to preference Alpha, each of the Investors would remain free to conduct its own trading activities independently. Moreover, the obligations would be independent of and entirely unrelated to (i) the continued ownership or acquisition of securities of Maple by any of the Investors, or (ii) the voting of any such securities. The non-preferencing obligation of each Alpha Dealer would survive the sale by such Alpha Dealer of its shares in Maple and would continue to run in perpetuity.

6. Share Ownership

Share Ownership of TMX Group

Maple will acquire beneficial ownership of more than 10% of the TMX shares upon its take-up of TMX shares under the Offer. As TMX Group owns all the issued and outstanding voting shares of the TSX, as a consequence of Maple's take-up of TMX shares, Maple will also be deemed to beneficially own more than 10% of the voting shares of the TSX pursuant to section 1(5) of the Act. In order to acquire this beneficial ownership, Maple requires the Commission's approval.

Following take-up of TMX shares under the Offer, Maple will acquire the TMX shares not deposited under the Offer through the Subsequent Arrangement. In order to do so, Maple and the Investors require the Commission's approval to act jointly or in concert within the meaning of the Share Ownership Restrictions at TMX Group for the purposes of the Subsequent Arrangement.

In addition, each of the Investors has agreed to use commercially reasonable efforts to pursue and effect a transaction or transactions that would result in the acquisition by Maple of Alpha and CDS. For purposes of the Share Ownership Restrictions, it may be argued that as a result of such agreement the Investors would be acting jointly or in concert with respect to such acquisitions. In order to avoid any inadvertent violation of the Share Ownership Restrictions, Maple and the Investors request the Commission's approval to act jointly or in concert within the meaning of the Share Ownership Restrictions at TMX Group for the purposes of effecting the Alpha and CDS Acquisitions.

We request that the Commission make an order under section 21.11(4) of the Act granting approval for (a) Maple to beneficially own or exercise control or direction over more than 10% of the voting shares of each of TMX Group and TSX and (b) Maple and the Investors to act jointly or in concert as beneficial owners of voting securities of TMX Group for the purposes of (i) the Subsequent Arrangement and (ii) the Alpha and CDS Acquisitions.

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23 The value of such non-preferencing obligation would be negotiated between the Alpha Dealers and an independent committee of Maple's directors, provided that if the value could not be agreed upon it would instead be determined by binding arbitration.

Share Ownership of Maple

Following take-up of TMX shares under the Offer, and until the Subsequent Arrangement is completed, four Investors, Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board, will each beneficially own approximately 11.8% of the outstanding voting securities of Maple. As a consequence of the Share Ownership Restrictions being applied to Maple, these four Investors may not beneficially own over 10% of the voting securities of Maple during the transitional period between take-up under the Offer and completion of the Subsequent Arrangement without the prior consent of the Commission.

In addition, each of the Investors has agreed to use commercially reasonable efforts to pursue and effect a transaction or transactions that would result in the acquisition by Maple of Alpha and CDS. For purposes of the Share Ownership Restrictions, it may be argued that as a result of such agreement the Investors would be acting jointly or in concert with respect to such acquisitions. In order to avoid any inadvertent violation of the Share Ownership Restrictions, Maple and the Investors request the Commission's approval to act jointly or in concert within the meaning of the Share Ownership Restrictions at Maple for the purposes of effecting the Alpha and CDS Acquisitions.

We request that the Commission make an order granting approval for (a) Alberta Investment Management Corporation, Caisse de dépôt et placement du Québec, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board to each beneficially own or exercise control or direction over more than 10% of the voting shares of Maple during the transitional period between take-up under the Offer and completion of the Subsequent Arrangement and (b) the Investors to act jointly or in concert as beneficial owners of voting securities of Maple for the purposes of (i) the Subsequent Arrangement and (ii) the Alpha and CDS Acquisitions.

7. Undertakings in Other Jurisdictions and Confirmation of Exemption Orders

TSX Venture

On November 26, 1999, as amended on July 31, 2001, September 3, 2002, and August 12, 2005, and varied on June 1, 2008, TSX Venture was recognized by the ASC as an exchange in Alberta under subsection 52(2) of the *Securities Act* (Alberta) and by the BCSC as an exchange in British Columbia under subsection 24(2) of the *Securities Act* (British Columbia).

In connection with the Maple Acquisition, Maple will be making application to the ASC and BCSC that may impact their recognition orders of TSX Venture. As part of such application, Maple will propose to undertake to the ASC and BCSC that:

(a) it will do everything within its control to cause TMX Group and TSX to perform their undertakings to the ASC and BCSC with respect to TSX Venture;

(b) it will do everything within its control to cause TSX Venture to comply with the terms and conditions of its recognition order;

(c) it will, subject to certain notice obligations, cause TMX Group to allocate sufficient financial and other resources to TSX Venture to ensure that TSX Venture can carry out its functions in a manner that is consistent with the public interest and the terms and conditions of its recognition order;

(d) it will cause TMX Group to do everything in its control to cause TSX Venture to carry out its activities as a recognized exchange and to comply with the terms and conditions of its recognition order;

(e) it will adopt TMX Group's existing undertaking to not cause or permit TSX Venture to cease to operate or suspend, discontinue or wind-up all or a significant portion of TSX Venture's operations, or dispose of all or substantially all of TSX Venture's assets, without six month's prior notice to the ASC and BCSC and complying with such terms and conditions as the ASC and BCSC may impose;

(f) it will adopt TMX Group's existing undertaking to not complete or authorize a transaction that would result in TSX Venture ceasing to be wholly-owned or directly controlled by TSX without six month's prior notice to the ASC and BCSC and complying with such terms and conditions as the ASC and BCSC may impose;

(g) it will adopt TMX Group’s existing undertaking to advise the ASC and BCSC if it or TMX Group applies to the Commission for an order permitting Maple and, in turn, TMX Group to own, directly or indirectly, less than all of the issued and outstanding voting shares of TSX;

(h) it will adopt TMX Group's existing undertakings with respect to TSX Venture's trading systems, operations and procedures;

(i) it will adopt TMX Group's existing undertaking with respect to access by the ASC and BCSC to information possessed by Maple and its subsidiaries for the purposes of assessing the performance by TSX Venture of its regulation functions and the compliance of TSX Venture with the terms and conditions of its recognition order; and

(j) it will adopt TMX Group's existing undertaking to maintain a committee of the Maple Board named the Public Venture Market Committee and to refer to such committee for recommendation and advice all policy issues and matters that are likely to have a significant impact on the public venture capital market in Canada and the role of Maple and/or TSX Venture in relation thereto.

The undertakings will be set out in full in Appendix B to Maple's application to the ASC and BCSC, a copy of which will be furnished to the Commission.

These undertakings will take effect upon the take-up by Maple of voting securities of TMX Group in connection with the Maple Acquisition. These undertakings would cease to have effect if (a) the ASC or BCSC, as applicable, revokes TSX Venture's recognition order for any reason other than the failure by Maple to fulfill its undertakings, (b) TSX Venture ceases to carry on business after complying with any terms and conditions the ASC and/or BCSC, as applicable, may impose, or (c) TSX Venture ceases to be a subsidiary of Maple.

We respectfully request that the Commission provide an amended and restated exemption order in respect of TSX Venture consistent with the existing exemption order dated August 12, 2005 and referencing any such amended and restated TSX Venture recognition orders.

Montréal Exchange

On December 17, 2002, as amended on May 13, 2003, MX was recognized by the Commission des valeurs mobilières du Québec as a self-regulatory organization. Under a decision dated April 10, 2008, as amended on November 22, 2010, MX was authorized by the Autorité to carry on business as an exchange in Québec and was recognized by the Autorité as a self-regulatory organization.

In connection with the Maple Acquisition, Maple will be making an application to the Autorité that may impact its recognition order of MX. As part of such application, Maple will propose to undertake to the Autorité that:[24]

(a) it will do everything within its control to cause TMX Group to fulfill its April 9, 2008 undertakings to the Autorité;

(b) it will do everything within its control to cause MX to comply with the terms and conditions of its recognition order;

(c) it will be subject to the Share Ownership Restrictions;

(d) it will nominate every year, without limit as to time, for election to the Maple Board, at every annual meeting of Maple (i) such number of directors who are independent and represent at least 50% of the total number of directors nominated, (ii) such number of directors who are resident of Québec and represent at least 25% of the total number of directors nominated, (iii) such number of directors who have expertise in derivatives and represent at least 25% of the total number of directors nominated, and (iv) one director drawn from the Canadian independent investment dealer community (for greater certainty, excluding investment dealers which are affiliates of Canadian Schedule I banks);

(e) it will select as the chair of the Maple Board an independent director;

(f) it will, unless it obtains the prior authorization of the Autorité to make changes, maintain mirror boards of directors for Maple, TMX Group and MX;

(g) it will appoint such number of persons with expertise in derivatives to the special regulatory committee of the board of MX such that at least 25% of that committee will be comprised of directors who have expertise in derivatives;

(h) it will adopt TMX Group’s existing undertaking that it will cause the existing derivatives trading and related products operations of the MX to remain in Montreal;

[24] For purposes of these undertakings to the Autorité, all references to derivatives and related products pertain to equity and fixed income derivatives and exclude any derivatives and related products of TMX Group or any affiliate thereof not under the direct responsibility of MX on the date of the undertakings including, without limitation, derivatives and related products of NGX, Shorcan Brokers Limited, and Shorcan Energy Brokers Inc.

(i) it will adopt TMX Group's existing undertaking that it will not, without the approval of the Autorité, do anything to cause MX to cease to be the Canadian national exchange for all derivatives trading and related products, including being the sole platform for trading of carbon and other emission credits in Canada;

(j) it will adopt TMX Group's existing undertakings that:

(i) without the Autorité's consent, it will not complete a transaction resulting in any person or company, or any combination of persons or companies acting jointly or in concert, owning or exercising control or direction over more than 10 per cent of any class or series of voting shares of the MX, except for Maple or an affiliate of Maple;

(ii) it will continue to exercise control or direction over more than 50 percent of all classes or series of voting shares of the MX; and

(iii) without the Autorité's consent, it will not complete a transaction resulting in more than 50 percent of any class or series of voting shares of the MX ceasing to be controlled by Maple, directly or indirectly;

(k) it will adopt TMX Group's existing undertaking that it will submit annually to the Autorité, within two months of its approval, its strategic plan for derivatives as approved by the Maple Board and further undertakes that the strategic plan will address the progress achieved during the past year in the fulfillment of previous strategic plan for derivatives;

(l) it will invest in the continued growth of trading and clearing of derivatives and related products;

(m) if MX determines from time to time to export their knowledge of derivatives trading and clearing, such international activity will be directed from Montréal;

(n) MX will continue as the exclusive business unit responsible for exchange traded derivatives and related products;

(o) adopt MX's existing obligation to maintain MX's head office and executive office in Montreal and further undertake that the mind and management of MX responsible for overseeing the annual operating plans and budgets thereof will be located in Montreal;

(p) if Maple establishes an exchange or clearing agency for trading or clearing derivatives that are presently over-the-counter derivatives, that exchange or clearing agency will comply with (q) and (r) below;

(q) the head office and executive office of any business unit under (p) will be located in Montreal, and that the mind and management of any business unit under (p) responsible for overseeing the annual operating plans and budgets thereof will be located in Montreal;

(r) the most senior officer of Maple (other than Maple's chief executive officer) with direct responsibility for MX and any business unit under (p) shall be a resident of Quebec at the time of his or her appointment and for the duration of his or her term of office and shall work in Montreal, and that the executives responsible for managing the development and execution of the policy and direction of MX and any business unit under (p) sufficient to permit the senior officer to execute his or her responsibilities, will work in Montreal;

(s) it will adopt TMX Group's existing undertaking with respect to access by the Autorité to information possessed by Maple and its subsidiaries for the purposes of assessing the performance by Maple, TMX Group and MX of their regulatory functions and compliance with the terms and conditions of the Autorité's decisions; and

(t) it will adopt TMX Group's existing undertaking, subject to certain notice obligations and for so long as TMX Group and MX carry on business as an exchange, to allocate sufficient financial and other resources to TMX Group and MX to ensure their financial viability, the proper performance of their functions and the exercise of the self-regulatory functions of MX and its self regulatory division.

These undertakings would take effect upon the take-up by Maple of voting securities of TMX Group in connection with the Maple Acquisition. These undertakings would, as applicable, cease to have effect if (a) the Autorité revokes the applicable recognition orders for any reason other than the failure by Maple to fulfill its undertakings with the Autorité, (b) TMX Group or MX ceases to carry on business after complying with any terms and conditions the Autorité may impose, or (c) TMX Group or MX ceases to be a subsidiary of Maple.

The undertakings are set out in full in Appendix B to Maple's application to the Autorité, a copy of which will be furnished to the Commission.

We respectfully request that the Commission provide an amended and restated exemption order in respect of MX consistent with the existing exemption order dated April 30, 2008 and referencing any such amended and restated MX recognition order.

CDCC

In connection with the Maple Acquisition, Maple will be making application to the Autorité with respect to CDCC. As part of such application, Maple will propose to undertake to the Autorité that:

(a) it will do everything within its control to cause the CDCC to comply with the terms and conditions of its recognition order;

(b) it will cause to be nominated every year, without limit as to time, for election to the board of directors of CDCC, at every annual meeting of CDCC (i) such number of directors who are independent (as defined in footnote 11 hereof) and represent at least 45% of the total number of directors, of which at least two will not be an associate, partner, director, officer or employee of a participant of CDCC or its affiliates or an associate of such director, partner, officer or employee, (ii) such number of directors who are a current or former associate, partner, director, officer or employee of a participant of CDCC or its affiliates and represent at least 33% of the total number of directors, (iii) such number of directors who are resident of Québec and represent at least 25% of the total number of directors, and (iv) such number of directors who have expertise in derivatives clearing and represent at least 25% of the total number of directors;

(c) if CDCC determines from time to time to export their knowledge of derivatives trading and clearing, such international activity will be directed from Montréal;

(d) it will adopt CDCC's existing obligation to maintain CDCC's head office and executive office in Montreal and further undertake that the mind and management of CDCC responsible for overseeing the annual operating plans and budgets thereof will be located in Montreal;

(e) the most senior officer of Maple (other than Maple's chief executive officer) with direct responsibility for CDCC shall be a resident of Quebec at the time of his or her appointment and for the duration of his or her term of office and shall work in Montreal, and that the executives responsible for managing the development and execution of the policy and direction of CDCC sufficient to permit the senior officer to execute his or her responsibilities, will work in Montreal;

(f) it will permit the Autorité to access information possessed by Maple and its subsidiaries for the purposes of assessing the performance by CDCC of its regulatory functions and compliance with the terms and conditions of the Autorité's decisions; and

(g) it will, subject to certain notice obligations and for so long as CDCC carries on business as a clearing house, allocate sufficient financial and other resources to CDCC to ensure its financial viability and the proper performance of its functions.

These undertakings would take effect upon the take-up by Maple of voting securities of TMX Group in connection with the Maple Acquisition. These undertakings would cease to have effect if (a) the Autorité revokes the applicable recognition orders for any reason other than the failure by Maple to fulfill its undertakings with the Autorité, (b) CDCC ceases to carry on business after complying with any terms and conditions the Autorité may impose, or (c) CDCC ceases to be a subsidiary of Maple.

The undertakings are set out in full in Appendix B to Maple's application to the Autorité, a copy of which will be furnished to the Commission.

I trust the foregoing is satisfactory.

Yours very truly,

Luc Bertrand
on behalf of
Maple Group Acquisition Corporation
cc. Jacinthe Bouffard
Autorité des marchés financiers

Ashlyn D'Aoust
Alberta Securities Commission

Mark Wang
British Columbia Securities Commission

13.3 Clearing Agencies

13.3.1 Notice of Commission Approval – CDS Clearing and Depository Services Inc. (CDS) – Material Amendments to CDS Rules – Electronic Payment of Entitlements

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS RULES

ELECTRONIC PAYMENT OF ENTITLEMENTS

NOTICE OF COMMISSION APPROVAL

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on October 4, 2011 amendments filed by CDS to its rules. The amendments permit CDS to establish certain limited exemptions to the requirement (scheduled to become effective on November 1, 2011) that all entitlements on eligible securities be paid by an acceptable electronic means.

The Commission's approval of the amendments is subject to the following term and condition, which will remain in effect until November 1, 2016 (or until such shorter time when CDS removes from its rules the limited duration exemptions):

> That CDS report to OSC staff annually, commencing on November 1, 2012, on the total number and value of non-electronic entitlement payments received by CDS relative to the combined electronic and non-electronic entitlement payments received by CDS during the year and on any CDS and industry developments to encourage further electronic payment of entitlements.

A copy and description of the rule amendments were published for comment on May 20, 2011 at (2011) 34 OSCB 6064. No comments were received.

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Chapter 25

Other Information

25.1 Approvals

25.1.1 Lightwater Partners Ltd. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

September 23, 2011

Lightwater Partners Ltd.
120 Adelaide Street West
Suite 2400
Toronto, ON M5H 1T1

Attention: Jerome Hass

Dear Sirs/Medames:

Re: Lightwater Partners Ltd. (the "Applicant")

Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) for approval to act as trustee

Application No. 2011/0677

Further to your application dated August 25, 2011 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of GreensKeeper Value Fund and any other future mutual fund trusts that the Applicant may establish and manage from time to time will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order.

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of GreensKeeper Value Fund and any other future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Wes M. Scott"

"Paulette Kennedy"

25.2 Exemptions

25.2.1 Citadel Income Fund and Energy Income Fund – s. 19.1 of NI 41-101 General Prospectus Requirements

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from s. 2.3(1) of National Instrument 41-101 General Prospectus Requirements to permit filing a final prospectus more than 90 days after the date of receipt for the preliminary prospectus.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 2.3(1), 19.1.

September 12, 2011

McMillan LLP

Attention: Stephen Genttner

Dear Sir:

Re: Citadel Income Fund and Energy Income Fund (the Funds)

Exemptive Relief Applications under Section 19.1 of National Instrument 41-101 *General Prospectus Requirements* (NI 41-101)

Application No. 2011/0626 and 2011/0654, SEDAR Project No. 1706739 and 1706759

By letter dated July 8, 2011, (the **Application**), the Funds applied to the Director of the Ontario Securities Commission (the **Director**) pursuant to section 19.1 of NI 41-101 for relief from the operation of subsection 2.3(1) of NI 41-101, which prohibits an issuer from filing a prospectus more than 90 days after the date of the receipt for the preliminary prospectus.

This letter confirms that, based on the information and representations made in the Application, and for the purposes described in the Application, the Director grants the requested exemption to be evidenced by the issuance of a receipt for the Funds' prospectuses, provided the Funds' final prospectuses are filed no later than September 30, 2011.

Yours very truly,

"Vera Nunes"
Manager, Investment Funds Branch

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