

The Ontario Securities Commission

OSC Bulletin

February 17, 2012

Volume 35, Issue 7

(2012), 35 OSCB

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

The Ontario Securities Commission

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Published under the authority of the Commission by:

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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

February 17, 2012

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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20 Queen Street West
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Vern Krishna	—	VK
Christopher Portner	—	CP
Judith N. Robertson	—	JNR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

February 21, 2012	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
10:00 a.m.	

s. 37, 127 and 127.1

C. Watson in attendance for Staff

Panel: PLK/JNR

February 22-23, 2012	Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc.
10:00 a.m.	

s. 37, 127 and 127.1

D. Ferris in attendance for Staff

Panel: EPK/PLK

February 27, 2012	North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti
10:00 a.m.	

s. 127

M. Vaillancourt in attendance for Staff

Panel: MGC

February 27, February 29, March 2 and March 5, 2012	Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)
10:00 a.m.	

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: VK/MCH

March 6-12 and
March 14- 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

C. Rossi in attendance for Staff

Panel: CP

March 6, 2012

10:00 a.m.

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

s. 127(1) and (5)

J. Feasby in attendance for Staff

Panel: MGC/SOA

March 7, 2012

10:00 a.m.

Systematech Solutions Inc., April Vuong and Hao Quach

s. 127

R. Goldstein/S. Schumacher in attendance for Staff

Panel: JEAT

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: CP

March 13, 2012

3:00 p.m.

Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjiaints

March 23, 2012

11:00 a.m.

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

D. Campbell in attendance for Staff

Panel: VK

March 21, 2012

10:00 a.m.

Eda Marie Agueci, Dennis Wing, Santo Iacono, Josephine Raponi, Kimberley Stephany, Henry Fiorillo, Giuseppe (Joseph) Fiorini, John Serpa, Ian Telfer, Jacob Gornitzki and Pollen Services Limited

s. 127

J, Waechter/U. Sheikh in attendance for Staff

Panel: JEAT

March 22, 2012

9:00 a.m.

Empire Consulting Inc. and Desmond Chambers

s. 127

D. Ferris in attendance for Staff

Panel: EPK

March 26, 2012

11:00 a.m.

Shaun Gerard McErlean, Securus Capital Inc., and Acquiesce Investments

s. 127

M. Britton in attendance for Staff

March 28 and
March 30-April
3, 2012

10:00 a.m.

Panel: VK/JDC

March 27, 2012 9:00 a.m.	Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva, Gurdip Singh Gahunia aka Michael Gahunia and Abraham Herbert Grossman aka Allen Grossman s. 127(7) and 127(8) H. Craig in attendance for Staff Panel: PLK	April 30, 2012 11:00 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: CP
June 18 and June 20-22, 2012 10:00 a.m.		May 1-May 7, May 9-18 and May 23-25, 2012 10:00 a.m.	
April 11, 2012 10:00 a.m.	Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Siklos (Also Known As Peter Kuti), Jan Chomica, and Lorne Banks s. 127 H. Craig/C. Rossi in attendance for Staff Panel: CP	May 1, 2012 10:00 a.m.	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: MGC/SOA
April 18, 2012 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: JDC	May 3, 2012 10:00 a.m.	Ciccone Group, Medra Corp. (a.k.a. Medra Corporation), 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vincent Ciccone (a.k.a. Vince Ciccone), Darryl Brubacher, Andrew J Martin, Steve Haney, Klaudiusz Malinowski, and Ben Giangrosso s. 127 M. Vaillancourt in attendance for Staff Panel: TBA
April 23, 2012 10:00 a.m.	Lehman Brothers & Associates Corp., Greg Marks, Kent Emerson Lounds and Gregory William Higgins s. 127 C. Rossi in attendance for Staff Panel: CP/CWMS	May 9-18 and May 23-25, 2012 10:00 a.m.	Crown Hill Capital Corporation and Wayne Lawrence Pushka s. 127 A. Perschy in attendance for Staff Panel: EPK

May 16-18, May 23-25, June 4 and June 6, 2012
10:00 a.m.

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

s. 37, 127 and 127.1

C. Price in attendance for Staff

Panel: JDC/MCH

May 29-June 1, 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: JEAT

June 4, June 6-18, and June 20-26, 2012
10:00 a.m.

Peter Sbaraglia

s. 127

J. Lynch in attendance for Staff

Panel: TBA

June 21, 2012
10:00 a.m.

M P Global Financial Ltd., and Joe Feng Deng

s. 127 (1)

M. Britton in attendance for Staff

Panel: MCH

June 22, 2012
10:00 a.m.

New Hudson Television Corporation, New Hudson Television L.L.C. & James Dmitry Salganov

s. 127

C. Watson in attendance for Staff

Panel: TBA

September 4-10, September 12-14, September 19-24, and September 26 – October 5, 2012
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: TBA

September 21, 2012
10:00 a.m.

Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang

s. 127 and 127.1

H. Craig in attendance for Staff

Panel: TBA

September 24, September 26 – October 5 and October 10-19, 2012
10:00 a.m.

New Found Freedom Financial, Ron Deonarine Singh, Wayne Gerard Martinez, Pauline Levy, David Whidden, Paul Swaby and Zompas Consulting

s. 127

A. Heydon in attendance for Staff

Panel: TBA

October 19, 2012
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: PLK

October 22 and October 24 – November 5, 2012 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: TBA	TBA	Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmony, Harmony Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	Yama Abdullah Yaqeen s. 8(2) J. Superina 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	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	Gold-Quest International, Health and Harmony, Iain Buchanan and Lisa Buchanan s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	Frank Dunn, Douglas Beatty, Michael Gollogly s. 127 K. Daniels in attendance for Staff Panel: TBA	TBA	Brilliant 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	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	Abel Da Silva s. 127 C. Watson in attendance for Staff Panel: TBA

TBA	<p>Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)</p> <p>s. 127</p> <p>T. Center/D. Campbell in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>Axxess Automation LLC, Axxess Fund Management, LLC, Axxess 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</p> <p>s. 127</p> <p>Y. Chisholm in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.</p> <p>s. 127</p> <p>S. Horgan in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>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</p> <p>s. 127(1) and 127(5)</p> <p>C. Watson in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan</p> <p>s. 127</p> <p>H. Craig/C.Rossi in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>Normand Gauthier, Gentree Asset Management Inc., R.E.A.L. Group Fund III (Canada) LP, and CanPro Income Fund I, LP</p> <p>s. 127</p> <p>B. Shulman in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>Paul Donald</p> <p>s. 127</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>Vincent Ciccone and Medra Corp.</p> <p>s. 127</p> <p>M. Vaillancourt in attendance for Staff</p> <p>Panel: TBA</p>

TBA	<p>FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun</p> <p>s. 127</p> <p>C. Price in attendance for Staff</p> <p>Panel: CP</p>	TBA	<p>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)</p> <p>s. 127</p> <p>J. Lynch/S. Chandra in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>2196768 Ontario Ltd carrying on business as Rare Investments, Ramadhar Dookhie, Adil Sunderji and Evgueni Todorov</p> <p>s. 127</p> <p>D. Campbell in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, John Colonna, Pasquale Schiavone, and Shafi Khan</p> <p>s. 127(7) and 127(8)</p> <p>J. Feasby in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>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</p> <p>s. 127</p> <p>H. Craig/C. Watson in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>Simply Wealth Financial Group Inc., Naida Allarde, Bernardo Giangrosso, K&S Global Wealth Creative Strategies Inc., Kevin Persaud, Maxine Lobban and Wayne Lobban</p> <p>s. 127 and 127.1</p> <p>C. Johnson in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt</p> <p>s. 127</p> <p>M. Vaillancourt in attendance for Staff</p> <p>Panel: TBA</p>		

TBA	<p>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.</p> <p>s. 127</p> <p>M. Britton in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>Bernard Boily</p> <p>s. 127 and 127.1</p> <p>M. Vaillancourt/U. Sheikh in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung</p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>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.</p> <p>s. 127</p> <p>B. Shulman in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton</p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>Ground Wealth Inc., Armadillo Energy Inc., Paul Schuett, Doug DeBoer, James Linde, Susan Lawson, Michelle Dunk, Adrion Smith, Bianca Soto and Terry Reichert</p> <p>s. 127</p> <p>S. Schumacher in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>Zungui Haixi Corporation, Yanda Cai and Fengyi Cai</p> <p>s. 127</p> <p>J. Superina in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p>Sage Investment Group, C.A.D.E Resources Group Inc., Greenstone Financial Group, Fidelity Financial Group, Antonio Carlos Neto David Oliveira, and Anne Marie Ridley</p> <p>s. 127</p> <p>C. Watson in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p>David M. O'Brien</p> <p>s. 37, 127 and 127.1</p> <p>B. Shulman in attendance for Staff</p> <p>Panel: TBA</p>		

TBA **Jowdat Waheed and Bruce Walter**

s. 127

J. Lynch in attendance for Staff

Panel: TBA

TBA **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

TBA **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: TBA

TBA **Sandy Winick, Andrea Lee Mccarthy, Kolt Curry, Laura Mateyak, Gregory J. Curry, American Heritage Stock Transfer Inc., American Heritage Stock Transfer, Inc., BFM Industries Inc., Liquid Gold International Inc., and Nanotech Industries Inc.**

s. 127

J. Feasby in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

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

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

1.1.2 CSA Staff Notice 52-306 (Revised) – Non-GAAP Financial Measures and Additional GAAP Measures

CANADIAN SECURITIES ADMINISTRATORS' STAFF NOTICE 52-306 (REVISED)

NON-GAAP FINANCIAL MEASURES AND ADDITIONAL GAAP MEASURES

Revision and Republication

Staff updated this notice on November 9, 2010 to reflect the changeover to International Financial Reporting Standards (IFRS).

Staff updated this notice on February 17, 2012 to provide further guidance on disclosure of additional GAAP measures presented under IFRS.

I. Purpose

This notice provides guidance to an issuer that discloses non-GAAP financial measures or additional GAAP measures, as those terms are described in this notice.

A non-GAAP financial measure is not presented in financial statements, whereas an additional GAAP measure is presented in financial statements.

The notice applies both to an issuer that uses IFRS as well as an issuer that uses accounting principles other than IFRS.

II. Non-GAAP Financial Measures

For the purpose of this staff notice, a non-GAAP financial measure is a numerical measure of an issuer's historical or future financial performance, financial position or cash flow, that does not meet one or more of the criteria of an issuer's GAAP for presentation in financial statements, and that either:

- (i) excludes amounts that are included in the most directly comparable measure calculated and presented in accordance with the issuer's GAAP, or
- (ii) includes amounts that are excluded from the most directly comparable measure calculated and presented in accordance with the issuer's GAAP.

Non-GAAP financial measures are not presented in an issuer's financial statements.

Some issuers disclose non-GAAP financial measures in press releases, management's discussion and analysis (MD&A), prospectus filings, websites and marketing materials.

Many non-GAAP financial measures are derived from profit or loss determined in accordance with an issuer's GAAP and, by omission of selected items, present a more positive picture of financial performance. A ratio such as return on assets that uses an amount for assets, profit or loss that differs from the amounts presented in the issuer's financial statements is also a non-GAAP financial measure. Terms used to identify non-GAAP financial measures may include "pro forma earnings", "cash earnings", "free cash flow", "distributable cash", "EBITDA", "adjusted earnings", and "earnings before non-recurring items". These terms generally lack standard meanings. Different issuers may use the same term to refer to different calculations or one issuer may vary its definition of a particular term from one period to another period.

Staff is concerned that investors may be confused or even misled by non-GAAP financial measures. Staff is also concerned about the prominence of disclosure given to non-GAAP financial measures related to earnings compared to the prominence of profit or loss determined in accordance with an issuer's GAAP. In staff's view, these concerns can be addressed by appropriate disclosure accompanying non-GAAP financial measures.

III. Disclosure Accompanying Non-GAAP Financial Measures

Financial statements prepared in accordance with an issuer's GAAP provide investors with a clearly defined basis for financial analysis and comparison among issuers. Staff recognizes that non-GAAP financial measures may provide investors with additional information to assist them in understanding critical components of an issuer's financial performance. However, an issuer should not present a non-GAAP financial measure in a way that confuses or obscures the most directly comparable measure calculated in accordance with the issuer's GAAP and presented in its financial statements.

Staff reminds issuers of their responsibility to ensure that information they provide to the public is not misleading. Staff also reminds certifying officers of their obligations under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and*

Interim Filings to make certifications regarding misrepresentations, fair presentation, and disclosure controls and procedures. A non-GAAP financial measure may be misleading if it includes positive components of the most directly comparable measure calculated in accordance with the issuer's GAAP and presented in its financial statements but omits similar negative components. Staff cautions issuers that regulatory action may be taken if an issuer discloses information in a manner considered misleading and therefore potentially harmful to the public interest.

In order to ensure that a non-GAAP financial measure does not mislead investors, an issuer should clearly define the measure and explain its relevance. As well, an issuer should present the measure on a consistent basis from period to period or explain any changes. Specifically, an issuer should:

1. state explicitly that the non-GAAP financial measure does not have any standardized meaning prescribed by the issuer's GAAP and is therefore unlikely to be comparable to similar measures presented by other issuers;
2. present with equal or greater prominence to that of the non-GAAP financial measure, the most directly comparable measure calculated in accordance with the issuer's GAAP and presented in its financial statements;
3. explain why the non-GAAP financial measure provides useful information to investors and the additional purposes, if any, for which management uses the non-GAAP financial measure;
4. provide a clear quantitative reconciliation from the non-GAAP financial measure to the most directly comparable measure calculated in accordance with the issuer's GAAP and presented in its financial statements, referencing to the reconciliation when the non-GAAP financial measure first appears in the document, or in the case of content on a website, in a manner that meets this objective (for example, by providing a link to the reconciliation);
5. explain any changes in the composition of the non-GAAP financial measure when compared to previously disclosed measures.

In staff's view, non-GAAP financial measures generally should not describe adjustments as non-recurring, infrequent or unusual, when a similar loss or gain is reasonably likely to occur within the next two years or occurred during the prior two years.

IV. Additional GAAP Measures Presented under IFRS

For the purpose of this staff notice, an additional GAAP measure presented in financial statements under IFRS is:

- (i) a line item, heading or subtotal that is relevant to an understanding of the financial statements and is not a minimum line item mandated by IFRS (see IAS 1 *Presentation of Financial Statements* (IAS 1) paragraphs 55 and 85), or
- (ii) a financial measure in the notes to financial statements that is relevant to an understanding of the financial statements and is a measure not presented elsewhere in the financial statements (see IAS 1 paragraph 112(c)).

IFRS mandates certain minimum line items for financial statements and requires presentation of additional line items, headings and subtotals when such presentation is relevant to an understanding of an entity's financial position and performance. IFRS also requires the notes to financial statements to provide information that is not presented elsewhere in the financial statements, but is relevant to an understanding of them. Because IFRS requires such additional GAAP measures, they are not non-GAAP financial measures.

Similarly, IFRS permits certain financial measures such as alternative earnings per share if certain conditions are met. Because IFRS expressly permits such measures, they are not non-GAAP financial measures.

IFRS requires fair presentation, which includes the faithful representation of transactions, other events and conditions. A fair presentation also requires issuers to present financial information in a manner that is relevant, reliable, understandable, comparable and consistent period over period. An issuer should consider these requirements when determining whether and how to present additional GAAP measures.

Issuers must exercise judgement to determine whether a measure qualifies as an additional GAAP measure. As noted in section III of this notice relating to non-GAAP financial measures, issuers have a responsibility to ensure that information they provide to the public is not misleading. In addition, certifying officers have obligations under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* to make certifications regarding misrepresentations, fair presentation, and disclosure controls and procedures. The following practices will help issuers and certifying officers address these obligations in relation to additional GAAP measures:

1. name an additional GAAP measure in a way that distinguishes it from minimum disclosure items required by IFRS and is meaningful given the composition of the additional GAAP measure. For example, the name "income before the undernoted items" is generally not meaningful because "undernoted items" does not sufficiently describe the elements that are missing from "income". In addition, it does not facilitate a cross-reference to MD&A or other documents. Similarly, an unnamed subtotal is not meaningful;
2. avoid using IFRS terms within a name for an additional GAAP measure unless the IFRS meaning applies. For example, the name "profit before tax" would be appropriate only if the IFRS meaning of profit applies;
3. present an additional GAAP measure in a manner that does not confuse, obscure, or exceed the prominence of, minimum disclosure items required by IFRS on the face of financial statements or in the notes to financial statements;
4. explain in either the notes to financial statements or in corresponding MD&A why the additional GAAP measure provides useful information to investors and the purposes, if any, for which management uses the measure;
5. ensure a reader can easily determine how the additional GAAP measure is calculated in relation to minimum disclosure items required by IFRS on the face of financial statements or in the notes to financial statements;
6. present additional GAAP measures consistently over time or explain any change and the reason for the change in the notes to financial statements.

Form 51-102F1 *Management's Discussion and Analysis* discusses management's objective when preparing the MD&A, and states that the MD&A should help current and prospective investors understand what the financial statements show and do not show. Generally, in order to meet this objective, an issuer's MD&A should discuss and analyze additional GAAP measures.

EBITDA and EBIT

As discussed in section II of this notice, terms used to identify non-GAAP financial measures may include EBITDA. While EBITDA is generally a non-GAAP measure presented outside the financial statements, in some cases it may be possible for an issuer to present EBITDA as a subtotal in its statement of comprehensive income, i.e. as an additional GAAP measure. Similarly, it may be possible to present EBIT as a subtotal in the statement of comprehensive income. Consistent with practice 5 above, presenting EBIT or EBITDA as a subtotal would only be appropriate if the amounts for interest, taxes, depreciation and amortization, as applicable, are clearly identified on the statement of comprehensive income and presented below the subtotal. These amounts will not be clearly identifiable on the statement of comprehensive income if, for example, an entity classifies expenses according to their function.

Consistent with practice 1 above, it would be misleading to exclude amounts for items such as restructuring expenses, fair value changes or impairment losses in calculating EBITDA or EBIT.

Results from Operating Activities

Some issuers present a line item named "results from operating activities" or similar subtotals in their statements of comprehensive income. We remind issuers of the material on this topic in IAS 1 Basis for Conclusions, paragraph 56 which states:

"The Board recognizes that an entity may elect to disclose the results of operating activities, or a similar line item, even though this term is not defined. In such cases, the Board notes that the entity should ensure that the amount disclosed is representative of activities that would normally be regarded as "operating". In the Board's view, it would be misleading and would impair the comparability of financial statements if items of an operating nature were excluded from the results of operating activities, even if that had been industry practice. For example, it would be inappropriate to exclude items clearly related to operations (such as inventory write-downs and restructuring and relocation expenses) because they occur irregularly or infrequently or are unusual in amount. Similarly, it would be inappropriate to exclude items on the grounds that they do not involve cash flows, such as depreciation expense and amortization expenses."

Adjusted Statement of Comprehensive Income and Additional Columns

Staff have observed instances of issuers providing an "adjusted" statement of comprehensive income that omits certain items from the statement of comprehensive income that are required by IAS 1. IFRS and securities legislation specify the individual statements and periods for which information must be included in annual financial statements and interim financial reports. Staff

is concerned that investors may be confused or even misled by presentation of an adjusted statement of comprehensive income or additional columns within the statement of comprehensive income.

V. Disclosing an Additional GAAP Measure Before Filing Financial Statements

An issuer may present an additional GAAP measure in a press release or some other location outside of an issuer's financial statements or MD&A before filing on SEDAR its financial statements that include the additional GAAP measure. In order to avoid any confusion about the additional GAAP measure, management should describe the additional GAAP measure and explain its composition. This may be accomplished by:

- reconciling the additional GAAP measure to the most directly comparable minimum line item that will be presented in financial statements (for example, profit or loss or cash flows from operating activities), or
- including a copy of the statement that contains the additional GAAP measure (for example, the statement of financial position or the statement of comprehensive income).

VI. Distributable Cash

National Policy 41-201 *Income Trusts and Other Indirect Offerings* provides additional guidance on measures of cash available for distribution.

VII. Forward-Looking Information

The contents of this notice apply equally to disclosure of forward-looking non-GAAP financial measures.

VIII. Questions

Please refer your questions to any of the following individuals:

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February 17, 2012

1.1.3 CSA Consultation Paper 91-404 – Derivatives: Segregation and Portability in OTC Derivatives Clearing

CANADIAN SECURITIES ADMINISTRATORS CSA CONSULTATION PAPER 91-404 DERIVATIVES: SEGREGATION AND PORTABILITY IN OTC DERIVATIVES CLEARING

Canadian Securities Administrators Derivatives Committee
February 10, 2012

CSA Consultation Paper – Segregation and Portability in OTC Derivatives Clearing

On November 2, 2010 the Canadian Securities Administrators Derivatives Committee (the “Committee”) published *Consultation Paper 91-401 on Over-the-Counter Derivatives Regulation in Canada* (“Consultation Paper 91-401”).¹ This public consultation paper addressed regulation of the over-the-counter (“OTC”) derivatives market and presented high level proposals for the regulation of OTC derivatives. The Committee sought input from the public with respect to the proposals and eighteen comment letters were received from interested parties.² The Committee has continued to contribute to and follow international regulatory proposals and legislative developments, and collaborate with other Canadian regulators³, the central bank and market participants. This public consultation paper is one in a series of eight papers that build on the regulatory proposals contained in Consultation Paper 91-401 providing a framework of proposed rules for the treatment of market participant collateral in centrally cleared OTC derivative transactions. Specifically, this paper will address the segregation of assets put forward as collateral for OTC derivatives transactions cleared through a central counterparty (“CCP”) by customers that access the CCP indirectly through clearing members. This consultation paper will also address the transfer, or porting, of collateral attributable to customers (“customer collateral”) and customer positions between clearing members of a CCP.

OTC derivatives are traded in a truly global marketplace and effective regulation can only be achieved through an internationally coordinated comprehensive regulatory effort. The Committee is committed to working with foreign regulators to develop rules that adhere to internationally accepted standards. The Canadian OTC derivative market comprises a relatively small share of the global market with the majority of Canadian transactions being entered into by Canadian market participants with foreign counterparties. It is therefore crucial that rules developed for the Canadian market accord with international practice to ensure that Canadian market participants and financial market infrastructures have full access to the international market and are regulated in accordance with international principles. In order to achieve a level playing field for Canadian market participants, the segregation of collateral and portability of collateral and positions must be supported by applicable federal and provincial laws. The recommendations in this report aim to ensure CCPs clearing OTC derivatives possess adequate rules and infrastructure to facilitate the segregation and portability of collateral in a manner that provides market participants with appropriate protections in order to facilitate their involvement in the OTC derivatives market.⁴ The recommendations with respect to segregation apply to customer collateral held at both the clearing member and CCP level. They are not intended to apply to collateral provided by a clearing member to a CCP to support its own proprietary positions.⁵

The Committee will continue to monitor and contribute to the development of international standards, and specifically review proposals on industry standards relating to segregation and portability to harmonize the Canadian approach with international efforts to the greatest extent possible. It is hoped that this paper will generate necessary commentary and debate that will assist members of the CSA in formulating new policies and rules in this area.

Executive Summary

Canadian and international initiatives promoting the clearing of OTC derivative transactions will cause certain market participants, who are not clearing members at a central counterparty (CCP), to clear their OTC derivatives transactions indirectly through intermediaries. Effective segregation and portability mechanisms at CCPs will help to ensure that indirect clearing is done in a manner that protects customer positions and collateral and potentially improves a CCP's resilience to a clearing member default. The following is a summary of the Committee's key findings and recommendations for segregation and portability contained in this consultation paper for consideration by market participants:

¹ Report available at http://www.osc.gov.on.ca/en/NewsEvents_nr_20101102_csa-rfc-derivatives.htm, <http://www.lautorite.qc.ca/files/pdf/consultations/derives/2010nov02-91-401-doc-consultation-en.pdf>, http://www.albertasecurities.com/securitiesLaw/Regulatory%20Instruments/9/91-401/3672026-v1-CSA_Consultation_Paper_91-401.pdf, http://www.bcsc.bc.ca/uploadedFiles/securitieslaw/policy9/94-101_Consultation_Paper.pdf.

² Comment letters publicly available at <http://www.osc.gov.on.ca/en/30430.htm> and <http://www.lautorite.qc.ca/en/regulation-derivatives-markets-qc.html>.

³ When referred to in this Consultation Paper, Canadian regulators include market and prudential regulators.

⁴ The scope of this paper is not intended to include CCPs that clear products other than OTC derivatives.

⁵ It is the Committees understanding that clearing member proprietary positions are currently segregated at the CCP level. Additional discussion of the treatment of clearing member proprietary positions and collateral will be included in an upcoming Committee consultation paper.

1. Segregation

(a) Segregation is a method of protecting customer collateral and contractual positions by holding and accounting for them separately from those of their clearing member and fellow customers of their clearing member.

(b) Effective segregation of collateral enables a CCP to efficiently identify customer positions which provides customers with a better opportunity to recover or transfer their collateral.

(c) The Committee recommends that clearing members be required to segregate customer collateral from their own proprietary assets and that all OTC derivatives CCPs employ an account structure that enables the efficient identification of positions and collateral belonging to the customers of a clearing member.

(d) The Committee also recommends that all OTC derivatives CCPs employ an account structure that enables the efficient identification and segregation of the positions and collateral belonging to each individual customer of a clearing member, as opposed to a clearing member's customers collectively.

2. Portability

(a) Portability refers to the operational aspects of the transfer of contractual positions, funds, or securities from one party to another party by means of a conveyance of money or financial instruments.

(b) Portability of customer positions and related collateral is a key mechanism to ensure that in the event of a clearing member default or insolvency, customer positions are not terminated and customer positions and collateral can be transferred to one or more non-defaulting clearing members without having to liquidate and re-establish the positions.

(c) Portability can mitigate difficulties associated with stressed market conditions, allow customers to maintain continuous clearing access and generally promote efficient financial markets.

3. Segregation Models

(a) Due to the greater likelihood that customer positions may be under-margined when collected on a net basis, the Committee recommends that customer initial margin be required to be provided to a CCP on a gross basis.

(b) The Committee examined four potential segregation models for the Canadian market: the *Full Physical Segregation Model*, *Complete Legal Segregation Model*, *Legal Segregation with Recourse Model*, and *Futures Model*.

(c) The major consideration in the evaluation of each segregation model is the degree of identification of individual customer positions and collateral under each model (i.e. record-keeping), whether non-defaulting customer funds are available to cure a default (i.e. fellow customer risk) and the order of recoveries that applies in the event of a default under the CCP's default waterfall.

(d) The Committee recommends that OTC derivatives CCPs be required to maintain the *Complete Legal Segregation Model*. This model protects against fellow customer risk and has recordkeeping requirements that enhance the potential for portability in an insolvency or default situation.

(e) The *Full Physical Segregation Model* also provides these protections but is potentially more costly and may not materially improve the degree of protection for a customer of a clearing member.

(f) The Committee understands that there may be CCPs that protect customer collateral and facilitate portability through different segregation models. In such case, the Committee recommends requiring that a CCP demonstrate how its alternative segregation model offers protection that is equivalent to the *Complete Legal Segregation Model*.

(g) The Committee understands that permitting CCPs to offer various segregation models for customer clearing would likely not be effective under Canadian law because customers selecting higher levels of segregation likely would not receive greater protection in an insolvency proceeding of their clearing member.

(h) The Committee recommends requiring that all CCPs operating in Canada provide information to the applicable provincial market regulators regarding how bankruptcy and insolvency laws would apply to customer collateral in the event of a clearing member insolvency as an element of the recognition process. This information will assist market regulators in their determination of whether a CCP offers appropriate protections for indirect customer clearing.

4. Use of Customer Collateral

The Committee recommends that, if a CCP or clearing member is permitted to re-invest any posted customer collateral, investments should be restricted to instruments with minimal credit, market and liquidity risk.

5. Holding of Customer Collateral

The Committee recommends that CCPs should hold customer collateral at one or more supervised and regulated entities that have robust accounting practices, safekeeping procedures, and internal controls.

6. Law Applicable to Customer Collateral

The Committee is considering whether requiring that customer collateral be governed by Canadian laws would be beneficial to the Canadian market.

7. CCP Disclosure of Segregation and Portability Rules

(a) The Committee recommends that all CCPs be required to make the segregation and portability arrangements contained in their rules, policies, and procedures available to the public in a clear and accessible manner.

(b) Before opening an account with a customer, clearing members should be required to receive a customer acknowledgment that the customer is aware of and has received the CCP's disclosure.

8. Portability Requirements

(a) The Committee recommends that each provincial market regulator enact rules requiring that every OTC derivatives CCP be structured to facilitate the portability of customer positions and collateral.

(b) The Committee believes that portability of customer positions and collateral should not be restricted to default situations but rather be made available to customers at their discretion.

9. Segregation and Uncleared OTC Derivatives transactions

The Committee believes that the parties to an uncleared OTC derivatives transaction should be free to negotiate the level of segregation required for collateral, but recommends that derivatives dealers be required to offer arrangements for collateral to be held with a third-party custodian.

10. Canadian Legal Issues Relating to Segregation and Portability

(a) The Committee and certain federal authorities have jointly been considering various Canadian legal issues that may impact safe and efficient clearing in Canada. These issues will require further consideration to ensure that Canada's legal framework appropriately supports segregation, portability and OTC derivative clearing, in general.

(b) The Committee recommends that a perfection by control regime for cash collateral be instituted through appropriate amendments to each province's PPSA laws (and the RPMRR) to facilitate the granting of first ranking security interests in cash collateral advanced in OTC derivative transactions.

(c) It is the Committee's view that, in order for a CCP to be approved to offer indirect customer clearing in Canada, its ability to expeditiously facilitate the termination of customer clearing member relationships, port positions or enforce collateral relationships should not be compromised by bankruptcy and insolvency laws.

Comments and Submissions

The Committee invites participants to provide input on the issues outlined in this public consultation paper. You may provide written comments in hard copy or electronic form. The comment period expires April 10, 2012.

The Committee will publish all responses received on the websites of the Autorité des marchés financiers (www.lautorite.qc.ca) and the Ontario Securities Commission (www.osc.gov.on.ca).

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Ontario Securities Commission
Saskatchewan Financial Services Commission

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

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1. Introduction

In accordance with Canada's G20 commitments, the Committee has recommended the mandatory clearing of OTC derivatives that are determined to be appropriate for clearing and capable of being cleared.⁶ For a detailed background on clearing, please see Consultation Paper 91-401. A CCP has the potential to reduce risks to market participants by imposing more robust risk controls on all participants and, in many cases, increase efficiency by reducing total collateral obligations through the facilitation of multilateral netting of trades.⁷ It also tends to enhance the liquidity of the markets it serves, because it can reduce risks to participants. However, CCPs also concentrate risk and responsibility for risk management in the CCP. Consequently, the effectiveness of a CCP's risk controls and the adequacy of its financial resources are critical aspects of the infrastructure of the markets it serves. CCPs must maintain rigorous eligibility criteria for direct participation as a clearing member in the CCP in order to promote its financial integrity and stability. Eligibility requirements not only ensure that a potential clearing member is financially sound but also that it has sufficient resources to contribute to the CCP to protect against difficulties such as a clearing member insolvency or default and is operationally capable of participating in the default management process. As a result, the Committee expects that many buy-side participants and smaller financial intermediaries may not qualify as direct clearing members or, in the case they qualify, may find it more efficient to clear through a third party.

Therefore, many OTC derivative market participants will clear their OTC derivative transactions through financial intermediaries that are direct CCP clearing members. Centrally cleared OTC derivatives transactions involve counterparties assuming opposing contractual economic positions with a CCP being interposed as central counterparty to both sides of the transaction. In a transaction cleared for a customer that is not a clearing member, either the clearing member transacting on behalf of a customer assumes the opposing position with the CCP or a different clearing member may act as counterparty and assume the opposing position to the customer. Once the transaction has been cleared, the side of the transaction involving the customer, clearing member and CCP is dealt with differently depending on the customer clearing model used by the CCP.

Two basic indirect clearing models are the "principal" or "back-to-back model" ("Principal Model") and the "agency model" ("Agency Model").⁸

(a) *The Principal Model*

The Principal Model involves a customer entering into a bilateral transaction with a clearing member who then enters into a cleared trade with the CCP on the same terms as the transaction it entered into with its customer (a mirror transaction). Under the Principal Model the customer typically owes an obligation to the clearing member to deliver collateral as margin for the original transaction. The clearing member owes a separate obligation to the CCP to deliver margin for the corresponding mirror transaction with the CCP. However, the clearing member will, in practice, use the customer's margin to discharge its obligation to the CCP to deliver margin for the corresponding mirror trade such that it can be said that the value of the customer's margin (or property of equivalent value) flows through the clearing member to the CCP.⁹

(b) *The Agency Model*

The Agency Model involves an arrangement whereby a clearing member agrees to enter into a derivatives transaction with a CCP on behalf of a customer. Under this model, the clearing member enters into a bilateral trade with the CCP as agent for the customer. Although the customer owes obligations directly to the CCP the clearing member is required to guarantee such obligations. Under the Agency Model the clearing member is liable as principal for the customer transaction and fully responsible for collecting and paying margin. In practice, the clearing member will transfer the customer margin to the CCP and the arrangements for holding customer margin with the CCP usually will be the same as those under the Principal Model.¹⁰

The Committee seeks comment regarding any distinctions between the Principal and Agency Models that should be taken into account in formulating segregation and portability policies and rules.

⁶ Consultation Paper 91-401 at 27, "Leaders' Statement: The Pittsburgh Summit" (September 24-25, 2009) and "The G-20 Toronto Summit Declaration" (June 26-27, 2010) available at http://www.g20.org/pub_communiques.aspx

⁷ The reduction in counterparty credit exposures may be reflected in a reduction in economic or regulatory capital beyond that achieved through bi-lateral netting and collateralization.

⁸ Please note that there are multiple indirect clearing models in existence and new models may be developed. These examples are included for illustrative purposes.

⁹ Financial Markets Law Committee, *The European Market Infrastructure Regulation*, Issue 156 – OTC Derivatives, October 2011 ("FMCL"), at 16. The report notes that under the LCH.Clearnet model the right to return of excess customer margin belongs to the clearing member but is subject to a security interest in favour of the customer, at 17. The *Personal Property and Security Act (Ontario)* (PPSA) R.S.O. 1990 Chapter P10., for example, defines a security interest as an interest in personal property that secures payment or performance of an obligation, and includes, whether or not the interest secures payment or performance of an obligation, (a) the interest of a transferee of an account or chattel paper, and (b) the interest of a lessor of goods under a lease for a term of more than one year; ("sûreté").

¹⁰ *Ibid* at 17.

Q1: Are there any differences between the Principal and Agency Models the Committee should be aware of in formulating the policies and rules for segregation and portability?

1.1 Customer Margin

Although the technical legal obligations differ between the Principal and Agency Models both indirect clearing structures require customers to deliver assets to the applicable clearing members as collateral to secure their obligations.

There are typically two types of collateral provided in derivatives transactions - initial margin and variation margin. Initial margin, often referred to as the independent amount in International Swaps and Derivatives Association ("ISDA") agreements, is collateral posted at the initiation of an OTC derivatives transaction to protect against replacement cost losses due to potential future movements in contract value, if a counterparty were to default and also takes into account counterparty credit risk. Variation margin, often referred to as "mark-to-market" margin, is collateral that is advanced based on changes in the market value of a derivatives contract. In the indirect clearing relationship, the clearing member is responsible for complying with the collateral requirements of the CCP, including calling for, posting and returning collateral on a daily or intraday basis, relating to the derivatives contracts of customers using the clearing member's services. The clearing member bears the risk of a customer's default in the event that a customer's collateral is insufficient to cover the customer's obligations. However, this customer collateral can also be put at risk in the event that the clearing member defaults or becomes insolvent. The policies outlined in this paper are intended to require that OTC derivative CCPs and their clearing members operate in a manner that provides protection to customer collateral, particularly in the case of a clearing member default or insolvency.

A key risk management component of a CCP, commonly referred to as portability, is the ability to facilitate a timely and efficient transfer of customer accounts¹¹ of an insolvent or defaulting clearing member to other solvent clearing members. In order for such transfer to be achieved the customer collateral and positions must be immediately identifiable, transferable and unencumbered. If customer collateral cannot be distinguished from the proprietary assets of the insolvent or defaulting clearing member, such collateral may not be available to secure the obligation for which the collateral was provided or there may be delays in accessing such collateral. This could impair customers' ability to rely on their positions and potentially the ability of a CCP to efficiently transfer customer positions of an insolvent or defaulting clearing member to solvent clearing members. Therefore, a CCP's rules, procedures and policies should be designed to ensure, to the greatest extent possible, that customer collateral and positions can be efficiently segregated and transferred and these arrangements should be supported by local laws.

The proposals in this report are intended to protect the assets of customers of a clearing member and potentially improve a CCP's resilience to a clearing member insolvency or default by facilitating the transfer of customer accounts and collateral without imposing undue costs on the OTC derivatives market. This consultative report also briefly discusses current Canadian laws applicable to segregation and portability arrangements and considerations for legal reforms to ensure segregation and portability can be achieved with greater legal certainty.

The Committee encourages market participants and the public to submit comment letters addressing any issues or questions raised by this consultation paper.

2. Segregation and Portability

Segregation and portability are important mechanisms that facilitate safe indirect CCP clearing of OTC derivative transactions. Achieving effective segregation and portability arrangements is an international priority. A recent consultative report produced by a working group jointly established by the Committee on Payment and Settlement Systems (CPSS) of the Bank of International Settlements and the Technical Committee of the International Organization of Securities Commissions (IOSCO) entitled *Principles for financial market infrastructures* ("CPSS IOSCO Report")¹², includes a new proposed principle that all CCPs should have rules and procedures that support the segregation and portability of positions and collateral belonging to customers of a clearing member.¹³ The report recommends that:

A CCP should have segregation and portability arrangements that protect customer positions and collateral to the greatest extent possible under applicable law, particularly in the event of a default or insolvency of a participant.¹⁴

¹¹ Including open positions and supporting collateral.

¹² The Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions' consultative report entitled *Principles for financial market infrastructures* (March 2011) ("CPSS IOSCO") available at <http://www.bis.org/publ/cpss94.htm>.

¹³ A CCP is one of several types of financial market infrastructures or "FMIs". Others include a payment system, a securities settlement system (SSS), a central securities depository (CSD), and a trade repository (TR).

¹⁴ CPSS IOSCO, *supra* note 12, at 66.

A complete list of the key considerations for segregation and portability identified by CPSS IOSCO has been included in Appendix A to this consultation report.¹⁵

The following sections will provide an introduction to these two concepts and explain their importance to the clearing of OTC derivative transactions.

2.1 Segregation

In the OTC derivatives market, participants enter into transactions that create contractual obligations to make payments or take specific actions in the future and acquire corresponding rights. As mentioned above, to ensure the performance of such future obligations, CCPs require clearing members (either on their own behalf or on behalf of their customers) to provide collateral. In other words, the CCP attempts to protect itself by holding amounts that would cover its potential losses should a party to the transactions default on its obligations. When a customer clears a transaction indirectly through a financial intermediary or other market participant that is a direct member of a CCP, collateral will be:

- advanced by the customer to the clearing members on their behalf; and
- advanced to the CCP by that clearing member.¹⁶

In the event of a clearing member insolvency, customer collateral that is not effectively divided from the insolvent clearing member's proprietary assets may be available to the clearing member's creditors and insolvency representatives to satisfy claims unrelated to the cleared transactions.¹⁷ This puts customer collateral at risk, could inhibit the transfer of customer accounts and collateral and more generally could undermine confidence in the market for cleared OTC derivative transactions.

The separation of collateral, referred to as segregation, is a method of protecting customer collateral and contractual positions by holding and accounting for them separately from those of the clearing member.¹⁸ CPSS IOSCO principles with respect to segregation instruct that: "A CCP should employ an account structure that enables it to readily identify and segregate positions and collateral belonging to customers of a participant."¹⁹ Effective segregation of collateral enables a CCP to efficiently identify customer positions which provides customers with a better opportunity to recover or transfer their collateral. The Committee believes that rules should be implemented to protect customers' collateral by requiring that such collateral be held separately from that of their clearing member.

Pursuant to the *Quebec Derivatives Act* dealers, advisers and representatives must segregate customer property from their own property and maintain separate accounting records.²⁰ A similar policy approach is currently in effect for futures trading under the Ontario and Manitoba *Commodity Futures Acts*, both of which prohibit the commingling of customer collateral with the assets of their dealer.²¹ In the U.S., the *Dodd-Frank Act* requires that any person that holds assets from a customer to margin or guarantee swaps cleared through a CCP must register as a futures commission merchant ("FCM")²² and must segregate

¹⁵ Please note that as this is a consultative report, the final principles may change.

¹⁶ Please note that customer margin does not necessarily simply flow through the clearing member to the CCP. For example the clearing member will often have to deliver property of equivalent value to the CCP because what the customer originally delivered to the clearing member does not meet the specific requirements of the CCP. A clearing member may also provide collateral to cover margin requirements on behalf of a customer.

¹⁷ Customer collateral could become part of the bankrupt clearing member's estate leaving the customer in the position of an unsecured creditor. Separating customer collateral from the proprietary assets of a clearing member may result in the relevant insolvency regime giving priority claims to customers over certain pools of assets or by virtue of being able to assert that the assets are not property of the clearing member, but of its customers.

¹⁸ CPSS IOSCO, *supra* note 12, at 66.

¹⁹ *Ibid* at 67

²⁰ *Derivatives Act* (Quebec), R.S.Q., chapter I-14.01 ("QDA") at article 72. Note that this requirement is qualified by the following "Unless the law, a regulation or the rules governing them stipulate otherwise..."

²¹ *Commodity Futures Act* (Ontario), R.S.O. 1990 Chapter C.20 at 46(1) *Commodity Futures Act* (Manitoba), C.C.S.M. c. C152 at 46(1). Certain provincial securities laws and Investment Industry Regulatory Organization of Canada (IIROC) rules also require dealer segregation of customer assets.

²² *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub.L.111-203, H.R. 4173, sec. 721(a)(47), online: U.S. Government Printing Office <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf> ("Dodd-Frank Act"). The Dodd-Frank Act defines futures commission merchant as follows: "(A) IN GENERAL.—The term 'futures commission merchant' means an individual, association, partnership, corporation, or trust that is— engaged in soliciting or in accepting orders for (AA) the purchase or sale of a commodity for future delivery; (BB) a security futures product; (CC) a swap; (DD) any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); (EE) any commodity option authorized under section 4c; or (FF) any leverage transaction authorized under section 19; or (bb) acting as a counterparty in any agreement, contract, or transaction described in section 2(c)(2)(C)(i) or section 2(c)(2)(D)(i); and (II) in or in connection with the activities described in items (aa) or (bb) of subclause (I), accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom; or (ii) that is registered with the Commission as a futures commission merchant. (B) FURTHER DEFINITION.—The Commission, by rule or regulation, may include within, or exclude from, the term 'futures commission merchant' any person who engages in

customer collateral from their own funds and separately account for these assets. Customer collateral posted by a defaulting clearing member is not permitted to be applied against the clearing member's proprietary positions in the event of a proprietary default.²³ Further, customer collateral is prohibited from being used to margin or guarantee derivatives transactions of other customers.²⁴ Consistent with this approach, the European Commission ("EC") has proposed mandating that each clearing member segregate the assets and positions of their customers in accounts that are separate from the clearing member's own proprietary assets.²⁵ Two comment letters to Consultation Paper 91-401 explicitly supported this manner of segregation²⁶ and no comments received opposed this treatment.

Recommendation

The Committee recommends that in all cases clearing members be required to segregate customer collateral from their own proprietary assets and that all OTC derivatives CCPs employ an account structure that enables the efficient identification and segregation of positions and collateral belonging to the customers of a clearing member from the positions and collateral belonging to the clearing member itself.

As explained below, the Committee also recommends that all OTC derivatives CCPs employ an account structure that enables the efficient identification and segregation of positions and collateral belonging to each customer of a clearing member, as opposed to a clearing member's customers collectively.

As mentioned above, the concept of segregation also applies to the manner in which the collateral of a clearing member's customers is individually or collectively held. Some foreign jurisdictions permit financial intermediaries and/or CCPs to commingle customer collateral in an omnibus or consolidated account (an "omnibus account") that remains separate from assets of the clearing member. Some Canadian jurisdictions permit the same for futures trading.²⁷ This method of segregation potentially puts a customer's collateral at risk in the event of a simultaneous default by their clearing member and a customer of that clearing member (sometimes referred to as a "double default"). For example, under such a commingling model, in the event of default of a clearing member and a customer of that clearing member, default waterfall²⁸ rules of certain CCPs provide that the collateral of other non-defaulting customers held in that clearing member's omnibus account may be used to satisfy the overall margin shortfall in the customer account, resulting from the defaulting customer.²⁹ This fellow customer risk can be avoided through a greater level of segregation among customer accounts. If customer collateral is held in individualized accounts (or sufficiently legally segregated³⁰) then steps can be taken to ensure that only the defaulting customer's collateral would be available to cover the losses related to the default.³¹ Although potentially more costly and operationally complex, individual account segregation (as opposed to omnibus account segregation) can help ensure that a customer's assets are not available to be used to satisfy the obligations of other customers of the clearing member.

The comments received on Consultation Paper 91-401 with respect to the level of segregation that should be required or available for market participants were split between supporting segregation on an individual account basis³² and those that did not support requiring mandatory individual account level segregation.³³ Commenters that supported individual account level segregation cited fellow customer risk and systemic risk as reasons for their support. The two commenters who opposed mandatory individual account level segregation cited increased costs and suggested that levels of segregation should be

soliciting or accepting orders for, or acting as a counterparty in, any agreement, contract, or transaction subject to this Act, and who accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee, or secure any trades or contracts that result or may result therefrom, if the Commission determines that the rule or regulation will effectuate the purposes of this Act.", *ibid* at 10,721.

²³ *Ibid.*

²⁴ *Ibid* at Sec. 4d(f)(2)

²⁵ *Proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories*, Brussels, COM(2010) 484/5 – 2010/0250 (COD), ("EC") at Article 37(1).

²⁶ Comment letters from TMX Group Inc., January 24, 2011. ("TMX") and Le Mouvement Desjardins, January 13, 2011 ("Desjardins"). Please note that Desjardins suggested a minimum threshold for segregation requirements.

²⁷ This practice is currently permitted under the *Commodity Futures Act* (Ontario) at s. 46(3) and *Commodity Futures Act* (Manitoba) at s. 46(3).

²⁸ A CCP default waterfall refers to the order in which funds are made available to cure a clearing member default.

²⁹ International Monetary Fund, *Global Financial Stability Report – Meeting New Challenges to Stability And Building A Safer System*, April 2010 ("IMF") at 14. Please note that if the customer of a clearing member defaults but the clearing member itself does not, the clearing member would be responsible for the shortfall in margin.

³⁰ See Section 3 below for a discussion of legal segregation.

³¹ IMF, *supra* note 29, at 14.

³² See for example comment letters to the CSA from Fidelity Investments, January 17, 2011 ("Fidelity"), Invesco Trimark Ltd., January 14, 2011, TD Asset Management Inc., January 14, 2011 and Desjardins. Please note that Desjardins suggested a minimum threshold for segregation requirements.

³³ See for example comment letters to the CSA from Hunton and Williams and TMX..

privately negotiated between transaction counterparties.³⁴ The benefits and disadvantages of various segregation models are discussed in greater detail in Section 3 below.

2.2 Portability

In addition to safeguarding customer collateral, effective segregation can also facilitate the timely and efficient transfer of customer positions and collateral.³⁵ This capability is known as “portability”, which refers to the operational aspects of the transfer of contractual positions, funds, or securities from one party to another party by means of a conveyance of money or financial instruments.³⁶ In the case of an insolvent or defaulting clearing member, effective portability arrangements would allow the customer positions and collateral associated with those customers to be transferred to other solvent clearing members without having to liquidate and re-establish the positions. Depending on the rules of the relevant CCP, customer positions could either be voluntarily assumed by solvent clearing members through a process such as an auction, allocated to solvent clearing members by the CCP, assigned to a pre-negotiated back-up clearing member or terminated and the customer’s assets returned.³⁷

Portability of customer positions and related collateral is a key mechanism to ensure that, in the event of a clearing member insolvency or default, customer interests are not compromised.³⁸ If a customer’s positions and collateral can be effectively transferred to another clearing member then the closing out of positions and resulting transaction costs (for example the cost of re-establishing hedged positions or re-collateralizing existing positions) can be avoided. Portability also mitigates difficulties associated with stressed market conditions,³⁹ allows customers to maintain continuous clearing access and generally promotes more efficient financial markets.

The following sections will describe in further detail the potential approaches for the segregation of customer collateral from collateral provided by other customers of their clearing member and the portability of that collateral. The Committee seeks to protect clearing member customers’ positions and collateral and promote portability without imposing undue costs on customers and the OTC derivatives industry.

3. Segregation between Customer Accounts

3.1 International Approaches

Some major trading jurisdictions and international regulatory bodies have considered and published analysis or proposed rules on segregation models. Although the effectiveness of each model depends on domestic legal frameworks, the Committee recognizes that, due to the international nature of OTC derivatives clearing, harmonization of approaches is highly desirable.

(a) CPSS IOSCO Principles

The CPSS IOSCO Report provides a useful high level description of various methods of customer account segregation. The report highlights that the degree of protection provided by segregation depends on whether accounts are held individually or on an omnibus basis. The report also questions whether margin should be collected on a gross or net basis and also provides a general description of these alternatives.⁴⁰

Individual customer accounts provide a higher degree of protection by restricting the use of a customer’s collateral to covering losses associated with the default of that customer. The report explains that individual account structures support full portability of customer’s positions and collateral but cautions that this structure can be operationally and resource intensive. CPSS IOSCO principles do not require CCPs to implement an individual customer account segregation structure, but recommend that CCPs consider offering such a structure at a reasonable cost and in an unrestrictive manner.⁴¹

³⁴ Please note that it would only be possible to privately negotiate segregation levels if CCP rules permitted and facilitated multiple segregation models.

³⁵ Full customer account segregation can facilitate efficient portability because it allows for the clear and prompt identification of a customer’s collateral and because all collateral maintained in the individual customer’s account is used to margin that customer’s positions only, therefore there should always be sufficient collateral to cover that customer’s exposures.

Customer collateral held in an omnibus account can also be ported, however, difficulties in porting may be encountered if there is a deficit in the omnibus account or there are conflicting claims against the collateral in the omnibus account. See Craig Pirrong, *The Economics of Central Clearing: Theory and Practice*, available at www2.isda.org at 32.

³⁶ CPSS IOSCO, *supra* note 12, at 67.

³⁷ The transferability of customer positions and collateral will depend on the willingness and ability of other clearing members to accept the transfer unless CCP rules require acceptance. Factors which could influence this include market conditions, sufficiency of information regarding customer accounts, and the complexity or sheer size of the portfolio. *Ibid*, at 69

³⁸ IMF, *supra* note 29, at 14.

³⁹ For example, customers would have less incentive to “run” if the solvency of their clearing member comes into question.

⁴⁰ CPSS IOSCO, *supra* note 12, at 67.

⁴¹ *Ibid*, at 69.

Omnibus account structures commingle all collateral belonging to the customers of a clearing member in a single account. The major benefit of this structure is that it can be less operationally intensive because individual accounts do not have to be established and maintained for each customer by the CCP. In certain circumstances, it may also increase operational efficiency in porting positions and collateral. For example, where a solvent clearing member is willing to accept all customers' accounts⁴² of a defaulting clearing member and there is not a shortfall in the customer margin account, an omnibus account could simplify the transfer process. The CPSS IOSCO Report notes that omnibus accounts require CCPs and clearing members to maintain accurate books in order to promptly ascertain an individual customer's interest to their portion of the collateral pool.⁴³

With respect to the manner in which CCPs collect margin, the CPSS IOSCO Report explains that the level of customer protection available depends on whether the CCP collects margin on a gross or net basis. Collecting margin on a gross basis means that each individual customer's margin is collected and then advanced to the CCP. Collecting margin on a net basis means that the different positions of a clearing member's customers are offset and only margin for the remaining exposure is advanced to the CCP. Collecting margin on a gross basis should ensure that all customer positions of a clearing member are adequately collateralized. Margin calculated on a gross basis affords no netting efficiency, but generally prevents customer positions from being under-margined⁴⁴, facilitating the porting of customer positions and collateral individually or as a group. The CPSS IOSCO Report explains that there is a possibility of customer positions being under-margined when collected on a net basis across multiple customer accounts. This is because collateral maintained in the omnibus account covers the net positions across all customers and may not be readily available for margining customer positions on a forward basis.⁴⁵ As a result customer collateral held on a net basis may impede the porting of customer accounts.

(b) *U.S. Treatment*

In the U.S., the Commodity Futures Trading Commission ("CFTC") published an advanced notice of proposed rule making that examined, in detail, four potential models for segregation in order to solicit public comment. The four models are examined below⁴⁶:

(i) *Full Physical Segregation Model*

Under this model (described in the section above as *individual account segregation*) each customer's account and collateral must be maintained in a separate individual account at the clearing member and CCP. This model protects a customer from losses on the positions or investments of any other customer and prohibits any collateral of a non-defaulting customer from being used as a CCP resource.⁴⁷ This model offers a high level of protection to customer collateral but is the most expensive and administratively intensive model.

(ii) *Complete Legal Segregation Model*⁴⁸

Under this omnibus account model all customers' collateral is permitted to be held on an omnibus basis (i.e., commingled in an account), but is recorded and attributed by both the CCP and clearing member to each customer based on their collateral advanced. Payments and collections of initial margin between the CCP and clearing member's customer accounts are made on a gross basis. The clearing member may post to the CCP the total required customer margin from an omnibus account, without regard to the customer to whom the collateral belongs. However, each clearing member would be required to report to the CCP on a daily basis, the rights and obligations attributable to each customer. Under this model, in the event of a clearing member default, each non-defaulting customer is protected from losses on the positions of other customers, but bears some risk of loss resulting from the investment of collateral in the customer pool (investment risk)⁴⁹. The CCP would be permitted to access the collateral of defaulting customers, up to a value equal to the margin required to be posted by such customers, but not that of non-defaulting customers.

⁴² Customer consent would also likely be required unless a requirement to accept porting is stipulated by a CCP's rules.

⁴³ CPSS IOSCO, *supra* note 12, at 68.

⁴⁴ The term under-margined refers to a situation in which there is less than sufficient collateral within an omnibus account to support the collateral requirements of each customer position.

⁴⁵ CPSS IOSCO, *supra* note 12, at 68. Currently, in Europe certain derivatives CCPs provide the option of collecting margin on a net basis.

⁴⁶ For a more detailed description of each model please see Advance Notice of Proposed Rulemaking – Protection of Cleared Swaps Customers Before and After Commodity Broker Bankruptcies, 75 Fed. Reg. 75162, 75-231, (December 2, 2010), ("CFTC #1") at 3716. A description is also provided in Notice of Proposed Rulemaking – Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 76 Fed. Reg. 33818, 76-111, (June 9, 2011), ("CFTC #2") at 33820 and Final Rule, Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 17 CFR Parts 22 and 190 ("CFTC #3") at 29.

⁴⁷ However, the CCP would still have access to the clearing member's collateral posted for its own proprietary positions for losses occurred as a result of a customer's default.

⁴⁸ This model is also referred to as the legal segregation with operational commingling or LSOC model.

⁴⁹ Investment risk refers to the risk that the pool of customer collateral is invested in instruments that decline in value. Although the same could occur for collateral held in an individual account the account holder may have more ability to influence investment decisions relating to their account.

(iii) *Legal Segregation with Recourse Model*

This omnibus account model is the same as the Complete Legal Segregation Model except that, in the case of a clearing member default, a CCP would be permitted to access the collateral of non-defaulting customers as well as defaulting customers. The CCP may access such customer collateral only after the CCP applies its own capital and the CCP default fund⁵⁰ contributions of its non-defaulting clearing members to cover losses arising from the default (i.e., moving non-defaulting customers collateral to the back of the CCP's default waterfall).

(iv) *Futures Model*

The Futures Model is the current omnibus account model typically used by futures markets. This model offers the least protection to customers. Under this model, customer collateral and positions are held on an omnibus basis with net margining and a CCP has recourse to all such collateral (including non-defaulting customer collateral) in the event of a clearing member default caused by the default of a customer. A CCP's access to customer collateral to cover losses arising from the default occurs before the CCP makes use of the CCP default fund contributions from non-defaulting clearing members (i.e., moving non-defaulting customers' collateral in front of the default fund in the CCP's default waterfall of financial resources).

(v) *CFTC Selected Approach*

Following receipt and review of comments and public consultation, the CFTC published a notice of proposed rule-making⁵¹ on the topic with an initial proposal that the Complete Legal Segregation Model be adopted for OTC derivatives transactions cleared on behalf of customers. Upon further consultation the CFTC issued their final rule selecting the Complete Legal Segregation Model as the most appropriate model.⁵² While potentially not providing the same level of protection of the Full Physical Segregation Model, this model would permit the commingling of customer collateral and should be more cost effective.

The CFTC has supported commingling of customer collateral by explaining that:

The Commission believes that there can be benefits to commingling customer positions in futures, options on futures, and cleared swaps, primarily in the area of greater capital efficiency due to margin reductions for correlated positions. The Commission views this form of portfolio margining as a positive step toward financial innovation within a framework of responsible oversight, and it believes that the public can benefit from such innovation.⁵³

The Complete Legal Segregation Model protects non-defaulting customers against fellow customer risk by only allowing the CCP to access the collateral of the clearing member's defaulting customers.⁵⁴ However, under the Complete Legal Segregation Model, customers are exposed to investment risk losses because the clearing member and CCP would be permitted to hold the collateral of all customers in one account and therefore would not be able to attribute investment losses to a particular customer.⁵⁵ To minimize the risk of investment losses within an omnibus account, the proposed CFTC rules would place restrictions on the investments that the CCP or clearing member could make with customer collateral.⁵⁶

The CFTC rules would require that certain informational requirements be satisfied in order for the CCP to commingle customers' collateral. The information required to be submitted to the CFTC would include an identification of the derivatives that would be commingled, an analysis of risk characteristics of the derivatives, information relating to how customer collateral would be commingled and a number of other characteristics.⁵⁷ Although the CFTC proposal would permit commingling, the rules would require CCPs to have the capability to promptly transfer, liquidate or hedge customer positions in the event of a default by the clearing member.⁵⁸

The CFTC also considered permitting CCPs to choose and offer various segregation models rather than mandating one approach. However, it is believed that the operation of the U.S. Bankruptcy Code would disadvantage customers selecting higher levels of segregation. Under an optional segregation model approach, if certain OTC derivative customers choose a model that provides more individual collateral protection while other customers do not, the customer seeking greater collateral

⁵⁰ A CCP default fund maintains assets contributed by clearing members that can be utilized to cure defects in the event of a clearing member default.

⁵¹ CFTC #2, *supra* note 46.

⁵² CFTC #3, *supra* note 46, at 29.

⁵³ Notice of Proposed Rulemaking – Risk Management Requirements for Derivatives Clearing Organizations, 76 Fed. Reg. 3698, 76-13, (January 20, 2011), ("CFTC #4") at 3716.

⁵⁴ CFTC #2, *supra* note 46, at 33819.

⁵⁵ *Ibid* at 33872.

⁵⁶ *Ibid* at 33820

⁵⁷ CFTC #4, *supra* note 53, at 3709.

⁵⁸ *Ibid*, at 3711.

protection will still share in any shortfalls in customer collateral. According to the CFTC this is because all customers transacting in the same type of contracts would be deemed to be participants in an "account class" regardless of the segregation model they select under U.S. bankruptcy laws.⁵⁹

(c) *EC Treatment*

The EC has not publicly examined segregation models to the same extent as the CFTC. However, the initial EC proposal mandated that every CCP should provide customers with the opportunity to choose more detailed segregation of their assets and positions.⁶⁰ It also requires that CCPs publicly disclose the cost and risks associated with each level of segregation. This approach is similar to the optional approach described by the CFTC, but would require that a range of segregation models, including more detailed segregation be made available to customers.

3.2 Canadian Segregation Requirements for Non-Centrally Cleared Trades

(a) *Investment Industry Regulatory Organization of Canada (IIROC)*

IIROC is the national self-regulatory organization which oversees investment dealers and trading activity on debt and equity marketplaces in Canada. IIROC rules with respect to treatment of customer collateral would apply to investment dealers operating in Canada that offer indirect clearing to their customers.⁶¹ Protection of customer collateral held by IIROC dealer member firms is provided through IIROC's dealer member capital requirements. The Committee intends to review IIROC rules that apply to their member's treatment of customer collateral as part of a broader discussion of the application of IIROC rules to OTC derivatives that will be included in the Committee's upcoming consultation paper on capital and collateral.

(b) *Office of the Superintendent of Financial Institutions (OSFI)*

OSFI is the primary regulator and supervisor of federally regulated deposit-taking institutions, insurance companies, and federally regulated private pension plans. OSFI's *capital adequacy requirements*⁶² include guidelines that apply to the treatment of customer collateral. A detailed discussion of OSFI requirements applicable to OTC derivatives will also be included in the Committee's upcoming consultation paper on capital and collateral.

3.3 Canadian Approach

The Committee reviewed the enforceability of various proposed and existing segregation models under Canadian law and considered which model or models may be most appropriate in Canada.⁶³ It is important to note that any legal analysis contained in this consultation paper is included for discussion purposes only and to solicit comments from interested parties. It is not intended to represent advice or a statement of law and market participants should seek independent legal advice as necessary. Further, as discussed in Section 6, the Committee and other Canadian authorities are investigating certain legal issues relating to segregation and portability and the effectiveness of the segregation models discussed in this Section must be reviewed in light of relevant Canadian laws.

(a) *Netting*

As a starting point the Committee considered whether segregation models that permit the collection of initial customer margin on a net basis⁶⁴ should be permitted. Due to the possibility that customer positions may be under-margined when collected on a net basis, the Committee's view is that customer initial margin should be required to be provided to a CCP on a gross basis. Therefore, the Committee recommends that segregation models that accept initial customer margin on a net basis not be permitted in respect of cleared OTC derivatives. This is consistent with proposed CFTC rules that require that CCPs collect initial customer margin on a gross basis and prohibit the netting of positions of different customers against one another.⁶⁵

⁵⁹ See reference to U.S. Bankruptcy Code and Regulation 190 (Section 766(h)) in CFTC #2, *supra* note 46, at 33829.

⁶⁰ EC, *supra* note 25, at Article 37(2).

⁶¹ Please note that many of the Canadian financial institutions that are, or are likely in the near term to become, clearing members of large global OTC derivatives CCPs are not IIROC members.

⁶² OSFI, *Capital Adequacy Requirements*, effective date November 2007, available at www.osfi-bsif.gc.ca.

⁶³ For the purposes of this analysis, the Committee has assumed that the relevant CCP would remain solvent.

⁶⁴ i.e. The different positions of a clearing member's customers are offset and only margin for the remaining exposure is advanced to the CCP.

⁶⁵ CFTC #4, *supra* note 53, at 3721. CFTC rules permit CCPs to collect initial margin from its clearing member's proprietary accounts on a net basis.

Recommendation

The Committee recommends that segregation models that accept initial customer margin on a net basis not be permitted in respect of cleared OTC derivatives.

The CFTC's gross margining requirements for customer margin only apply to initial margin.⁶⁶ The Committee is considering whether variation margin should also be required to be provided to a CCP on a gross basis and seeks public comment with respect to any rationale for treating variation margin differently.

Q2: Should variation margin be required to be provided to a CCP on a gross basis?

The next step in the Committee's process was to review, from a Canadian legal perspective, a range of potential segregation models. In order to do so, the Committee considered the four segregation models outlined by the CFTC described above in Section 3.1(b). The Committee recognizes that these four models do not represent all existing or potential models for segregation of customer collateral.⁶⁷ However, these models represent four feasible options for the Canadian market and illustrate the legal and cost issues associated with various levels of segregation.⁶⁸

(b) Evaluation of Segregation Models

The major consideration in the evaluation of each segregation model is the degree of identification of individual customer positions and collateral under each model (i.e. record-keeping), whether non-defaulting customer funds are available to cure a default (i.e. fellow customer risk) and the order of recoveries pursuant to the default waterfall rules of the CCP that applies in the event of a default.

(i) Record Keeping

The Futures Model is inferior to the other models with respect to the information available and transmitted to the CCP regarding individual customer positions. In an insolvency or default situation under this model a CCP may lack information on individual customer positions and be reliant on the defaulting clearing member for the information necessary to transfer customer positions and collateral. This is because, unlike the other models, information about customers as a whole and each individual customer's position are not transmitted to the CCP on a daily basis.⁶⁹ This deficiency would complicate and potentially impair a CCP's ability to port collateral and positions and could also make recovery of customer collateral more difficult. For this reason and the reasons discussed below the Committee recommends that the Futures Model not be used for OTC derivatives customer clearing.

The record keeping requirements under the three other models would be sufficient to allow the CCP to more readily allocate positions and collateral relating to a customer of the clearing member from the clearing member's own assets and those of other customers. This level of individual customer identification would allow the CCP to have relatively up to date information in an insolvency situation and facilitate the porting of customer positions and collateral.

(ii) Fellow Customer Risk

The Legal Segregation with Recourse and Futures models increase non-defaulting customers' risks because collateral posted by non-defaulting customers can be realized by the CCP. The CCP default waterfall in the Futures Model would create a greater level of risk to customers than the Legal Segregation with Recourse Model because the CCP's access to collateral of non-defaulting customers will occur sooner. Even where there is no shortfall in non-defaulting customer collateral in the customer pool, customers' access to their collateral and ability to port positions could be delayed until the existence or extent of losses has been determined by the CCP. Although the futures market has operated relatively well in the past⁷⁰ the OTC derivatives market is much larger, and differs from futures in that products are traded less frequently and in larger amounts.

The primary argument for allowing the mutualisation of fellow customer risk is the potential for lower costs. It is understood that there is a high likelihood that any increased clearing costs associated with eliminating or reducing fellow customer risk would be borne by customers. However, the Committee notes that responses to the CFTC's proposal from parties representing potential

⁶⁶ Final Rule, Derivatives Clearing Organizations; Compliance with Core Principles; Risk Management, 17 CFR Part 39 at 39.13(g)(8)(i).

⁶⁷ In particular, there is potential for a variety of omnibus segregation models.

⁶⁸ The Committee recognizes that physical or legal segregation models are more closely aligned with the Agency Model. For CCPs utilizing the Principal Model the Committee would require that equivalent protections are in place.

⁶⁹ CFTC #3, *supra* note 46, at 18.

⁷⁰ Notwithstanding the deficiency in the treatment of customer collateral in the recent U.S. insolvency of MF Global.

future indirect clearing customers were largely in favour of models that reduce fellow customer risk notwithstanding the fact that costs may be higher.⁷¹

The Committee is not prepared to recommend any model that allows non-defaulting customer collateral to be used to support defaulting customer positions. Currently, OTC derivatives customers who engage in uncleared transactions are not generally exposed to fellow customer risk due to the bilateral nature of the market and are able to negotiate for various levels of segregation including utilizing independent third-party custodians. A primary objective of the Committee's proposed recommendations is to reduce risks to customer collateral and it would be inconsistent with this goal to introduce greater levels of fellow customer risk. Collateral is provided by a customer to address the risk associated with a customer's default, not the default of their clearing member or other customers. The Committee believes that each obligation associated with an OTC derivative cleared through a CCP should be appropriately collateralized and that customers should be confident in the safety of their collateral. Clearing models that require customers to assume fellow customer risk are not appropriate because customers are in a relatively poor position to evaluate the risks associated with their fellow customers or the adequacy of collateral required by the clearing member of CCP. Customers likely will have limited or no access to information regarding the general financial condition of fellow customers or their OTC derivatives positions with a clearing member. CCPs, on the other hand, can require clearing members to provide their own and their customers financial information and therefore are better placed to evaluate such risks. Furthermore, clearing models that do not permit non-defaulting customer assets to be used as a CCP resource increase risk monitoring incentives for CCPs because they may suffer greater losses in the event of a clearing member insolvency or default and this is more appropriate given their enhanced monitoring ability.⁷²

Recommendation

Both the Full Physical Segregation Model and the Complete Legal Segregation Model, protect OTC derivative market participants against fellow customer risk and enhance the potential for portability in an insolvency or default situation. In the event that a clearing member becomes insolvent, under both models, the CCP will have sufficient information (on a customer by customer basis) to effect the transfer of customer positions and collateral to one or more solvent clearing members without the need to liquidate collateral and terminate positions with the insolvent clearing member.

It is the Committee's view that in Canada, selecting the Full Physical Segregation Model would not materially improve the degree of protection for a customer of a clearing member compared to the Complete Legal Segregation Model. The Complete Legal Segregation Model would allow CCPs and clearing members to avoid the cost of creating and maintaining a separate account for each individual customer. The Full Physical Segregation Model may not provide additional benefit because in the event of a clearing member insolvency customer recovery rights against an insolvent clearing member may be on an omnibus basis⁷³, in which case, the fact that one customer has its collateral more segregated than another customer would be unlikely to provide that customer with a greater claim or protection.⁷⁴

Furthermore, based on our analysis at the customer level, the Committee is of the view that permitting CCPs to offer various segregation models for customer clearing would not be effective under Canadian law because it is unlikely that customers selecting higher levels of segregation would receive greater protection in an insolvency proceeding of their clearing member.

For the reasons outlined above, the Committee believes that the most appropriate segregation model for OTC derivatives CCPs operating in Canada is the Complete Legal Segregation Model.⁷⁵ The Committee understands that there may be CCPs that protect customer collateral and facilitate portability through segregation models that are different than the Complete Legal Segregation Model. The Committee recommends that alternative models be considered for approval where the CCP can demonstrate that their alternative segregation model offers equivalent protections.

⁷¹ Comment letters to CFTC on proposed rule 76 FR 33818 from Managed Funds Association ("MFA"), August 8, 2011, at 7-8, Blackrock Inc, August 8, 2011 at 7, LCH.Clearnet, August 5, 2011 ("LCH"), at 2, available at: [http://comments.cftc.gov/ PublicComments/ CommentList.aspx?id=1038](http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1038).

⁷² For a detailed discussion of fellow customer risk see CFTC #3, *supra* note 46.

⁷³ This is subject to the customer's right to net collateral against closed out obligations of the clearing member to the customer.

⁷⁴ The Committee understands that the results under current Canadian law would be similar to those described above in section 3.1(b)(5) under the U.S. Bankruptcy Code. The Full Physical Segregation Model would not increase customers' protection in the event of a clearing member insolvency. In a clearing member insolvency, cash and book-based securities are likely considered to be intangibles which are treated on an omnibus basis for distribution purposes. At customer level, a key legal issue is whether the customer can assert a proportionate claim against a pool of assets not belonging to the insolvent clearing member or whether the customer can only assert an unsecured claim which ranks at the same level as ordinary unsecured creditors of the insolvent clearing member.

⁷⁵ The Committee notes that according to a major European CCP the Complete Legal Segregation Model most closely parallels the protections that will be required in Europe under the European Commission's proposal for a European Market Infrastructure Regulation. LCH, *supra* note 71.

Q3: Do you agree with the Committee's recommendation that CCPs adopt the Complete Legal Segregation Model?

Q4: Are there any benefits to the Full Physical Segregation Model that would make it preferable to the Complete Legal Segregation Model?

(c) *Additional Legal Considerations*

It should be noted that in order for any CCP segregation model to be effective it must be supported by applicable laws. As discussed in Section 6 below, the *Payment and Clearing Settlement Act*⁷⁶ ("PCSA") contains provisions that can insulate the rules of designated/named CCPs and designated clearing and settlement systems from the operation of bankruptcy and insolvency laws. This should prevent customer collateral held by the CCP from becoming part of the estate of the defaulting clearing member. Therefore, if a CCP is designated by the Bank of Canada or named pursuant to the PCSA as a derivatives clearing house, its segregation model should be allowed to operate as designed in the event of a clearing member insolvency or default. However, customer collateral that is held by a clearing member and not forwarded to the CCP may not enjoy the same protections. Clearing members often require their customers to post more collateral than is required by a CCP for a given transaction or transactions. As that excess collateral is not passed to the CCP, the customer would not be able to afford itself of the additional protections in the PCSA that would prevent the excess collateral from becoming part of the estate of the insolvent clearing member. In such a situation the level of segregation of customer collateral would not improve the priority of customers' claims to such excess collateral.

Furthermore, in the event of a clearing member insolvency or default, if it is not possible to port customer positions then under certain clearing models customer transactions may be terminated and their collateral returned to the clearing member's customer account.⁷⁷ In the case that a customer's collateral becomes part of the estate of an insolvent clearing member, traditional bankruptcy and insolvency rules would likely apply to the customer.

The Committee understands that there is a degree of uncertainty as to how customer collateral held under various clearing models would be treated under Canadian law in the event of a clearing member insolvency.

Recommendation

Therefore, the Committee recommends requiring that all CCPs seeking recognition to operate in Canada provide information to the applicable provincial market regulators regarding how bankruptcy and insolvency laws, applicable in Canada would apply to customer collateral in the event of a clearing member insolvency. This information will assist market regulators in their determination of whether a CCP offers appropriate protections for indirect customer clearing.

(d) *Considerations Relating to Legal Frameworks of Foreign Jurisdictions*

The international nature of OTC derivatives clearing is such that there will often be laws of multiple jurisdictions that apply to a CCP's operations. Foreign jurisdictions will be required to adopt segregation and portability models that satisfy their own policy objectives and are supported by their legal frameworks. As a result the Committee recognizes that rules and requirements with respect to segregation and portability may differ across countries. For example, the Committee anticipates that CCPs located in foreign jurisdictions may wish to offer clearing services in Canada and that these CCPs may not offer the Complete Legal Segregation Model. In such cases, the foreign CCP may wish to apply to the applicable Canadian market regulator for recognition based on the equivalency protection of customer collateral and facilitation of portability under its proposed segregation model and its home jurisdiction's regulatory regime.⁷⁸

There is a wide range of jurisdiction specific legal issues relating to segregation and portability and therefore CCPs seeking recognition in Canada will be required to provide assurances that the legal frameworks of each clearing member's jurisdiction contains the requisite legal protections to support the CCP's rules and operations.

⁷⁶ *Payment and Clearing Settlement Act*, S.C. 1996, c. 6 ("PCSA").

⁷⁷ This may be the case under the Principal Model, where in the event of a clearing member default the mirror trade would be terminated and customer collateral returned to the clearing member's account held on behalf of its customers. It should be noted that under this model it may be possible to establish a mechanism to have customer collateral returned directly to the customer. Under the Agency Model the customer's agency trade would be terminated and the customer collateral would be returned directly to the client. FMLC, *supra* note 9, at 17-18.

⁷⁸ A CCP providing clearing service to a market participant in a Canadian jurisdiction would be considered to be carrying on business in that jurisdiction.

Recommendation

As part of any CCPs application, an analysis of the interaction of all laws applicable to customer collateral in each jurisdiction of operation, including bankruptcy and insolvency laws, should be required.⁷⁹

3.4 Use of Customer Collateral

The Committee believes that customer collateral must be safeguarded to the greatest extent possible. With respect to CCPs, the CPSS IOSCO Report includes a principle relating to custody and investment risk proposing that:

An FMI should safeguard its assets and minimise the risk of loss or delay in access to those assets, including assets posted by its participants. An FMI's investments should be in instruments with minimal credit, market, and liquidity risks.⁸⁰

If a CCP's rules permit re-investment of any posted collateral,⁸¹ strict investment requirements with respect to customer collateral should be imposed so as to minimize the possibility of losses occurring within or delay in access to a customer collateral pool. This principle should also apply to clearing members holding customer collateral for cleared OTC derivatives transactions. The Committee believes that investments of customer collateral by clearing members and CCPs should be restricted to instruments with minimal credit, market and liquidity risk.⁸² Investments of customer collateral should allow for quick liquidation with minimal adverse price effects. CCPs and clearing members should disclose their investment risk strategy and clearing members should disseminate this information to relevant customers.⁸³

The Committee is considering creating an enumerated list of permitted investments for customer collateral held in connection with indirectly cleared OTC derivatives transactions and seeks comments on the types of instruments that would be appropriate for investment in order to minimize credit, market and liquidity risk.

Q5: Should there be specific permitted investment criteria for customer collateral?

Q6: If yes, what types of investments are suitable for customer collateral held in connection with indirectly cleared OTC derivatives transactions?

Under certain clearing models customer collateral is re-hypothecated to the CCP for the benefit of the customer and the Committee approves of such practice in accordance with a CCP's rules. However, the Committee also understands that current market practice involves instances where customer collateral for OTC derivative transactions is re-hypothecated by financial institutions for their own purposes.⁸⁴ The Committee seeks comment as to whether re-hypothecation of customer collateral in this manner is inconsistent with the goals of the Complete Legal Segregation Model and creates undue risks for customers. In particular the Committee is concerned that in a clearing member insolvency situation customer collateral that has been re-hypothecated by a clearing member may not be recoverable or there may be delays in accessing such collateral.

Q7: Is re-hypothecation of customer collateral consistent with the goals of the Complete Legal Segregation model and should it be permitted?

3.5 Holding of Customer Collateral

In the indirect clearing relationship, customer collateral is held by the CCP and can in certain circumstances also be held by the customer's clearing member.⁸⁵ In order to ensure the security of posted customer collateral, CCPs should hold such collateral (whether in an omnibus customer account or individual account) at one or more supervised and regulated entities that have robust accounting practices, safekeeping procedures, and internal controls.⁸⁶ Any collateral held with a custodian must be protected against claims of the custodian's creditors, and a CCP should confirm that its, and any customer's, interest or ownership rights in the collateral can be enforced with prompt and unencumbered access to such collateral.⁸⁷

⁷⁹ Details of the approval process for OTC derivatives CCPs will be outlined in the upcoming CSA consultation paper on Central Counterparty Clearing.

⁸⁰ CPSS IOSCO, *supra* note 12, principle 16.

⁸¹ Please note that any CCP rules governing re-investment would generally be reviewed by the relevant provincial regulator having oversight of the CCP, including the power to approve any such rules.

⁸² This is consistent with CFTC standards for investments by CCPs. CFTC #4, *supra* note 53, at 3709.

⁸³ CPSS IOSCO, *supra* note 12, at 75.

⁸⁴ Re-hypothecation refers to the practice of a financial institution reusing the collateral pledged by its customers. Re-hypothecation of customer collateral may be a source of profit for financial institutions who charge fees to third parties for the use of such collateral.

⁸⁵ For example excess collateral.

⁸⁶ CPSS IOSCO, *supra* note 12, at p. 74. Internal controls would include restrictions on investment of customer collateral.

⁸⁷ *Ibid.*

It is equally important that customer collateral held with a clearing member is subject to a holding system that protects customer interests. There are a variety of potential holding systems including:

- Direct holding, where customer collateral is held directly by the clearing member or its affiliate.⁸⁸
- Third-party custodian, where an unaffiliated entity such as a bank or broker-dealer provides custody and safekeeping services pursuant to an agreement with the clearing member.
- Tri-party custody, where an unaffiliated entity provides custodial services pursuant to a three-way contract between the customer, the clearing member and the custodian.⁸⁹

The Committee understands that greater protections may be afforded to customer collateral held with a custodian that is a third-party subject to appropriate regulation and is considering recommending that clearing members be required to offer customers the opportunity to select a third-party custodian that is not affiliated with that clearing member to hold its collateral.

Q8: Should clearing members be required to offer collateral holding arrangements with a third-party custodian for customer collateral held in connection with an indirectly cleared OTC derivatives transaction?

3.6 Law Applicable to Customer Collateral

In the context of a Canadian customer of a clearing member that clears OTC derivatives through a foreign CCP, the Committee understands that there may be certain advantages to requiring that customer collateral be subject to Canadian law.⁹⁰ Such a requirement would ensure that Canadian laws, as opposed to the foreign laws of the CCP or clearing member's jurisdiction, would govern the treatment of customer collateral in the event of a clearing member insolvency.⁹¹ In the U.S., the CFTC has proposed that customer collateral accounts be situated in the U.S. and be subject to U.S. law.⁹²

The Committee seeks comment as to whether requiring that customer collateral be governed by Canadian laws would be beneficial to the Canadian market. The Committee recognizes that there may be conflicting collateral location requirements in certain situations and also seeks comment on this issue.

Q9: What would be the costs and benefits of a requirement that all Canadian customer collateral be governed by Canadian laws?

3.7 CCP Disclosure of Segregation and Portability Rules

Although provincial market regulators will be responsible for setting minimum standards for acceptability for CCPs operating in Canada the Committee believes that it is important for market participants to have full understanding of the risks, protections and cost inherent in each CCP's operating and risk management models. Therefore, the Committee recommends that all CCPs be required to make the segregation and portability arrangements contained in their rules, policies, and procedures available to the public in a clear and accessible manner. A CCP's disclosure should allow customers to evaluate the level of customer protection provided, the manner in which segregation and portability is achieved, and any risks or uncertainties associated with such arrangements.⁹³

The CPSS IOSCO Report outlines the following disclosures regarding segregation that should be made available by CCPs:

whether the segregated assets are reflected on the books and records at the CCP, direct participant, or unaffiliated third-party custodians that hold assets for CCPs or direct participants; who holds the customer collateral (for example, the direct participant, CCP, or third-party custodian); and under what circumstances may customer collateral be used by the CCP.⁹⁴

⁸⁸ Any customer collateral held directly by the clearing member or its affiliate would have to be segregated from that entities proprietary assets.

⁸⁹ For further details on collateral holding arrangements for initial margin or independent amount see ISDA, MFA and SIFMA, *Independent Amounts*, March 1, 2010.

⁹⁰ Any such advantage would be contingent on resolution of the Canadian specific legal issues relating to collateral described in Section 6 below.

⁹¹ CFTC #2, *supra* note 46, at 33854.

⁹² Note that the CFTC's proposal is not intended to specify the actual location in which a clearing member of a CCP must keep customer collateral but rather the legal situs of the account must be in the U.S., see CFTC #2 *supra* note 46, at 33838.

⁹³ CPSS IOSCO, *supra* note 12, principle 3.14.13.

⁹⁴ *Ibid.*

This information will assist clearing member customers to assess the risks associated with various indirect clearing methods. Under the CFTC's proposed rules, CCPs would be required to publicly disclose their default rules with respect to the order in which funds and assets of a defaulting clearing member and financial resources maintained by the CCP, including customer collateral, would be utilized.⁹⁵

Recommendation

The Committee recommends that provincial market regulators develop rules requiring all CCPs permitted to operate in Canada to make such disclosures. Furthermore, before opening an account with a customer, clearing members should be required to receive a customer acknowledgment that the customer is aware of and has received the CCP's disclosure.

4. Portability of Customer Accounts and Collateral

The ability of customers to port their OTC derivatives positions and collateral is a key element of any indirect clearing system. As discussed in Section 2.2, porting provides important advantages to customers and the operations of CCPs by allowing customer positions and associated collateral to be transferred to another clearing member. This can have the important systemic benefit, in the event of a clearing member insolvency, of preventing the forced liquidation of the customer positions of a major clearing member and the associated negative effects on markets prices and stability.

Achieving portability of customer positions and collateral is an international priority supported by the major trading jurisdictions and international bodies. It will have important regulatory capital charge implications for financial institutions based in jurisdictions that adhere to the Basel Committee on Banking Supervision's revised capital standards known as Basel III.⁹⁶ Basel III proposes favourable capital treatment for OTC derivatives exposures that are centrally cleared if, among other things, the CCP and/or clearing member effectively segregate customer positions and assets, and assure portability in the event of a clearing member insolvency is assured.⁹⁷ Due to this preferential capital treatment there will be strong incentives for financial institutions that are required to adhere to Basel III to ensure that any CCP they participate in or use, meet applicable segregation and portability and other CPSS IOSCO standards.

Recommendation

The Committee recommends that each provincial market regulator enact rules requiring that every OTC derivatives CCP, that is approved⁹⁸ be structured to facilitate the portability of customer positions and collateral.

Q10: Are there any risks that portability arrangements may have on clearing members who accept customer positions in the event of a clearing member default?

The CFTC has proposed a rule requiring CCPs to facilitate the prompt and efficient transfer of customer positions from one clearing member to another. Pursuant to the proposed rule, portability of positions should not require closing out or re-booking positions and should be done promptly.⁹⁹ The proposal further requires a CCP's rules and procedures to facilitate the transfer of customer position and collateral upon a customer's request.¹⁰⁰ This is consistent with the CPSS IOSCO recommendation that all CCPs should require clearing members to facilitate the transfer of customer positions and collateral to an accepting clearing member upon customer request.¹⁰¹ Similarly, the EC proposal requires that each CCP have the ability to transfer the assets and positions of a customer from one clearing member to another without the consent of the clearing member holding the assets and positions.¹⁰²

Recommendation

The Committee believes that portability of customer positions and collateral should not be restricted to default situations but rather be made available to customers at their discretion. Facilitating the transfer of customer positions and collateral upon

⁹⁵ CFTC #4, *supra* note 53, at 3712.

⁹⁶ Basel Committee on Banking Supervision, *A global regulatory framework for more resilient banks and banking systems*, December 2010, ("Basel #1").

⁹⁷ Basel Committee on Banking Supervision, *Capitalization of bank exposures to central counterparties*, December 2010 ("Basel #2") at 112. It should be noted that the Basel III rules have not been finalized and therefore this proposal could be revised.

⁹⁸ Details of the approval process for OTC derivatives CCPs will be outlined in the upcoming CSA consultation paper on Central Counterparty Clearing.

⁹⁹ Industry standards are currently within two business days. Basel #2, *supra* note 97, at 112.

¹⁰⁰ Notice of Proposed Rulemaking – Requirements for Processing, Clearing, and Transfer of Customer Positions, 76 Fed. Reg. 13101, 76-47, (March 10, 2011), ("CFTC #5") at 13106.

¹⁰¹ CPSS IOSCO, *supra* note 12, at 69.

¹⁰² EC, *supra* note 25, at Article 37(3).

request provides customers with greater flexibility and ability to respond to market developments. It also has the potential to create a more competitive market among potential CCP members for indirect clearing services.

Q11: Do you agree with the Committee's recommendation that OTC derivatives CCPs should be required to facilitate portability for customers at their discretion?

5. Segregation and Uncleared OTC Derivatives transactions

Although the focus of this consultation paper is on cleared OTC derivative transactions, a brief description of the Committee's recommended policies with respect to segregation of customer collateral in uncleared trades is warranted. The Committee believes that the parties to an uncleared transaction should be free to negotiate the level of segregation required for collateral as is the current market practice. However, in order to ensure that customers have the opportunity to protect their collateral to the fullest extent possible the Committee recommends that OTC derivatives dealers¹⁰³ be required to offer arrangements for collateral to be held with a third-party custodian for uncleared transactions. This level of segregation should be made available at a cost and in a manner that does not have the effect of creating unreasonable barriers to access. The Committee believes that this requirement is appropriate because uncleared transactions may not be subject to the full segregation and portability regime.

Recommendation

The Committee recommends that OTC derivatives dealers be required to offer arrangements for collateral to be held with a third-party custodian for uncleared transactions.

Q12: Should OTC derivatives dealers be required to offer arrangements for collateral to be held with a third-party custodian for uncleared transactions?

6. Canadian Legal Issues Relating to Segregation and Portability

As discussed, the Committee recommends that CCPs and clearing members adopt rules and procedures that effectively segregate customer collateral and facilitate the portability of customer collateral and positions between clearing members. In order for this to be achieved CCP arrangements must be supported by Canadian federal and provincial laws. In particular, segregation and portability arrangements will only effectively protect customer collateral from the creditors or insolvency representative of an insolvent clearing member to the extent that they are enforceable, as intended, under applicable laws. At the international level it has been recognized that CCP rules can only be effective if supported by local laws. The CPSS IOSCO Report explains that:

[...] a CCP should structure its segregation and portability arrangements in a manner that protects the interest of a participant's customers and achieves a high degree of legal certainty under applicable law.¹⁰⁴

In Canada a variety of laws, including the PCSA, *Canada Deposit Insurance Corporation Act*¹⁰⁵ ("CDICA") and personal property security, securities transfer, and bankruptcy and insolvency laws may impact the legal certainty and efficacy of segregation and portability arrangements. The first part of this section will discuss a legal issue affecting segregation and portability arrangements for cash collateral which arises from the potential application of provincial personal property security and securities transfer laws.

The second part of this section will briefly describe various legal issues arising under federal laws that may impact safe and efficient clearing in Canada and that will require further consideration to ensure that Canada's legal framework effectively supports segregation, portability and OTC derivative clearing, in general.¹⁰⁶

6.1 Segregation of Collateral and Provincial Personal Property Security and Securities Transfer Laws

Under current market practices, OTC derivatives contracts often require delivery or the grant of a security interest in collateral to secure outstanding counterparty obligations including transactions that are cleared through a CCP. Collateral in OTC derivatives transactions typically takes the form of cash¹⁰⁷ or highly liquid securities such as government bonds or other highly rated bonds which are appropriately discounted to offset the risk that they may depreciate in value.¹⁰⁸

¹⁰³ The upcoming CSA paper focusing on registration will provide details on which parties constitute derivatives dealers.

¹⁰⁴ CPSS IOSCO, *supra* note 12, at 67.

¹⁰⁵ *Canada Deposit Insurance Corporation Act* R.S.C., 1985, c. C-3, ("CDICA").

¹⁰⁶ The Committee has discussed these issues with Federal government officials as well as the Canadian Market Infrastructure Committee during interagency meetings in respect of OTC derivatives reform.

¹⁰⁷ For the purposes of this consultation paper "cash collateral" refers to funds advanced by way of an electronic transfer and held in an account of a deposit taking institution. This form of cash collateral is used in over 80% of OTC derivative transactions, see ISDA Margin

In Canada, when a customer or clearing member advances collateral to support its obligations in an OTC derivative transaction, it is typically posted either by way of the granting of a security interest in the collateral or through the transfer of title to the collateral. The nature of OTC derivative transactions is such that where a security interest in collateral is granted, counterparties want the most secure claim to that collateral possible, known as a first priority security interest, at each level of a transaction.¹⁰⁹

In order to create a perfected security interest over cash collateral in Canada, a financing statement must be registered under one or more province's *Personal Property and Security Act* ("PPSA") (or in the case of Quebec under the *Register of personal and movable real rights*, ("RPMRR"), when referred to herein the term "provincial PPSA laws" includes the RPMRR). In contrast, if collateral is held in the form of securities or other financial assets, provincial PPSAs and securities transfer acts afford enhanced priority to security interests perfected by control.¹¹⁰ Therefore, if customer collateral is advanced in the form of securities or other financial assets and held in a securities account which is perfected by control by a clearing member or CCP, as a securities intermediary, that intermediary would, subject to certain exceptions, have the top ranking priority and most secure claim to the collateral.¹¹¹ This facilitates portability because a different clearing member could assume unencumbered rights to the collateral through an assignment or novation.

A threshold issue in Canada relates to the effective granting of cash collateral held in deposit accounts. Canada's current laws governing the granting of cash collateral held in deposit accounts may not provide adequate legal certainty for OTC derivatives transactions conducted in today's global markets, especially as more of these transactions are centrally cleared through CCPs. This issue may adversely impact Canadian market participants' ability to compete in global OTC derivatives markets.

As currently applied, provincial PPSA laws do not permit the perfection of a security interest in cash collateral placed in a deposit account at a deposit taking financial institution by means of "control".¹¹² Instead, a perfection by registration process is required to establish a first priority security interest. Under provincial PPSA laws the only way to perfect a security interest in cash¹¹³ is by registering a financing statement under each relevant province's PPSA. Even then, a first priority security interest is not assured.

Registration does not automatically grant priority over a security interest of another secured party. To mitigate the risk of subordination to other secured parties having prior perfected security interests in cash collateral, the secured party may require PPSA searches of each relevant provincial register against the debtor to disclose prior registrations and seek subordinations, creditor acknowledgments, waivers or estoppel letters from those secured parties whose pre-existing registrations could have priority over the cash collateral. However, due to the short timeframe within which OTC derivatives transactions are completed, the need to transfer collateral in a timely manner,¹¹⁴ and the large number of transactions market participants enter into, taking these precautions would be impractical and costly.

Credit support in the form of cash can be provided without expressly creating a security interest. This involves the absolute transfer of collateral on the basis that the party receiving the collateral would establish a credit balance in favour of the counterparty that would remain outstanding at levels varying with the exposure calculated on the transactions between the parties. This approach relies on the credit balance being set-off¹¹⁵ by the receiver of collateral in the event that the cash provider defaulted on its obligations under the transactions or became insolvent. Until recently, market participants receiving the cash had a high degree of confidence that their set-off rights created under this non-security interest means of providing credit support would be effective notwithstanding that the cash provider had secured creditors. However, a Supreme Court of Canada decision in *Caisse populaire Desjardins de l'Est de Drummond v. Canada*¹¹⁶ characterized a credit institution's exercise of set-off rights against a deposit liability of the institution set up as a credit support method as the enforcement of a security interest and not an independent right. It is possible that the Court's reasoning in this decision could be applied to other transfer and set-

Survey 2010 available at <http://www.isda.org/c_and_a/pdf/ISDA-Margin-Survey-2010.pdf>. Please note that this issue does not arise with respect to physical currency for which a first priority security interest can be achieved through possession.

¹⁰⁸ This discounting is referred to as a haircut. See "The role of margin requirements and haircuts in procyclicality", issued by the Study Group established by the Committee on the Global Financial System of the Bank for International Settlements.

¹⁰⁹ This includes collateral advanced by a customer to a clearing member and collateral advanced by the clearing member to a CCP.

¹¹⁰ See for example Securities Transfer Act (Ontario), SO 2006, c 8, at Section 25, 26, 28 and PPSA, *supra* note 9, s. 1(2)(c).

¹¹¹ This is known as perfection by control see PPSA, *supra* note 9, at Section 1(2).

¹¹² This is in contrast to a number of jurisdictions with large OTC derivative markets where a first priority security interest can be achieved by controlling a deposit account where cash collateral is held (e.g. the U.S. and EC).

¹¹³ Please note that it may be possible to perfect a security interest in cash represented by physical currency or instruments or credited to a securities account by control.

¹¹⁴ The need to provide collateral in a timely manner is particularly acute in the case of variable margin that may be calculated and deliverable multiple times each day.

¹¹⁵ Set-off is a right (contractual, legal or equitable) that allows a party owed an amount to use that right to satisfy its own obligation.

¹¹⁶ *Caisse populaire Desjardins de L'Est de Drummond v. Canada*, 2009 SCC 29; [2009] 2 S.C.R. 94. This case considered a set-off agreement analogous to the type used for OTC derivative transactions but was not a derivatives case.

off credit support arrangements, thereby significantly decreasing the level of confidence that institutions have in set-off rights to effectively confer priority over cash collateral.¹¹⁷

In the U.S. and European Union, cash collateral advanced in major OTC derivative transactions is governed by a control-based regime that is similar to the control regime in effect for securities transfers in Canada or through legally enforceable set-off rights. Therefore, under current PPSA laws, Canadian market participants are not able to offer the same level of security to cash collateral as many foreign market participants. Consequently, the Committee is concerned Canadian market participants may experience difficulty using cash collateral in OTC derivatives transactions, forcing them to offer more expensive forms of collateral or more collateral to compensate.

This issue may also inhibit portability of customer collateral held in Canadian cash accounts because clearing members may be reluctant to assume customer cash collateral to which they do not have a legally certain first priority security interest.

To achieve greater legal certainty and a higher degree of protection and priority for CCPs, clearing members and their customers, provincial law may need to be amended to perfect the pledging of deposit accounts and provide for priority by control. Legal certainty and protection for rights in cash collateral could also be improved by giving statutory protection to contractual rights of set-off in cash collateral. This is the approach taken by recently-introduced amendments to the Quebec *Derivatives Act*.¹¹⁸

Given the importance of cash collateral in the OTC derivatives market, the Committee recommends that a perfection by control regime for cash collateral be instituted through appropriate amendments to each province's PPSA laws. This would facilitate the granting of first ranking security interests in cash collateral advanced in OTC derivative transactions.

6.2 Portability of Customer Collateral and Positions Under Federal Insolvency Laws

In the event of a clearing member insolvency or default, it is crucial that a CCP have the ability to transfer customer positions and collateral of the insolvent or defaulting clearing member to a non-defaulting CCP participant or participants. Portability is therefore a requirement under proposed CPSS IOSCO principles and proposed rules of major trading jurisdictions such as the U.S. and European Union, and constitutes a criterion for preferential capital treatment under Basel III.¹¹⁹

In order to achieve portability, each CCP should have rules facilitating the termination of contractual relationships between a clearing member and its customers and the transfer of positions. Local laws should give effect to these rules. The application of bankruptcy and insolvency laws could interfere with the portability of positions if a stay, or temporary prohibition on dealing with the assets of an insolvent clearing member, is imposed and a statutory exception to that stay or prohibition is unavailable.¹²⁰ An automatic or court ordered stay could delay the portability of customer positions from an insolvent clearing member while an insolvency representative evaluates the various creditor claims disrupting the functioning of a CCP and potentially undermining customer hedging positions.

CCPs located outside of Canada can be impacted by Canadian law if any of their clearing members or any of the customers of their clearing members (or their assets) are subject to Canadian bankruptcy and insolvency laws.

The International Monetary Fund *Global Financial Stability Report* outlined the following legal requirements for effective portability:

- The laws applying to derivatives or to insolvent clearing members ("CMs") should not limit the ability of customers to close out their position vis-à-vis the CM;
- The proceedings of the CCP should be carved out from general insolvency proceedings of insolvent CMs;
- Statutory provisions might be required to render portability enforceable even upon the commencement of an insolvency proceeding against the failed CM;¹²¹

OTC derivatives transaction counterparties are uncomfortable with the risk that termination and close out netting provisions may not be fully and promptly enforceable in an insolvency situation.¹²² Prudential capital standards make it highly advantageous to

¹¹⁷ The Quebec Government recently amended the QDA to facilitate the use of contractual set-off or compensation as a means to offer cash as a credit support in connection with OTC derivatives (and certain other transactions). See sections 11.1 and 11.2 of the QDA.

¹¹⁸ *Ibid.*

¹¹⁹ Basel #1, *supra* note 96.

¹²⁰ A stay prevents creditors from taking a variety of actions in an attempt to preserve an insolvent company's value as a going concern by preventing creditors from immediately disposing of assets.

¹²¹ IMF, *supra* note 29, at 15.

deal with various counterparties on a net basis and this is only possible with the assurance that netting agreements would be valid and enforceable in an insolvency proceeding.¹²³ Without this assurance, market participants are required to maintain additional capital.¹²⁴

In Canada, most applicable insolvency legislation does support termination and close-out netting for a wide range of transactions.¹²⁵ The *Companies' Creditor Arrangement Act*, *Bankruptcy and Insolvency Act*, *Winding up and Restructuring Act*, *PCSA*, and *CDICA* provide protection for derivative transactions defined as "eligible financial contracts"¹²⁶ which include exchange traded and OTC derivatives. However, the Committee understands that certain legal issues may need to be addressed to ensure that CCPs whose operation may be impacted by Canadian law can operate with legal certainty under Canadian law.

For example, the *PCSA* contains provisions that can insulate the rules of designated CCPs and designated clearing and settlement systems from the operation of bankruptcy and insolvency laws. However, the Committee understands that the *PCSA*'s scope may not currently capture all relevant CCPs, market participants and products or provide adequate protection to the rules of an OTC derivatives CCP. With respect to insolvency laws, clarification may be necessary to ensure that protections are available to OTC derivatives CCPs and participants in a manner consistent with other market infrastructure and that rules and operations essential to safe and efficient clearing are supported.

It is the Committee's view that, in order for a CCP to be approved to offer indirect customer clearing in Canada, its ability to expeditiously facilitate the termination of customer clearing member relationships, port positions or enforce collateral relationships should not be compromised by bankruptcy and insolvency laws.

Conclusion

The Committee welcomes public comment on any proposal in this report and requests that comments be submitted by April 10, 2012. Once public comments have been received and considered the Committee will finalize rule making guidelines and each province will begin the rule making process.

Summary of Questions

Question 1: Are there any differences between the Principal and Agency Models the Committee should be aware of in forming the policies and rules for segregation and portability?

Question 2: Should variation margin be required to be provided to a CCP on a gross basis?

Question 3: Do you agree with the Committee's recommendation that CCPs adopt the Complete Legal Segregation Model?

Question 4: Are there any benefits to the Full Physical Segregation Model that would make it preferable to the Complete Legal Segregation Model?

Question 5: Should there be specific permitted investment criteria for customer collateral?

Question 6: If yes, what types of investments are suitable for customer collateral held in connection with indirectly cleared OTC derivatives transactions?

Question 7: Is re-hypothecation of customer collateral consistent with the goals of the Complete Legal Segregation model and should it be permitted?

Question 8: Should clearing members be required to offer collateral holding arrangements with a third-party custodian for customer collateral held in connection with an indirectly cleared OTC derivatives transaction?

¹²² Margaret E. Grottenhaller and Philip J. Henderson, "The Law of Financial Derivatives in Canada", Carswell Toronto, 2003 (as updated) at 5-2.

¹²³ *Ibid* at 5-3.

¹²⁴ *Ibid*.

¹²⁵ *CDICA*, *supra* note 105, at s. 39.15(7) *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 65.1; *Winding up and Restructuring Act*, R.S.C. 1985, c. W-11, s. 22.1; *PCSA*, *supra* note 76, at s. 13; *Companies' Creditor Arrangement Act*, R.S.C. 1985, c. C-36, s. 11.1.

¹²⁶ Each of these Acts includes the same definition of "eligible financial contract" in their respective regulations. *Bankruptcy and Insolvency Act*, s. 2; *Companies' Creditors Arrangement Act*, s. 2; *Winding-up and Restructuring Act*, s.22.1(2); *CDICA*, s. 39.15(9). Orders fixing November 17, 2007 as the day on which the new definitional provisions come into force - SI/2007-0106 and SI 2007-0105. Eligible Financial Contract Regulations (Canada Deposit Insurance Corporation Act), SOP 2007-0255; Eligible Financial Contract Regulations (Bankruptcy and Insolvency Act), SOP 2007-0256; Eligible Financial Contract Regulations (Companies' Creditors Arrangement Act), SOP 2007-0257; Eligible Financial Contract Regulations (Winding-up and Restructuring Act), SOP 2007-0258.

Question 9: What would be the costs and benefits of a requirement that all Canadian customer collateral be governed by Canadian laws?

Question 10: Are there any risks that portability arrangements may have on clearing members who accept customer positions in the event of a clearing member default?

Question 11: Do you agree with the Committee's recommendation that OTC derivatives CCPs should be required to facilitate portability for customers at their discretion?

Question 12: Should OTC derivatives dealers be required to offer arrangements for collateral to be held with a third-party custodian for uncleared transactions?

Appendix A

CPSS IOSCO Principles for Financial Market Infrastructures

Principle 14: Segregation and portability

A Central Counterparty (“CCP”) should have rules and procedures that enable the segregation and portability of positions and collateral belonging to customers of a participant.

Key considerations

- 1. A CCP should have segregation and portability arrangements that protect customer positions and collateral to the greatest extent possible under applicable law, particularly in the event of a default or insolvency of a participant.*
- 2. A CCP should employ an account structure that enables it readily to identify and segregate positions and collateral belonging to customers of a participant. Such CCPs should maintain customer collateral and positions in an omnibus account or in individual accounts at the CCP or at its custodian.*
- 3. A CCP should structure its arrangements in a way that facilitates the transfer of the positions and collateral belonging to customers of a defaulting participant to one or more other participants.*
- 4. A CCP should clearly disclose its rules, policies, and procedures relating to the segregation and portability of customer positions and collateral. In addition, a CCP should disclose any constraints, such as legal or operational constraints, that may impair its ability fully to segregate or port customer positions and collateral.*

1.1.4 Notice of Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Regulated Entities

**NOTICE OF MEMORANDUM OF UNDERSTANDING
CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF CROSS-BORDER REGULATED ENTITIES**

On February 10, 2012, the Ontario Securities Commission, together with the Quebec Autorité des marchés financiers and the Alberta and British Columbia Securities Commissions, entered into a Memorandum of Understanding with the Australian Securities and Investments Commission ("ASIC") concerning regulatory cooperation related to the supervision of regulated entities that operate in both Australia and Canada (the "Supervisory MOU"). The OSC and ASIC have a long history of cooperation, particularly in securities enforcement matters. The Supervisory MOU would extend this cooperation beyond enforcement by setting a framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of regulated entities. This framework would enhance the OSC and ASIC's ability to supervise regulated entities that operate across our jurisdictions.

The Supervisory MOU is subject to the approval of the Minister of Finance. The Supervisory MOU was delivered to the Minister of Finance on February 13, 2012. Subject to the Minister's approval, the Supervisory MOU will take effect in Ontario on April 17, 2012.

Questions may be referred to:

Tula Alexopoulos
Director
Office of Domestic and International Affairs
Tel: 416-593-8084
E-mail: talexopoulos@osc.gov.on.ca

February 17, 2012

MEMORANDUM OF UNDERSTANDING



Alberta Securities Commission

Autorité des marchés financiers

British Columbia Securities Commission

Ontario Securities Commission



**Australian Securities and
Investments Commission**

**CONCERNING CONSULTATION, COOPERATION AND
THE EXCHANGE OF INFORMATION
RELATED TO THE
SUPERVISION OF CROSS-BORDER REGULATED ENTITIES**

**MEMORANDUM OF UNDERSTANDING
CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE
SUPERVISION OF CROSS-BORDER REGULATED ENTITIES**

PREAMBLE

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the Australian Securities and Investments Commission, the Autorité des marchés financiers, the Ontario Securities Commission, the Alberta Securities Commission and the British Columbia Securities Commission have reached this Memorandum of Understanding regarding mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in Australia and Canada. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of: investor protection; fostering the integrity of, and maintaining confidence in, capital markets; and reducing systemic risk.

**ARTICLE ONE
DEFINITIONS**

For the purposes of this Memorandum of Understanding (**MOU**):

1. **"Authority"** means:
 - (a) The Australian Securities and Investments Commission (**ASIC**), or
 - (b) The Autorité des marchés financiers (**AMF**), the Ontario Securities Commission (**OSC**), the Alberta Securities Commission (**ASC**), the British Columbia Securities Commission (**BCSC**), or any other Canadian securities regulatory authority which may become a party to this MOU in the manner set out in Article Eight (individually a **Canadian Authority**, or collectively the **Canadian Authorities**).
2. **"Requested Authority"** means;
 - (a) Where the Requesting Authority is ASIC, the Canadian Authority to which a request is made under this MOU; or
 - (b) Where the Requesting Authority is a Canadian Authority, ASIC.
3. **"Requesting Authority"** means an Authority making a request under this MOU.
4. **"Person"** means a natural or legal person, or unincorporated entity or association, including corporations, partnerships, trusts and syndicates.
5. **"Regulated Entity"** means a Person that is authorized, designated, recognized, qualified, or registered, and supervised or overseen by one of the Authorities, which may include but is not limited to exchanges and other trading venues, brokers or dealers, investment advisers, investment fund managers, clearing agencies or houses, transfer agents, and credit rating agencies.
6. **"Cross-Border Regulated Entity"** means:
 - (a) a Regulated Entity of ASIC and any of the Canadian Authorities,
 - (b) a Regulated Entity in one jurisdiction that has been exempted from authorization, designation, recognition, qualification or registration by an Authority in the other jurisdiction,
 - (c) a Regulated Entity in one jurisdiction that is controlled by a Regulated Entity in the other jurisdiction, or
 - (d) a Regulated Entity in one jurisdiction that is physically located in the other jurisdiction.

For the purposes of this MOU, references to jurisdiction will be determined as either the jurisdiction of ASIC or the jurisdiction of one of the Canadian Authorities.
7. **"On-Site Visit"** means any routine sweep, or for-cause regulatory visit to or inspection of the Books and Records and premises of a Cross-Border Regulated Entity for the purposes of ongoing supervision and oversight.

8. **"Books and Records"** means documents, books, and records of, and other information about, a Regulated Entity.
9. **"Local Authority"** means the Authority in whose jurisdiction a Cross-Border Regulated Entity is physically located.
10. **"Emergency Situation"** means the occurrence of an event that could materially impair the financial or operational condition of a Cross-Border Regulated Entity.
11. **"Government Entity"** means:
 - (a) ASIC's responsible minister or ministers, a House or Committee of the Parliament of Australia, the Australian Department of Treasury, the Australian Prudential Regulatory Authority, or the Reserve Bank of Australia, if the Requesting Authority is ASIC, and such other entities as agreed to by the signatories from time to time,
 - (b) The Québec ministère des Finances, if the Requesting Authority is the AMF,
 - (c) The Ontario Ministry of Finance, if the Requesting Authority is the OSC,
 - (d) The Alberta Ministry of Finance and Enterprise, if the Requesting Authority is the ASC,
 - (e) The British Columbia Ministry of Finance, if the Requesting Authority is the BCSC, and
 - (f) Such other entity, as agreed to by the signatories, as may be responsible for any other Canadian Authority which may become a party to this MOU in the manner set out in Article Eight.

ARTICLE TWO GENERAL PROVISIONS

12. This MOU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Cross-Border Regulated Entities in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities. This MOU provides for consultation, cooperation and exchange of information related to the supervision and oversight of Cross-Border Regulated Entities between ASIC and each Canadian Authority individually. The Authorities anticipate that cooperation will be primarily achieved through ongoing informal consultations, supplemented, when necessary, by more in-depth cooperation, including through mutual assistance in obtaining information from Regulated Entities. The provisions of this MOU are intended to support such informal communication as well as facilitate the written exchange of non-public information where necessary in accordance with applicable laws.
13. This MOU does not create any legally binding obligations, confer any rights or supersede domestic laws. This MOU does not confer upon any Person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MOU.
14. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions. In particular, this MOU does not affect any right of any Authority to communicate with, conduct an On-Site Visit of (subject to the procedures described in Article Four), or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of another Authority.
15. This MOU complements, but does not alter the terms and conditions of the following existing arrangements concerning cooperation in securities matters:
 - (a) The IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, to which the Authorities are signatories, which covers information-sharing in the context of enforcement,
 - (b) Memorandum of Understanding (1996) between the Australian Securities Commission and the Commission des valeurs mobilières du Québec,
 - (c) Memorandum of Understanding (1995) between the Australian Securities Commission and the OSC,
 - (d) Memorandum of Understanding (1996) between the Australian Securities Commission and the ASC, and
 - (e) Memorandum of Understanding (1996) between the Australian Securities Commission and the BCSC.

16. The Authorities will, within the framework of this MOU, provide each other with the fullest cooperation permissible under the law in relation to the supervision of Cross-Border Regulated Entities. Following consultation, cooperation may be denied:
- (a) Where the cooperation would require an Authority to act in a manner that would violate domestic law,
 - (b) Where a request for assistance is not made in accordance with the terms of the MOU, or
 - (c) On the grounds of the public interest.

17. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in **Appendix "A"**.

ARTICLE THREE
SCOPE OF SUPERVISORY CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION

18. The Authorities recognize the importance of close communication concerning Cross-Border Regulated Entities, and intend to consult regularly at the staff level regarding:
- (a) General supervisory issues, including regulatory, oversight or other related developments,
 - (b) Issues relevant to the operations, activities, and regulation of Cross-Border Regulated Entities, and
 - (c) Any other areas of mutual supervisory interest.
19. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:
- (a) The initial application with an Authority for authorization, designation, recognition, qualification, registration or exemption therefrom by a Regulated Entity that is authorized, designated, recognized, qualified or registered by an Authority in the other jurisdiction,
 - (b) The ongoing supervision and oversight of a Cross-Border Regulated Entity, and
 - (c) Regulatory or supervisory actions or approvals taken in relation to a Cross-Border Regulated Entity by an Authority that may impact the operations of the entity in the jurisdiction of the other Authority.
20. Each Authority will, where practicable and reasonable, seek to inform the other Authorities in advance of, or as soon as possible thereafter, of:
- (a) Pending regulatory changes that may have a significant impact on the operations, activities, or reputation of a Cross-Border Regulated Entity,
 - (b) Any material event of which the Authority is aware that could adversely and directly impact a Cross-Border Regulated Entity. Such events include known changes in the ownership, operating environment, operations, financial resources, management, or systems and control of a Cross-Border Regulated Entity, and
 - (c) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant authorization, designation, recognition, qualification or registration or exemption therefrom, concerning or related to a Cross-Border Regulated Entity.
21. To supplement informal consultations, upon written request, each Authority intends, subject to applicable laws, to provide the other Authorities with assistance in obtaining information, and interpreting such information, relevant to ensuring compliance with the laws and regulations of the Requesting Authority and that is not otherwise available to the Requesting Authority. The information covered by this paragraph includes, without limitation:
- (a) Information relevant to the financial and operational condition of a Cross-Border Regulated Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, and internal control procedures,
 - (b) Relevant regulatory information and filings that a Cross-Border Regulated Entity is required to submit to an Authority, including, for example, interim and annual financial statements and early warning notices, and

- (c) Regulatory reports prepared by an Authority, including, for example, examination reports, findings, or information drawn from such reports regarding Cross-Border Regulated Entities.

ARTICLE FOUR ON-SITE VISITS

- 22. Where necessary in order to fulfill its supervision and oversight responsibilities and to ensure compliance with its laws and regulations, an Authority seeking to examine a Cross-Border Regulated Entity located in the jurisdiction of the Local Authority will consult and work collaboratively with the Local Authority in conducting an On-Site Visit. Subject to applicable laws, the Authorities will comply with the following procedures before conducting an On-Site Visit:
 - (a) The Authority seeking to conduct an On-Site Visit will provide advance notice to the Local Authority of its intent to conduct an On-Site Visit, by itself or by a third party commissioned by it, and will consult with the Local Authority on the intended timeframe and scope of the On-Site Visit,
 - (b) The Local Authority will endeavour to share any relevant examination reports or compliance reviews it may have undertaken respecting the Cross-Border Regulated Entity with the Requesting Authority,
 - (c) The Authorities intend to assist each other regarding On-Site Visits, including cooperation and consultation in reviewing, interpreting and analyzing the contents of public and non-public Books and Records and information obtained from directors and senior management of a Cross-Border Regulated Entity, and
 - (d) The Authorities will consult and, where permitted, conduct joint inspections or cooperate in other ways with a view to possibly leveraging resources in the oversight of a Cross-Border Regulated Entity.

ARTICLE FIVE EXECUTION OF REQUESTS FOR ASSISTANCE

- 23. To the extent possible, a request for information pursuant to Article Three should be made in writing, and addressed to the relevant contact person identified in Appendix "A". A request for information generally should specify the following:
 - (a) The information sought by the Requesting Authority,
 - (b) A general description of the matter which is the subject of the request and the purpose for which the information is sought, and
 - (c) The desired time period for reply and, where appropriate, the urgency thereof.
- 24. In an Emergency Situation, the Authorities will endeavour to notify each other of the Emergency Situation and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During an Emergency Situation, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

ARTICLE SIX PERMISSIBLE USES OF INFORMATION

- 25. The Requesting Authority may use non-public information obtained under this MOU solely for the purpose of supervising Cross-Border Regulated Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority.
- 26. This MOU is intended to complement, but does not alter the terms and conditions of the existing arrangements between the Authorities concerning cooperation in securities matters as set forth in Paragraph 15. The Authorities recognize that while information is not to be gathered under the auspices of this MOU for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement. In cases where a Requesting Authority seeks to use information obtained under this MOU for enforcement purposes, including in conducting investigations or bringing administrative, civil or criminal proceedings, prior consent must be sought from the Requested Authority. Use will be subject to the terms and conditions of the arrangements referred to in Paragraph 15.

**ARTICLE SEVEN
CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING**

27. Except for disclosures in accordance with the MOU, including permissible uses of information under Article Six, each Authority will keep confidential to the extent permitted by law information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
28. To the extent possible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
29. In certain circumstances, and as required by law, it may become necessary for the Requesting Authority to share information obtained under this MOU with other Government Entities in its jurisdiction. In these circumstances and to the extent permitted by law:
- (a) The Requesting Authority will notify the Requested Authority, and
 - (b) Prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Government Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior consent of the Requested Authority.
30. Except as provided in Paragraph 29, the Requesting Authority must obtain the prior written consent of the Requested Authority before disclosing non-public information received under this MOU to any non-signatory to this MOU. During an Emergency Situation, consent may be obtained in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification. If consent is not obtained from the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
31. The Authorities intend that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, such as written analysis, opinions or recommendations relating to non-public information that is prepared by or on behalf of an Authority, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

**ARTICLE EIGHT
AMENDMENTS**

32. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary. This MOU may be amended with the written consent of all of the Authorities.
33. Any Canadian Authority may become a party to this MOU by executing a counterpart hereof, together with ASIC and providing notice of such execution to the other Canadian Authorities which are signatories to this MOU.

**ARTICLE NINE
EXECUTION OF MOU**

34. Cooperation in accordance with this MOU will become effective on the date this MOU is signed by the Authorities and, in the case of the OSC, on the date determined in accordance with applicable legislation.

**ARTICLE TEN
TERMINATION**

35. Cooperation in accordance with this MOU will continue until the expiration of 30 days after any Authority gives written notice to the other Authorities of its intention to terminate the MOU. If an Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MOU before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in a manner prescribed under Articles Six and Seven.

"Greg Medcraft"

Greg Medcraft
Chairman
For the Australian Securities and Investments Commission
Date: February 10, 2012

"Mario Albert"

Mario Albert
President and Chief Executive Officer
For the Autorité des marchés financiers
Date: February 10, 2012

"Howard Wetston, Q.C."

Howard Wetston, Q.C.
Chair
For the Ontario Securities Commission
Date: February 10, 2012

"William S. Rice, Q.C."

William S. Rice, Q.C.
Chair
For the Alberta Securities Commission
Date: January 26, 2012

"Brenda M. Leong"

Brenda M. Leong
Chair and Chief Executive Officer
For the British Columbia Securities Commission
Date: January 25, 2012

APPENDIX "A"
CONTACT OFFICERS

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

100 Market Street
Sydney, New South Wales, Australia
GPO Box 9827, Sydney, New South Wales, Australia

Attention: Senior Executive Specialist International Strategy
Telephone: +61 2 2 9911 5246
Fax: +61 2 2 9911 2634
Email: Steven.Bardy@asic.gov.au

AUTORITÉ DES MARCHÉS FINANCIERS

800, Square Victoria, 22nd Floor, Box 246
Montreal, QC
H4Z 1G3
Canada

Attention: Corporate Secretary
Telephone: 514 395 0337 ext. 2517
Fax: 514 864 6381
Email: louise.sorel@lautorite.qc.ca

ONTARIO SECURITIES COMMISSION

20 Queen Street West, 19th Floor, Box 55
Toronto, Ontario
M5H 3S8
Canada

Attention: Director, Office of Domestic and International Affairs
Telephone: 416 593 8084
Fax: 416 595 8942
Email: talexopoulos@osc.gov.on.ca

ALBERTA SECURITIES COMMISSION

Suite 600, 250-5th Street SW
Calgary, Alberta
T2P 0R4
Canada

Attention: General Counsel
Telephone: 403 297 4698
Fax: 403 355 4479
Email: kari.horn@asc.ca

BRITISH COLUMBIA SECURITIES COMMISSION

P.O. Box 10142, Pacific Centre
701 West Georgia
Vancouver, BC
V7Y 1L2
Canada

Attention: Secretary to the Commission
Telephone: 604 899 6534
Fax: 604 899 6506
Email: commsec@bcsc.bc.ca

1.1.5 Notice on Guidelines for Executive Director's Settlements

NOTICE ON GUIDELINES FOR EXECUTIVE DIRECTOR'S SETTLEMENTS

Guidelines for the Approval by the Executive Director of Settlements of Enforcement Matters were approved by the Commission and reproduced in the November 28, 2008 edition of the Bulletin, at pages 11407 to 11409. Consistent with the Commission's practices with regard to its instruments, by this notice the Guidelines are officially numbered as OSC Notice 15-902.

Questions regarding this notice may be directed to:

Simon Thompson
Senior Legal Counsel
Ontario Securities Commission
Phone: 416-593-8261
sthompson@osc.gov.on.ca

February 17, 2012

1.2 Notices of Hearing

1.2.1 Sandy Winick 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
SANDY WINICK, ANDREA LEE MCCARTHY,
KOLT CURRY, LAURA MATEYAK, GREGORY J. CURRY,
AMERICAN HERITAGE STOCK TRANSFER INC.,
AMERICAN HERITAGE STOCK TRANSFER, INC.,
BFM INDUSTRIES INC., LIQUID GOLD INTERNATIONAL INC.,
AND NANOTECH INDUSTRIES INC.**

**NOTICE OF HEARING
(Section 127)**

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission, 20 Queen Street West, 17th Floor, Large Hearing Room, commencing on February 16, 2012, at 10:00 a.m. or as soon thereafter as the hearing can be held,

TO CONSIDER whether, it is in the public interest for the Commission:

- (a) to make an order pursuant to section 127(1) clause 2 of the Act that trading in securities by the Respondents cease permanently or for such period as specified by the Commission;
- (b) to make an order pursuant to section 127(1) clause 2.1 of the Act that acquisition of any securities by the Respondents be prohibited permanently or for such period as is specified by the Commission;
- (c) to make an order pursuant to subsection 127(1) clause 3 of the Act that any exemptions in Ontario securities law do not apply to the Respondents permanently or for such period as specified by the Commission;
- (d) to make an order pursuant to section 127(1) clause 6 of the Act that the individual Respondents be reprimanded;
- (e) to make an order pursuant to section 127(1) clause 7 of the Act that the individual Respondents resign any position that the Respondents hold as a director or officer of an issuer;
- (f) to make an order pursuant to section 127(1) clause 8 of the Act that the individual Respondents be prohibited from becoming or acting as an officer or director of any issuer permanently or for such period as specified by the Commission;
- (g) to make an order pursuant to section 127(1) clause 8.5 of the Act that the individual Respondents be prohibited from becoming or acting as an a registrant, an investment fund manager or as a promoter, permanently or for such period as specified by the Commission;
- (h) to make an order pursuant to section 127(1) clause 9 of the Act that the Respondents each pay an administrative penalty of not more than \$1 million for each failure by the Respondents to comply with Ontario securities law;
- (i) to make an order pursuant to section 127(1) clause 10 of the Act that the Respondents disgorge to the Commission any amounts obtained as a result of the non-compliance with Ontario securities law;
- (j) to make an order pursuant to section 127.1 of the Act that the Respondents, or any of them, pay the costs of Staff's investigation and the costs of, or related to, this proceeding, incurred by or on behalf of the Commission; and,
- (k) to make such other order or orders as the Commission considers appropriate.

BY REASON of the allegations set out in the Statement of Allegations of Staff and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 27th day of January, 2012.

"Daisy Aranha"

Per: John Stevenson
Secretary to the Commission

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

AND

**IN THE MATTER OF
SANDY WINICK, ANDREA LEE MCCARTHY,
KOLT CURRY, LAURA MATEYAK, GREGORY J. CURRY,
AMERICAN HERITAGE STOCK TRANSFER INC.,
AMERICAN HERITAGE STOCK TRANSFER, INC.,
BFM INDUSTRIES INC., LIQUID GOLD INTERNATIONAL INC.,
AND NANOTECH INDUSTRIES INC.**

**STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION**

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

I. OVERVIEW

1. This case concerns three distinct but related schemes, together involving fraud, misrepresentations to investors, illegal distribution and the unregistered trading of securities.

- I. From June of 2009 through December of 2010, 28 investors outside of Canada purchased shares in an Ontario company called BFM Industries Inc. through telephone sales people claiming to represent Denver Gardner Inc., a non-existent investment bank allegedly operating out of Singapore. BFM Industries Inc. never had an operating business or any assets other than cash during this investment scheme (the "BFM Scheme"). Despite this, the equivalent of more than CDN \$360,000 was raised through the sale of shares in BFM Industries Inc. and deposited to bank accounts in Ontario. Over 50% of those funds were withdrawn in cash, transferred to accounts held by Sandy Winick or Andrea McCarthy or used to pay personal credit card bills.
- II. From June of 2009 through November of 2010, at least four investors outside of Canada purchased shares in an Ontario company called Liquid Gold International Inc. through telephone sales people claiming to represent Denver Gardner Inc. Liquid Gold International Inc. never had an operating business or any assets other than cash during this investment scheme (the "Liquid Gold Scheme"). Liquid Gold International Inc. received approximately USD \$2.6 million during the Liquid Gold Scheme, of which approximately USD \$85,000 was from the sale of its shares to investors. Over 98% of the funds received by Liquid Gold International Inc. were disbursed on expenses apparently unrelated to the alleged business of the company, including payments to credit cards in Sandy Winick's name and transfers to bank accounts in Andrea McCarthy's name and Kolt Curry's name.
- III. From May of 2009 through August of 2010, at the direction of Sandy Winick, Kolt Curry and others sent correspondence from an Ontario company called American Heritage Stock Transfer Inc. and a Nevada company called American Heritage Stock Transfer, Inc. to approximately 10,000 people enclosing share and warrant certificates in a Wyoming company called Nanotech Industries Inc. (the "Nanotech Letter"). The recipients of the Nanotech Letter included both BFM Investors and Liquid Gold Investors. The Nanotech Letter stated that the recipient was entitled to an unpaid dividend in the form of shares and warrants; it further claimed that the warrants could be exercised at \$2.75 and that Nanotech Industries Inc. was trading at \$4.93 per share at the date of the letter, implying investors could make an immediate and substantial profit. In fact, Nanotech Industries Inc. had not traded at \$4.93 since October 2008 and was listed as inactive by the State of Wyoming for the duration of this investment scheme (the "Nanotech Letter Scheme"). Staff are not aware of any investors who sent money in response to the Nanotech Letter.

II. THE INDIVIDUAL RESPONDENTS

2. Sandy Winick ("Winick") is a resident of Stoney Creek, Ontario, and has never been registered with the Ontario Securities Commission (the "Commission") in any capacity. Winick is married to Jodi Winick, but lived with Andrea McCarthy.

3. Andrea McCarthy ("McCarthy") is a resident of Stoney Creek, Ontario. McCarthy has never been registered with the Commission in any capacity.

4. Kolt Curry ("Curry") is a resident of Aurora, Ontario, and has never been registered with the Commission in any capacity.

5. Laura Mateyak ("Mateyak") is a resident of Aurora, Ontario, and the wife of Curry. Mateyak has never been registered with the Commission in any capacity.

6. Gregory J. Curry ("Greg Curry") is a Canadian citizen and a resident of Bangkok, Thailand, and the father of Curry. Greg Curry has never been registered with the Commission in any capacity.

III. THE CORPORATE RESPONDENTS

7. BFM Industries Inc. ("BFM") is a company incorporated under the laws of Ontario with its head office at the residential address of McCarthy and Winick. Winick was at all times a directing mind and *de facto* director and officer of BFM. McCarthy and Greg Curry are registered as directors of BFM. BFM has never filed with the Commission or received a receipt for a prospectus. BFM has never been registered with the Commission in any capacity.

8. Liquid Gold International Inc. ("Liquid Gold") is a company incorporated under the laws of Ontario. Liquid Gold maintains business addresses in Toronto and Stoney Creek, Ontario, and in Evansville, Indiana. Winick was at all times a directing mind and *de facto* director and officer of Liquid Gold. McCarthy is the sole registered director of Liquid Gold. Liquid Gold has never filed with the Commission or received a receipt for a prospectus. Liquid Gold has never been registered with the Commission in any capacity.

9. Nanotech Industries Inc., formerly called Amerossi EC Inc., as well as Microgenix Filtration Systems, Inc. (and in each case is referred to as "Nanotech"), is a company incorporated under the laws of the State of Wyoming with its head office in Bangkok, Thailand. Winick was at all times a directing mind and *de facto* director and officer of Nanotech. Nanotech has never filed with the Commission or received a receipt for a prospectus. Nanotech has never been registered with the Commission in any capacity.

10. American Heritage Stock Transfer Inc. ("AHST Ontario") is a company incorporated under the laws of Ontario with its head office in Aurora and previously in Markham, Ontario. Mateyak is the President, Secretary, Treasurer and General Manager of AHST Ontario. Curry is the former President, Secretary and General Manager of AHST Ontario and was at all times a directing mind and *de facto* director and officer of AHST Ontario. AHST Ontario has never been registered with the Commission or the United States Securities and Exchange Commission ("SEC") in any capacity.

11. American Heritage Stock Transfer, Inc. ("AHST Nevada") is a company incorporated under the laws of the State of Nevada with a registered business address in the State of Nevada (together with AHST Ontario: the "AHST Companies"). AHST Nevada also used the same Markham, Ontario, address as AHST, Ontario. Curry is a director, the Secretary and the Treasurer of AHST Nevada. AHST Nevada registered with the SEC as a transfer agent in December 2004. However, AHST Nevada's corporate status was listed as revoked by the Nevada Secretary of State during the time of the Nanotech Letter Scheme. AHST Nevada has never been registered with the Commission in any capacity.

IV. PARTICULARS

The BFM Scheme

12. The BFM Scheme took place from June of 2009 through December of 2010.

13. Winick was at all times a directing mind of the BFM Scheme.

14. BFM was incorporated on November 25, 2008, by McCarthy at Winick's instruction, and registered to McCarthy's home address.

15. BFM's advertised mailing address was a mailbox on Yonge Street in Toronto that named Winick on the service agreement (the "Yonge Street Mailbox").

16. BFM held itself out as a company that "produces White Label High Quality all-natural fresh fish organic liquid fertilizer. BFM Industries manufactures this high quality product to the exact specifications and requirements of our customers."

17. BFM never operated any fertilizer manufacturing business or other business and never had any assets other than funds raised from investors by selling BFM's securities (the "BFM Investor Funds").

18. BFM sold previously unissued securities to 28 members of the public (the "BFM Investors") through telephone representatives claiming to work for Denver Gardner Inc. ("Denver Gardner") without registration and without having filed a prospectus.

19. The BFM Investor Funds totalled CDN \$360,000, and were deposited into Canadian and US Dollar bank accounts in Ontario (collectively, the "BFM Accounts").

20. The BFM Investor Funds were disbursed for purposes unrelated to the alleged business of BFM, including the following:

- (a) Approximately 43% was used to make payments on credit cards in the name of Winick, Jodi Winick and McCarthy;
- (b) Approximately 15% was transferred to a joint account held by Winick and McCarthy;
- (c) Approximately 10% was withdrawn in cash;
- (d) Approximately 8% was transferred into accounts Winick directed McCarthy to open in the name of other corporations;
- (e) Approximately 5% was used to pay printing expenses related to the Nanotech Letter;
- (f) Approximately 4% was transferred to personal accounts held by Curry and Mateyak;
- (g) Approximately 3% was used to pay municipal and federal taxes unrelated to the business of BFM;
- (h) Approximately 1% was transferred to an account held by a company owned and controlled by McCarthy; and,
- (i) Additional BFM Investor Funds were transferred from the BFM Accounts for other purposes unrelated to the alleged business of BFM, including car payments and Jodi Winick's hydro bill.

21. At Winick's direction, McCarthy participated in and facilitated the BFM Scheme by:

- (a) Acting as the sole signatory to the BFM Accounts;
- (b) Disbursing funds from the BFM Accounts to pay expenses arising from the Nanotech Letter Scheme;
- (c) Disbursing funds from the BFM Accounts to pay her own personal expenses, as well as personal expenses of Winick and Jodi Winick;
- (d) Disbursing funds from the BFM Accounts to other recipients as and when instructed by Winick;
- (e) Signing BFM share certificates;
- (f) Delivering BFM share certificates to investors; and,
- (g) Creating the the BFM website, registering it to her home address and acting as the administrative and technical contact.

The Liquid Gold Scheme

22. The Liquid Gold Scheme took place from June of 2009 through November of 2010

23. Winick was at all times a directing mind of the Liquid Gold Scheme.

24. Liquid Gold was incorporated by McCarthy in May, 2009, at the request of Winick.

25. Liquid Gold's registered business address is the Yonge Street Mailbox.

26. Liquid Gold held itself out as a company specialising in "the recovery of additional hydrocarbons from domestic sources, lessening the United States' dependence on foreign oil."

27. Liquid Gold never operated any oil or hydrocarbon recovery business or other business and never had any assets other than cash.

28. Liquid Gold sold previously unissued securities to at least four members of the public (the "Liquid Gold Investors") through telephone representatives claiming to work for Denver Gardner without registration and without having filed a prospectus.

29. During the Liquid Gold Scheme, a total of approximately USD \$2.6 million was deposited into Canadian and US Dollar bank accounts in Ontario (the "Liquid Gold Accounts"). Funds deposited into the Liquid Gold Accounts included approximately CDN \$85,000 raised through the sale of Liquid Gold shares (the "Liquid Gold Investor Funds") and funds from other sources.

30. Over 98% of the approximately USD \$2.6 million in the Liquid Gold Accounts were disbursed for purposes unrelated to the alleged business of Liquid Gold, including the following:

- (a) Approximately 24% was used to make payments on credit cards in Winick's name;
- (b) Approximately 6% was transferred to Curry;
- (c) Approximately 4% was used to pay personal tax debts of Winick and Jodi Winick;
- (d) Approximately 4% was transferred to McCarthy or McCarthy and her father;
- (e) Approximately 3% was withdrawn in cash;
- (f) Approximately 2% was transferred to Jodi Winick;
- (g) Approximately 2% was transferred to pay a line of credit in the name of McCarthy;
- (h) Approximately 1% was used to pay printing expenses related to the Nanotech Letter; and,
- (i) Additional funds were transferred from the Liquid Gold Accounts to other sources unrelated to the alleged business of Liquid Gold.

31. At Winick's direction, McCarthy participated in and facilitated the Liquid Gold Scheme by:

- (a) Acting as a signatory on the Liquid Gold Accounts;
- (b) Disbursing funds from the Liquid Gold Accounts to pay her own personal expenses, as well as personal expenses of Winick, Jodi Winick, and others;
- (c) Disbursing funds from the Liquid Gold Accounts to other recipients as and when instructed by Winick; and,
- (d) Disbursing funds from the Liquid Gold Accounts to pay expenses arising from the Nanotech Letter Scheme.

The Nanotech Letter Scheme

32. The Nanotech Letter Scheme took place from May of 2009 through August of 2010.

33. At all times, Winick was a directing mind of the Nanotech Letter Scheme.

34. Nanotech held itself out as a company engaged in natural resource development in oil, gas and precious metals and claimed it was involved "in the exploration, production and drilling of oil and gas in Toronto, Canada."

35. Nanotech never operated any oil, gas or exploration business or other business during the time of the Nanotech Letter Scheme and never had any assets.

36. Through the Nanotech Letter, Nanotech, the AHST Companies, Winick and Curry distributed previously unissued securities to the public from Ontario without registration and without having filed a prospectus.

37. Winick gave Curry a list of approximately 10,000 names and instructed Curry to send each of them a copy of the Nanotech Letter enclosing share and warrant certificates (the "Nanotech Share Certificates"; the "Nanotech Warrants").

38. The Nanotech letters were sent from Ontario and addressed to residents of Europe, Asia, Africa and Australia.

39. In the Nanotech Letter, Winick, Curry and the AHST Companies falsely claimed that Nanotech was trading at \$4.93; the letter further stated that the Nanotech Warrants could be exercised at \$2.75 per share, falsely implying that investors could make an immediate and substantial profit when, in fact:

- (a) Nanotech had not traded at \$4.93 since October of 2008; and,
- (b) Nanotech had been listed as inactive by the Wyoming Secretary of State since March 14, 2009.

40. Recipients of the Nanotech Letter who wished to exercise their warrants were directed in the Nanotech Letter to send certified funds, cashier's cheques or wire transfers to AHST Ontario. Earlier versions of the letter gave AHST Ontario's Markham address; later versions directed investors to send funds to a rented mailbox in Hamilton.

41. The Nanotech Letter also included an SEC transfer agent registration number for the AHST Companies. However, while AHST Nevada was registered with the SEC as of December 2004, AHST Nevada was not an active company at any time during the Nanotech Letter Scheme and AHST Ontario has never been registered with the SEC.

42. At Winick's direction, Curry participated in and facilitated the Nanotech Letter Scheme by:

- (a) Collaborating with Winick on drafting the Nanotech Letter;
- (b) Assisting with the printing and mailing of approximately 10,000 Nanotech Letters, including the Nanotech Share Certificates and the Nanotech Warrants;
- (c) Signing the Nanotech Share Certificates and the Nanotech Warrants sent with the Nanotech Letter;
- (d) Permitting the Nanotech Letter, the Nanotech Share Certificates and the Nanotech Warrants to be sent on behalf of the AHST Companies; and,
- (e) Offering in the Nanotech Letter to collect through the AHST Companies any funds sent by investors in response to the Nanotech Letter.

V. ALLEGATIONS

43. Staff make the following specific allegations with respect to the BFM Scheme:

- (a) From June, 2009 through December, 2010, Winick, McCarthy and BFM directly or indirectly, engaged in or participated in an act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that they knew or reasonably ought to have known perpetrated a fraud on other persons or companies contrary to section 126.1(b) of the Act;
- (b) From June, 2009 through December, 2010, Winick, McCarthy and BFM traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to s. 25(1)(a) of the Act, as that section existed at the time the conduct commenced, and contrary to s. 25(1) of the Act, as subsequently amended on September 28, 2009;
- (c) From June, 2009 through December, 2010, Winick, McCarthy and BFM distributed the securities of BFM without a preliminary prospectus and prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirement, contrary to section 53(1) of the Act;
- (d) McCarthy and Greg Curry, being directors and/or officers of BFM, did authorize, permit or acquiesce in the commission of the violations of sections 25, 53 and 126.1 of the Act, as set out above, by BFM or by the employees, agents or representatives of BFM, contrary to section 129.2 of the Act and contrary to the public interest; and,
- (e) Winick, being a directing mind and *de facto* director and officer of BFM, did authorize, permit or acquiesce in the commission of the violations of sections 25, 53 and 126.1 of the Act, as set out above, by BFM or by the employees, agents or representatives of BFM, contrary to section 129.2 of the Act and contrary to the public interest.

44. Staff make the following specific allegations with respect to the Liquid Gold Scheme:
- (a) From June of 2009 through November of 2010, Winick, McCarthy and Liquid Gold directly or indirectly, engaged in or participated in an act, practice or course of conduct relating to securities, derivatives or the underlying interest of a derivative that they knew or reasonably ought to have known perpetrated a fraud on other persons or companies contrary to section 126.1(b) of the Act;
 - (b) From June of 2009 through November of 2010, Winick, McCarthy and Liquid Gold traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to s. 25(1)(a) of the Act, as that section existed at the time the conduct commenced, and contrary to s. 25(1) of the Act, as subsequently amended on September 28, 2009;
 - (c) From June of 2009 through November of 2010, Winick, McCarthy and Liquid Gold distributed the securities of Liquid Gold without a preliminary prospectus and prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirement, contrary to section 53(1) of the Act;
 - (d) McCarthy, being a director of Liquid Gold, did authorize, permit or acquiesce in the commission of the violations of sections 25, 53 and 126.1 of the Act, as set out above, by Liquid Gold or by the employees, agents or representatives of Liquid Gold, contrary to section 129.2 of the Act and contrary to the public interest; and,
 - (e) Winick, being a directing mind and *de facto* director and officer of Liquid Gold, did authorize, permit or acquiesce in the commission of the violations of sections 25, 53 and 126.1 of the Act, as set out above, by Liquid Gold or by the employees, agents or representatives of Liquid Gold, contrary to section 129.2 of the Act and contrary to the public interest.
45. Staff make the following specific allegations with respect to the Nanotech Letter Scheme:
- (a) From May of 2009 through August of 2010, Winick, Curry, AHST Ontario and AHST Nevada traded and engaged in or held themselves out as engaging in the business of trading in securities without being registered to do so in circumstances in which no exemption was available, contrary to s. 25(1)(a) of the Act, as that section existed at the time the conduct commenced, and contrary to s. 25(1) of the Act, as subsequently amended on September 28, 2009;
 - (b) From May of 2009 through August of 2010, Winick, Curry, AHST Ontario and AHST Nevada distributed securities of Nanotech without a preliminary prospectus and prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirement contrary to section 53(1) of the Act;
 - (c) From September 28, 2009 through August of 2010, Winick, Curry, AHST Ontario and AHST Nevada made statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading or advising relationship with Winick, Curry, AHST Ontario or AHST Nevada that were untrue or omitted information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, contrary to section 44(2) of the Act;
 - (d) Winick, being a directing mind and *de facto* officer and director of Nanotech and the AHST Companies, did authorize, permit or acquiesce in the commission of the violations of sections 25, 53 and 44(2) of the Act, as set out above, by AHST or by the employees, agents or representatives of Nanotech and the AHST Companies, contrary to section 129.2 of the Act and contrary to the public interest;
 - (e) Mateyak, being a director and officer of AHST Ontario, did authorize, permit or acquiesce in the commission of the violations of sections 25, 53 and 44(2) of the Act, as set out above, by the AHST Companies or by the employees, agents or representatives of the AHST Companies, contrary to section 129.2 of the Act and contrary to the public interest; and,
 - (f) Curry, being a directing mind and *de facto* director and officer of AHST Ontario, and a director and officer of AHST Nevada, did authorize, permit or acquiesce in the commission of the violations of sections 25, 53 and 44(2) of the Act, as set out above, by the AHST Companies or by the employees, agents or representatives of the AHST Companies, contrary to section 129.2 of the Act and contrary to the public interest.

VI. CONDUCT CONTRARY TO THE PUBLIC INTEREST

- 46. The conduct of the Respondents contravened Ontario securities law and is contrary to the public interest.
- 47. The Staff seek enforcement orders under section 127 of the Act and costs under s. 127.1 of the Act.
- 48. Staff reserve the right to make such other allegations as Staff may advise and the Commission may permit.

DATED at Toronto this 27th day of January, 2012.

1.3 News Releases

1.3.1 CSA Publishes Findings and Recommendations for the Segregation and Portability of Customer Positions and Related Collateral in Over-the-counter Derivatives Clearing

FOR IMMEDIATE RELEASE
February 10, 2012

CSA PUBLISHES FINDINGS AND RECOMMENDATIONS FOR THE SEGREGATION AND PORTABILITY OF CUSTOMER POSITIONS AND RELATED COLLATERAL IN OVER-THE-COUNTER DERIVATIVES CLEARING

Toronto – The Canadian Securities Administrators (CSA) today published for comment Consultation Paper 91-404 – *Derivatives: Segregation and Portability in OTC Derivatives Clearing*. The Consultation Paper sets out the CSA Derivatives Committee's proposals related to the segregation and portability of customer positions and related collateral in cleared over-the-counter (OTC) derivatives transactions.

Specifically, the paper addresses the segregation of assets put forward as collateral for OTC derivatives transactions cleared through a central counterparty (CCP), by customers that access the CCP indirectly through clearing members. As Canadian and international regulators move forward with their G20 commitments that mandate the clearing of standardized OTC derivatives, the effective operation of CCPs becomes essential to enhancing market stability and strengthening market participant protection.

"The CSA is committed to establishing a comprehensive framework for the regulation of OTC derivatives that serves the needs of market participants and is consistent with Canada's international commitments," said Bill Rice, Chair of the CSA and Chair and CEO of the Alberta Securities Commission. "The CSA Derivatives Committee has developed proposals for segregation and portability arrangements that aim to protect customer positions and related collateral in the event of a clearing member insolvency."

Market participants are invited to submit their comments until April 10, 2012. All responses received will be published on the Autorité des marchés financiers (www.lautorite.qc.ca) and the Ontario Securities Commission (www.osc.gov.on.ca) websites.

Copies of the Consultation Paper are available on the following websites: Alberta Securities Commission, Autorité des marchés financiers, British Columbia Securities Commission, Manitoba Securities Commission, New Brunswick Securities Commission, Nova Scotia Securities Commission, Ontario Securities Commission and Saskatchewan Financial Services Commission.

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

For more information:

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Donn MacDougall
Northwest Territories
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1.3.2 Australian Securities and Investments Commission, Quebec Autorité des marchés financiers, Ontario Securities Commission, Alberta Securities Commission and British Columbia Securities Commission Sign Regulatory Cooperation Arrangement

**FOR IMMEDIATE RELEASE
February 10, 2012**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION,
QUEBEC AUTORITÉ DES MARCHÉS FINANCIERS,
ONTARIO SECURITIES COMMISSION, ALBERTA SECURITIES COMMISSION
AND BRITISH COLUMBIA SECURITIES COMMISSION SIGN
REGULATORY COOPERATION ARRANGEMENT**

Tokyo, February 10, 2012 – The Australian Securities and Investments Commission (ASIC), the Quebec Autorité des marchés financiers (AMF), the Ontario Securities Commission (OSC), the Alberta Securities Commission (ASC) and the British Columbia Securities Commission (BCSC) today announced a comprehensive arrangement to facilitate their supervision of regulated entities that operate both in Australia and Canada.

ASIC Chairman Greg Medcraft, AMF President and CEO Mario Albert, OSC Chair and CEO Howard Wetston, ASC Chair and CEO Bill Rice, and BCSC Chair and CEO Brenda Leong executed a memorandum of understanding (MOU) that provides a clear mechanism for consultation, cooperation, and exchange of information among ASIC, AMF, OSC, ASC and BCSC in the context of supervision. The MOU sets forth the terms and conditions for the sharing of information about regulated entities, such as broker or dealers, which operate in Australia, Quebec, Ontario, Alberta and British Columbia.

ASIC, AMF, OSC, ASC and BCSC have a long history of cooperation particularly in securities enforcement matters. This MOU extends this cooperation beyond enforcement by setting forth a framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of regulated entities. The supervision of regulated entities is critical to encouraging compliance with securities laws, which in turn helps to protect investors and the securities markets generally.

The MOU was signed in Tokyo on February 10, 2012, after the close of a meeting of the International Organization of Securities Commissions (IOSCO). It is modeled after the principles set out in the IOSCO Task Force on Supervisory Cooperation Report, which was published on 25 May 2010.

In response to the recent financial crisis, the Task Force and many other groups, including the G20, have recommended that regulators enhance the supervision of internationally-active regulated entities by working with their foreign counterparts.

ASIC Chair Greg Medcraft said, "This Supervisory MOU establishes a strong framework for cooperation and collaboration between ASIC and the OSC, AMF, ASC and BCSC. It will enhance the supervision of our financial markets and support our regulatory mandates. Investors and financial consumers can be confident that regulators are working together to see that markets are fair and efficient."

AMF President and CEO Mario Albert said, "This type of agreement emphasizes the importance of cooperation among regulators from different countries and jurisdictions in order to adequately protect our markets, which are increasingly global in nature, and our investors. It is essential that entities operating across borders be effectively regulated, and this cannot be achieved without the cooperation envisioned by this MOU."

OSC Chair and CEO Howard Wetston said, "Securities regulation is a global responsibility that extends beyond our respective borders. Through cooperation with our regulatory partners, we demonstrate our mutual commitment to protect investors, reduce systemic risk and maintain the effectiveness and integrity of our global capital markets."

In Ontario, the MOU is subject to approval by the Ontario Minister of Finance.

For additional information on the MOU, contact:

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ASIC Corporate Affairs
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416-593-8120

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1.4 Notices from the Office of the Secretary

1.4.1 Maitland Capital Ltd. et al.

**FOR IMMEDIATE RELEASE
February 9, 2012**

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

AND

**IN THE MATTER OF
MAITLAND CAPITAL LTD., ALLEN GROSSMAN,
HANOCH ULFAN, LEONARD WADDINGHAM,
RON GARNER, GORD VALDE, MARIANNE
HYACINTHE, DIANNA CASSIDY, RON CATONE,
STEVEN LANY, ROGER MCKENZIE, TOM
MEZINSKI, WILLIAM ROUSE AND JASON SNOW**

TORONTO – The Commission issued its Reasons and Decision and an Order relating to Maitland Capital Ltd., Allen Grossman and Hanoch Ulfan in the above named matter

A copy of the Reasons and Decision and Order dated February 8, 2012 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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SECRETARY

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1.4.2 Sandy Winick et al.

**FOR IMMEDIATE RELEASE
February 9, 2012**

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

AND

**IN THE MATTER OF
SANDY WINICK, ANDREA LEE MCCARTHY,
KOLT CURRY, LAURA MATEYAK, GREGORY J.
CURRY, AMERICAN HERITAGE STOCK TRANSFER
INC., AMERICAN HERITAGE STOCK TRANSFER,
INC., BFM INDUSTRIES INC., LIQUID GOLD
INTERNATIONAL INC., AND NANOTECH
INDUSTRIES INC.**

TORONTO – The Office of the Secretary issued a Notice of Hearing on January 27, 2012 setting the matter down to be heard on February 16, 2012, at 10:00 a.m. or as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated January 27, 2012 and Statement of Allegations of Staff of the Ontario Securities Commission dated January 27, 2012 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.4.3 Nest Acquisitions and Mergers et al.

FOR IMMEDIATE RELEASE
February 10, 2012

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

AND

**IN THE MATTER OF
NEST ACQUISITIONS AND MERGERS,
IMG INTERNATIONAL INC.,
CAROLINE MYRIAM FRAYSSIGNES,
DAVID PELCOWITZ, MICHAEL SMITH, AND
ROBERT PATRICK ZUK**

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing on the merits is set for May 16, 17, 18, 23, 24, and 25, and June 4 and 6, 2012.

A copy of the Order dated February 1, 2012 is available at www.osc.gov.on.ca.

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1.4.4 Ground Wealth Inc. et al.

FOR IMMEDIATE RELEASE
February 10, 2012

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

AND

**IN THE MATTER OF
GROUND WEALTH INC., ARMADILLO ENERGY INC.,
PAUL SCHUETT, DOUG DEBOER, JAMES LINDE,
SUSAN LAWSON, MICHELLE DUNK, ADRIAN SMITH,
BIANCA SOTO AND TERRY REICHERT**

TORONTO – The Commission issued an Order with certain provisions in the above named matter. The Temporary Order is extended to August 8, 2012.

A copy of the Temporary Order dated February 8, 2012 is available at www.osc.gov.on.ca.

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1.4.5 Irwin Boock et al.

For investor inquiries:

**FOR IMMEDIATE RELEASE
February 10, 2012**

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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
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**

AND

**IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
IRWIN BOOCK**

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

A copy of the Order dated February 10, 2012 and Settlement Agreement dated February 10, 2012 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.4.6 Irwin Boock et al.

**FOR IMMEDIATE RELEASE
February 10, 2012**

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

AND

**IN THE MATTER OF
IRWIN BOOCK, STANTON DEFREITAS, JASON
WONG, SAUDIA ALLIE, ALENA DUBINSKY, ALEX
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**

TORONTO – The Commission issued an Order in the above named matter.

A copy of the Order dated February 10, 2012 is available at **www.osc.gov.on.ca**.

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1.4.7 Irwin Boock et al.

**FOR IMMEDIATE RELEASE
February 10, 2012**

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

AND

**IN THE MATTER OF
IRWIN BOOCK, STANTON DEFREITAS, JASON
WONG, SAUDIA ALLIE, ALENA DUBINSKY, ALEX
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**

TORONTO – Following a hearing held today in the above named matter, the Commission issued an Order which provides that the hearing on the merits is adjourned until February 15, 2012 at 10:30 a.m. at which time the parties shall advise the Commission of the steps taken with regard to the Second JR Application.

A copy of the Order dated February 10, 2012 is available at **www.osc.gov.on.ca**.

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1.4.8 Irwin Boock et al.

FOR IMMEDIATE RELEASE
February 15, 2012

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

AND

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

TORONTO – Following a hearing held today in the above named matter, the Commission issued an Order which provides that the hearing dates of February 16, 17, 21, 22, 23, 27, 29 and March 2, 5, and 6, 2012 be vacated; and that a status hearing be held on March 13, 2012 at 3:00 p.m. and if necessary, on Friday March 23, 2012 at 11:00 a.m.

A copy of the Order dated February 15, 2012 is available at www.osc.gov.on.ca.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Excel Investment Counsel Inc. et al.

Headnote

Under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another registered firm. An individual dealing representative is applying for registration as associate advising representative of an affiliated firm. The current and additional sponsoring firms have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 15.1.

February 7, 2012

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

AND

IN THE MATTER OF
EXCEL INVESTMENT COUNSEL INC. (EIC)

AND

EM INVESTOR SERVICES INC. (EIS)

AND

LAKHBIR SINGH
(collectively the Filers)

DECISION

Background

The regulator in the Jurisdiction (the **Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the regulator (the **Legislation**) for relief from the requirement under paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to permit Lakhbir Singh to be registered as both a

dealing representative of EIS and as an associate advising representative of EIC (the **Requested Relief**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meaning in this decision unless otherwise defined.

Representations

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

1. EIC and EIS are both wholly owned subsidiaries of Asdhir Enterprises Inc. and affiliates of Excel Fund Management Inc. (**EFM**) which is controlled by Asdhir Enterprises Inc. The three Excel companies share the same head office in Mississauga, Ontario.
2. EFM is registered in Ontario in the category of investment fund manager. EFM manages emerging market funds under the banner of Excel Funds. Bhim Asdhir is registered as the UDP for EFM, EIC, and EIS. Grant Alfred Patterson is registered as the CCO for EFM, EIC, and EIS.
3. EIC is registered in Ontario in the category of portfolio manager. EIC provides portfolio management services to investment funds managed by EFM. EIC has no other clients and is economically dependent on EFM.
4. EIS is registered in Ontario in the category of exempt market dealer. EIS was registered for the purpose of selling Excel Funds to Accredited Investors (as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*). EIS only sell funds managed by EFM; it does not trade in the securities of other issuers and is economically dependent on EFM.
5. EIC, EIS and EFM are not in default of any requirements of securities legislation in any jurisdiction of Canada.
6. Lakhbir Singh is currently registered as a dealing representative under the category of exempt market dealer with EIS. He also applied for registration as an associate advising representative under EIC. Mr. Singh has been working as an investment analyst with EIC and will continue with those duties as well as assisting the senior portfolio manager of EIC in advising investment funds managed by EFM.

7. For business purposes, Asdhir Enterprises Inc. has historically caused, and continues to require, the management, advising and distribution of Excel Funds to be carried out through three registrants.
8. EIC and EIS are wholly-owned subsidiaries of Asdhir Enterprises Inc. and affiliates of EFM and are wholly dependent on EFM, accordingly, the dual registration will not give rise to the conflicts of interest present in a similar arrangement involving unrelated, arm's length firms.
9. The Filers have in place policies and procedures to address conflicts of interest that may arise as a result of the dual registration, and believe that they will be able to appropriately deal with these conflicts.
10. The Filers are subject to the restrictions and requirements of Part 13 of NI 31-103 regarding conflict of interest matters.
11. The Excel Funds and their manager EFM are subject to the requirements of National Instrument 81-107 *Independent Review Committee for Investment Funds* and therefore must comply with the requirements relating to conflict of interest issues.
12. In the absence of the Requested Relief, Lakhbir Singh would be prohibited under paragraph 4.1(1)(b) of NI 31-103 from acting as an associate advising representative of EIC while also registered as a dealing and advising representative of EIS, even though EIC is an affiliate of EIS.

Decision

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

The decision of the Decision Maker under the Legislation is that the Requested Relief is granted.

"Marrianne Bridge"
Deputy Director,
Compliance and Registrant Regulation
Ontario Securities Commission

2.1.2 Cub Energy Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from requirement in section 4.3(a) of National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards (NI 52-107) that an auditor's report filed in connection with certain financial statements must express an unmodified opinion.

Applicable Legislative Provisions

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

February 9, 2012

**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
CUB ENERGY INC.
(the "Filer")**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") exempting the Filer from the requirement set out in subsection 4.3(a) of National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards* ("**NI 52-107**") that an auditor's report filed in connection with certain financial statements must express an unmodified opinion in order that the Filer may file audited financial statements of Gastek LLC ("**Gastek**") accompanied by an auditor's report containing a limitation of scope reservation (the "**Exemption Sought**").

Under National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) The Ontario Securities Commission (the "**Commission**") is the principal jurisdiction for the application; and

- (b) The Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in each of British Columbia and Alberta (the "**Non-Principal Passport Jurisdictions**").

Interpretation

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

Representations

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

The Filer

1. The Filer exists pursuant to articles of incorporation dated April 3, 2008 filed in accordance with the *Business Corporations Act* (Ontario). By articles of amendment dated January 26, 2012, the name of the Filer was changed to its current name, "Cub Energy Inc."
2. The registered and head office of the Filer is located in Toronto, Ontario.
3. The Filer's common shares are listed on the TSX Venture Exchange (the "**TSXV**") and the Filer is a reporting issuer in Ontario and the other Jurisdictions.

Gastek LLC

4. Gastek LLC ("**Gastek**") is a limited liability company existing under the laws of the State of California, and created on May 3, 2005;
5. Gastek is not a reporting issuer in any jurisdiction of Canada. Gastek is not in default of securities legislation in any jurisdiction.
6. Gastek's sole material asset is an indirect 30% interest in the capital of KUB-Gas Ltd. ("**KUB**"). Kulczyk Oil Ventures Inc. ("**Kulczyk**"), a reporting issuer in Canada, indirectly owns the remaining 70% interest in the capital of KUB.

KUB-Gas Ltd.

7. KUB is a private Ukrainian company based in Lugansk, Ukraine whose principal asset consists of a 100% interest in four gas fields located in eastern Ukraine in the Dnieper-Donets Basin.
8. KUB is not a reporting issuer in any jurisdiction of Canada. KUB is not in default of securities legislation in any jurisdiction.

Proposed Transaction

9. On October 30, 2011, the Filer, Gastek and Gastek's sole member entered into letter of intent pursuant to which the Filer would acquire Gastek in exchange for the issuance by the Filer of approximately 120% of its issued and outstanding capital to the sole member of Gastek (the "**Proposed Transaction**").
10. The Proposed Transaction will be a reverse takeover as defined in National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**") and within the meaning of TSXV policy 5.2 – *Changes of Business and Reverse Takeovers*.
11. In connection with the Proposed Transaction, the Filer will be filing its filing statement (the "**Filing Statement**") in the form of TSXV Form 3D2 – *Information Required in a Filing Statement for a Reverse Takeover or Change of Business* ("**Form 3D2**") pursuant to the policies of the TSXV. TSXV Form 3D2 requires disclosure of financial statements of the Filer and Gastek prescribed by National Instrument 41-101 – *General Prospectus Requirements* ("**NI 41-101**") and Form 41-101F1 – *Information Required in a Prospectus* ("**Form 41-101F1**").
12. In addition to applying to the principal regulator for the Exemption Sought, the Filer has also applied to the Exchange for a waiver from the equivalent requirements of Form 3D2.

Exemption Sought

13. Form 3D2, section 4.10(2)(a)(ii) of NI 51-102 and item 5.2 of Form 51-102F3 require that financial statements prescribed by NI 41-101 and Form 41-101F1 be filed for the reverse takeover acquirer, Gastek (the "**Gastek Statements**").
14. Pursuant to section 4.2 of NI 41-101 and to item 47.4 of Form 3D2, the Gastek Statements for the years ended 2010, 2009 and 2008 must be audited in accordance with NI 52-107.
15. Pursuant to subsection 4.3(a) of NI 52-107, the annual Gastek Statements must be accompanied by an auditor's report that expresses an unmodified opinion.
16. Prior to June 11, 2010, the date that Kulczyk acquired its 70% interest in KUB, KUB was not affiliated with a reporting issuer in any jurisdiction and its securities were not listed on any stock exchange. As a private company in Ukraine, KUB was not subject to any statutory obligations to have its financial statements audited or reviewed, nor had it ever prepared financial statements in conformance with Canadian generally accepted accounting principles or International Financial Reporting Standards ("**IFRS**").

17. Due to circumstances beyond the control of the Filer and Gastek, the annual financial statements of KUB for the years ended December 31, 2008 and 2009 (the **"Qualified KUB Statements"**) are accompanied by an auditor's report containing an opinion that is qualified because of a scope limitation (the **"Scope Limitation"**) arising from insufficient audit evidence with respect to certain revenue and expense items.
18. The qualification to the Qualified KUB Statements will flow through to the audit report that will be issued for the consolidated financial statements of Gastek for the years ending 2008 and 2009 (the **"Qualified Gastek Statements"**).
19. The audit report for KUB for the year ended December 31, 2010 contains no reservation. Consequently, the annual financial statements of KUB for the year ended December 31, 2010 and the interim financial statement of KUB for the period ending September 30, 2011 are free of any qualification. Consequently, the corresponding financial statements of Gastek will also be free of any qualification.
20. Insufficient audit evidence was available to support revenues of KUB amounting to approximately US\$1.16 million for the year ended December 31, 2009. Equal and offsetting amounts of general and administrative expenses were recorded, and as such, the effect on net income of these non-auditable amounts is zero for each period presented.
21. KUB did not maintain sufficient accounting records for the above described transactions nor did underlying documentation exist to be able to support such transactions, and as such, the audit evidence available was not sufficient for KUB's auditors to satisfy themselves as to the accuracy of the amounts recorded. Alternative and analytical procedures were suggested and attempted, however, as the underlying documentation pertaining to such transactions never existed and cannot be created, sufficient appropriate audit evidence could not be produced, notwithstanding the effort expended by Gastek and the Filer, or by Kulczyk and its auditors since November 2009 to rectify KUB's accounting records in respect of such transactions.
22. The auditor's report accompanying the Qualified KUB Statements contains a clear description of the items and amounts to which the Scope Limitation applies, and the audit report accompanying the Qualified Gastek Statements will contain the same description. Additionally, the financial statements section of the Filing Statement and the basis of presentation note to the pro forma financial statements will disclose that the auditor's report is qualified and will direct readers to the auditor's report for further information.
23. The Scope Limitation qualification within the auditor's report accompanying the Qualified KUB Statements did not result in the auditor being unable to form an opinion on such financial statements as a whole, nor in the issuance of an adverse opinion.
24. To the best knowledge of the Filer, the Filer believes that the Qualified KUB Statements present fairly, in all material respects, the consolidated financial position of KUB as at December 31, 2009 and its consolidated financial performance and its consolidated cash flows for the year then ended in accordance with IFRS.
25. Subsequent to the completion of the Disposition, KUB has taken steps to ensure that accurate and complete account records have been maintained and retained by KUB such that no further similar qualifications of opinion or other similar communications due to a scope limitation arising from the auditor's examination of such records is reasonably expected to recur.

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.

DATED this 9th day of February, 2012

"Cameron McInnis"

Chief Accountant, Chief Accountant's Office
Ontario Securities Commission

2.1.3 McLean Budden Limited

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from conflict of interest trading prohibition in paragraph 13.5(2)(b) of NI 31-103 to permit *in specie* subscriptions and redemptions by separately managed accounts and mutual funds in mutual funds – Portfolio manager of managed accounts is also portfolio manager of mutual funds and is, therefore, a “responsible person” – Relief subject to certain conditions.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.5, 15.1.

February 7, 2012

**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
MCLEAN BUDDEN LIMITED**

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from McLean Budden Limited and any affiliate of McLean Budden Limited (collectively, the **Filer**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) granting an exemption from Section 13.5(2)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) that prohibits an adviser from knowingly causing an investment portfolio managed by it (including an investment fund for which it acts as an adviser) to purchase or sell the securities of any issuer from or to the investment portfolio of a responsible person, an associate of a responsible person, or any investment fund for which a responsible person acts as an adviser,

- (a) to permit the following purchases and redemptions (each purchase and redemption, an ***In Specie Transaction***):
 - (i) the purchase by a fully managed account managed by the Filer (each, a **Managed Account** and, collectively, the **Managed Accounts**) of securities of existing or future mutual funds managed by the Filer, to which National Instrument 81-102 *Mutual Funds* (**NI 81-102**) applies (each, a **Fund** and, collectively, the **Funds**) and the redemption of securities held by a Managed Account in a Fund, and as payment:
 - (A) for such purchase, in whole or in part, by the Managed Account making good delivery of portfolio securities to the Fund; and
 - (B) for such redemption, in whole or in part, by the Fund making good delivery of portfolio securities to the Managed Account

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

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

- (a) the Ontario Securities Commission is the principal regulator for the Application; and

- (b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the provinces and territories of Canada other than the Jurisdiction (the **Passport Jurisdictions**).

Interpretation

Terms defined in NI 31-103, National Instrument 14-101 *Definitions*, NI 81-102, National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) or the securities legislation of the Jurisdiction or the Passport Jurisdictions have the same meaning in this Decision Document.

Representations

This decision is based on the following representations by the Filer:

The Filer

1. The Filer is, or will be, registered as a portfolio manager in Ontario and each of the Passport Jurisdictions.
2. The Filer is, or will be, registered as an investment fund manager, in respect of any Fund managed by it, in Ontario and in any other Passport Jurisdiction where such registration is required.
3. The Filer is, or will be, the investment fund manager and/or portfolio manager of each of the Funds.
4. The Filer is, or will be, the portfolio manager of each of the Managed Accounts.

The Funds

5. Each of the Funds is, or will be, an open-end mutual fund trust or mutual fund corporation to which NI 81-102 applies.
6. Each of the Funds is, or will be, a reporting issuer in Ontario and in each of the Passport Jurisdictions, qualified for distribution pursuant to a simplified prospectus and annual information form prepared and filed in accordance with securities legislation.
7. A Fund may be an associate of the Filer that is a responsible person in respect of a Managed Account or an investment fund for which the Filer acts as an advisor.

Managed Accounts

8. Each client of the Filer has executed, or will execute, an investment management agreement for a fully managed account (the **Client**) with the Filer whereby the Filer has been appointed, or will be appointed, as portfolio manager for the investment portfolio of the Client with full discretionary authority. The investment management agreement or other documentation contains, or will contain, the authorization of the Client, on behalf of the Managed Account, to engage in *In Specie* Transaction with the Funds.

In Specie Transactions

9. The Filer wishes to be able to enter into *In Specie* Transactions in accordance with the investment objectives of the applicable Managed Accounts. Absent the Exemption Sought, the Filer would be prohibited by subsection 13.5(2)(b) of NI 31-103 from engaging in *In Specie* Transactions.
10. In all *In Specie* Transactions, the Filer will value the portfolio securities to be delivered using the same values that are used to calculate the net asset value for the purpose of the issue price or redemption price of the securities of the Fund.
11. The Filer has established, or will establish, an independent review committee (**IRC**) in respect of each Fund in accordance with the requirements of NI 81-107.
12. *In Specie* Transactions involving a Fund will be referred to the IRC of the Fund under Section 5.1 of NI 81-107 for approval on behalf of the Fund.
13. The IRC will not provide its approval in respect of *In Specie* Transactions unless it has made the determination set out in Section 5.2(2) of NI 81-107.

14. If the IRC of a Fund becomes aware of an instance where the Filer, as investment fund manager or portfolio manager of the Fund, did not comply with the terms of the Exemption Sought or a condition imposed by the IRC in its approval, the IRC will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction in which the Fund is organized.
15. At the time of an *In Specie* Transaction, the Filer will have in place policies and procedures to enable the Funds to engage in *In Specie* Transactions with Managed Accounts.
16. The Filer considers that effecting *In Specie* Transactions will be beneficial to the Funds and Managed Accounts in that they will reduce transaction costs on the acquisition or disposition of securities for the applicable Fund or Managed Account and there will be reduced market disruption associated with the transactions.

Decision

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

- (a) in connection with an *In Specie* Transaction where a Managed Account acquires securities of a Fund:
 - (i) the Filer obtains the prior written consent of the relevant Client before it engages in any *In Specie* Transactions and such consent has not been revoked;
 - (ii) the securities delivered by the Managed Account to the Fund are acceptable to the Filer as portfolio manager of the Fund and consistent with the investment objective of the Fund;
 - (iii) the value of the securities delivered by the Managed Account to the Fund is at least equal to the issue price of the securities of the Fund for which they are payment, valued as if the securities were portfolio assets of that Fund;
 - (iv) the account statement next prepared for the Managed Account will include a note describing the securities delivered by the Managed Account to the Fund and the value assigned to such securities; and
 - (v) the Fund will keep written records of an *In Specie* Transaction in a financial year of the Fund, reflecting details of the securities delivered by the Managed Account to the Fund and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;
- (b) in connection with an *In Specie* Transaction where a Managed Account redeems securities of a Fund:
 - (i) the Filer obtains the prior written consent of the relevant Client before it engages in any *In Specie* Transactions in connection with the redemption of securities of a Fund and such consent has not been revoked;
 - (ii) the securities delivered by the Fund to the Managed Account are acceptable to the Filer as portfolio manager of the Managed Account, and are consistent with the Managed Account's investment objective;
 - (iii) the value of the securities delivered by the Fund to the Managed Account is equal to the amount at which those securities were valued in calculating the net asset value per security used to establish the redemption price;
 - (iv) the holder of the Managed Account has not provided notice to terminate its Managed Account with the Filer;
 - (v) the account statement next prepared for the Managed Account will include a note describing the securities delivered by the Fund to the Managed Account and the value assigned to such securities; and
 - (vi) the Fund will keep written records of an *In Specie* Transaction in a financial year of the Fund, reflecting details of the securities delivered by the Fund to the Managed Account and the value assigned to such securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place; and

- (c) the Filer does not receive any compensation in respect of any sale or redemption of securities of a Fund (other than redemption fees which have been disclosed) and, in respect of any delivery of securities further to an *In Specie* Transaction, the only charges paid by the Managed Account are the commission charged by the dealer executing the trade and/or any administrative charges levied by the custodian.

“Raymond Chan”
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.4 BMO Nesbitt Burns Inc. et al.

Headnote

NP 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Hybrid Application – Filers request relief from the trade confirmation, client statement, statement of purchase and sale, and monthly statement requirements in securities laws where acting solely as execution-only brokers in the context of “give-up” trades – Relief granted with respect to give-up trades for institutional customers provided that a give-up trade agreement is executed with institutional customer and clearing broker and that clearing broker agrees to provide the customers with statements which include give-up trade details.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 36(1).

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 14.14.

Citation: BMO Nesbitt Burns Inc., CIBC World Markets Inc., RBC Dominion Securities Inc., Scotia Capital Inc., and TD Securities Inc., Re, 2011 ABASC 598

November 24, 2011

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, ONTARIO, SASKATCHEWAN,
AND NEWFOUNDLAND AND LABRADOR**

AND

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

AND

**IN THE MATTER OF
BMO NESBITT BURNS INC.,
CIBC WORLD MARKETS INC.,
RBC DOMINION SECURITIES INC.,
SCOTIA CAPITAL INC.,
AND TD SECURITIES INC.
(the Filers)**

DECISION

Background and Relief Requested

The securities regulatory authority or regulator in each of Alberta and Ontario (the **Dual Exemption Decision Makers**) has received an application from the Filers for a decision under the securities legislation of those jurisdictions for an exemption, in the context of Give-up

Transactions (as defined below), from the requirement (the **Statement of Account Requirement**) that a dealer must deliver a statement of account to each client at least once every three months, or at the end of a month if the client has requested statements on a monthly basis or if a transaction was effected in the client's account during the month (the **Dual Exemption**).

The securities regulatory authority or regulator in each of Alberta, Saskatchewan, Ontario and Newfoundland and Labrador (the **Coordinated Exemption Decision Makers**) has received an application from the Filers for a decision under the securities legislation of those jurisdictions for an exemption, in the context of Give-up Transactions, from the requirement (the **Trade Confirmation Requirement**) that every registered dealer that has acted as principal or agent in connection with any purchase or sale of a security must promptly send by pre-paid mail or deliver to the client a written confirmation of the transaction (the **Coordinated Exemption**).

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

- (a) the Alberta Securities Commission is the principal regulator for this application,
- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Northwest Territories, Nunavut and the Yukon Territory;
- (c) this decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario; and
- (d) this decision evidences the decision of each Coordinated Exemption Decision Maker.

Interpretation

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

Representations

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

1. Each Filer is registered as an investment dealer under the securities legislation of all provinces and territories of Canada, as a futures commission merchant under the *Commodity Futures Act* (Ontario) and *The Commodity Futures Act* (Manitoba) and as a derivatives dealer under the *Derivatives Act* (Québec).

2. Each Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the TSX Venture Exchange, an approved participant of the Montreal Exchange and a participating organization of the Toronto Stock Exchange.
3. The head office of each Filer is located in Toronto, Ontario.
4. Each Filer acts as an executing and clearing broker for Give-up Transactions (as defined below) that involve the purchase or sale of options on equities or indexes (**Securities**) or of commodity futures contracts or commodity futures options (**Futures Contracts**) that are listed or traded on one or more marketplaces.
5. **Give-up Transactions** are purchases or sales of Securities or Futures Contracts by investors, each of whom is an "institutional customer" within the meaning of IIROC Dealer Member Rule 1.1, that have an existing relationship as a client with a clearing broker but wish to use the trade execution services of one or more executing brokers for the purpose of executing such purchases or sales (**Subject Transactions**). Under these circumstances, the executing broker will execute the Subject Transactions in accordance with the institutional client's instructions and then "give up" the Subject Transactions to the clearing broker for clearing, settlement and/or custody. The service provided by the executing broker is limited to trade execution only.
6. The clearing broker remains subject to applicable Trade Confirmation and Statement of Account Requirements (collectively, the **Delivery Requirements**) in respect of its institutional client in Give-up Transactions. The clearing broker maintains an account for the institutional client that is administered in accordance with the terms and conditions of the account documentation of the clearing broker that has been signed by the institutional client. For a Give-up Transaction, the institutional client does not sign account documentation with the executing broker, and the executing broker does not receive any money, securities, margin or collateral from the institutional client. The institutional client does, however, enter into an agreement with the executing broker and the clearing broker that governs their Give-up Transaction relationship (a **Give-up Agreement**).
7. Although each Filer is responsible for record-keeping, bookkeeping, custody and other administrative functions (**Account Services**) in respect of its own clients, it does not provide Account Services for execution-only customers in Give-up Transactions. Such Account Services remain the responsibility of those clients' clearing brokers.
8. Each Filer does, however, record in its own books and records and accounting system all Give-up Transactions that it executes, which generally comprise those Securities and Futures Contract positions held by it that are not allocated to any of its own institutional client accounts. The Filer communicates these unallocated positions to the relevant clearing brokers who either accept or reject the positions so allocated on behalf of their clients based on existing Give-Up Agreements. If a clearing broker rejects a proposed allocation, the Filer contacts the person who executed the trade to obtain clarifying instructions and then allocates the position in accordance with the instructions so received.
9. Each Filer prepares a monthly or transaction-by-transaction invoice detailing all Give-up Transactions (including the amount of any commission to the Filer for execution thereof) that the Filer conducted during the month for each institutional client under a Give-up Agreement. The Filer delivers such invoice to the clearing broker who then reconciles the Give-up Transactions with its own records.
10. Each Filer is, to the best of its knowledge, in compliance with all IIROC requirements relating to the maintenance of records of executed transactions.
11. Application of the Delivery Requirements to the Filers when they provide only trade execution services in respect of Give-up Transactions would:
 - (a) be duplicative and confusing because the required trade confirmations and statements of accounts to execution-only clients would capture only some, not all, of the information that would be contained in the trade confirmations and statements of account delivered to the same clients by their clearing brokers; and
 - (b) not be required to establish an audit trail or to facilitate reconciliation of Give-up Transactions as between a Filer and a clearing broker.

Decision

Each of the principal regulator, the securities regulatory authority or regulator in Ontario and the Coordinated Exemption Decision Makers is satisfied that the decision meets the test set out in the legislation of the jurisdiction for the relevant regulator or securities regulatory authority to make the decision.

The decision of the Dual Exemption Decision Makers under the Legislation is that the Dual Exemption is granted, and the decision of the Coordinated Review Decision Makers

under the legislation of the jurisdiction is that the Coordinated Exemption is granted, provided that:

1. each Filer provides trade execution services in respect of Give-up Transactions only for institutional customers within the meaning of IIROC Dealer Member Rule 1.1;
2. each Filer enters into a Give-Up Agreement with the clearing broker and the institutional customer; and
3. the clearing broker has agreed to provide each institutional customer with written trade confirmations and statements of account that include information for any Subject Transaction.

For the Alberta Securities Commission:

"Glenda A. Campbell", QC
Vice-Chair

"Stephen Murison"
Vice-Chair

2.1.5 Centamin Egypt Limited – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

February 9, 2012

Centamin Egypt Limited
57 Kishorn Road
Mount Pleasant, Western Australia 6153
Australia

Dear Sirs/Mesdames:

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

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

As the Applicant has represented to the Decision Makers that:

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

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

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

2.1.6 Sinopec Daylight Energy Ltd. – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

Citation: Sinopec Daylight Energy Ltd., Re, 2012 ABASC 53

February 9, 2012

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

Attention: Jennifer Marshall

Dear Madam:

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

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

As the Applicant has represented to the Decision Makers that:

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

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

"Blaine Young"
Associate Director, Corporate Finance

2.1.7 First Asset Pipes & Power Income Fund and First Asset Investment Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Investment fund and its manager exempted from the dealer registration requirement for certain limited trading activities to be carried out by these parties in connection with rights offering by the investment fund – The limited trading activities involve: i) the forwarding of a rights offering prospectus, and the distribution of rights to acquire securities of the fund, to existing holders of fund securities, and ii) the subsequent distribution of securities to holders of these rights, upon their exercise of the rights, through an appropriately registered dealer.

Applicable Legislative Provisions

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

February 10, 2012

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

AND

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

AND

IN THE MATTER OF FIRST ASSET PIPES & POWER INCOME FUND (the Fund) AND FIRST ASSET INVESTMENT MANAGEMENT INC. (the Manager, together with the Fund, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Filers from the dealer registration requirement in the Legislation in respect of certain trades (the **Rights Offering Activities**) to be carried out by the Manager, on behalf of the Fund, in connection with a proposed distribution (the **Rights Offering**) of rights (the **Rights**) to acquire trust units of the Fund (the **Units**), to be made in Ontario and each of the Passport Jurisdictions (as defined below) pursuant to a rights offering prospectus (the **Rights Offering Prospectus**).

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

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

Interpretation

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

Representations

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

1. The Fund is a closed-end investment trust established under the laws of the Jurisdiction. The Fund is an investment fund. The Fund is a reporting issuer in the Jurisdiction and in each of the Passport Jurisdictions. The Fund is not in default of the securities legislation of any jurisdiction.
2. The Manager acts as the investment fund manager for the Fund. The Manager is registered as an investment fund manager under the Legislation.
3. The head office of each of the Filers is located in Toronto, Ontario.
4. The authorized capital of the Fund consists of an unlimited number of Units. The Units are listed for trading on the Toronto Stock Exchange (the **TSX**).
5. The Fund is subject to certain investment restrictions that, among other things, limit the equity securities and other securities that may be acquired for its investment portfolio.
6. The investment objectives of the Fund are to provide holders of Units with the benefits of high monthly cash distributions together with the opportunity for capital appreciation by investing in an actively managed portfolio of issuers that derive their income from the distribution of oil, gas or natural gas, as well as those issuers that service and support such industries.
7. The Fund filed a final long form prospectus dated January 27, 2005, under the securities legislation of each of the Passport Jurisdictions for the initial

issuance of Units. On September 28, 2006, the Fund completed a rights offering under which it issued additional Units pursuant to a rights offering circular dated August 15, 2006. The Fund also completed two warrant offerings on July 23, 2009 and July 23, 2010 under which it issued additional Units pursuant to two short form warrant offering prospectuses dated February 18, 2009 and February 10, 2010, respectively. On March 24, 2011, the Fund completed a rights offering under which it issued additional Units pursuant to a rights offering prospectus dated February 14, 2011.

8. The Fund does not engage in a continuous distribution of its securities.
9. Under the Rights Offering, each holder of Units, as at a specified record date, will be entitled to receive, for no consideration, one Right for each Unit held by the holder. Three Rights entitle the holder to subscribe for one Unit upon payment to the Fund of a subscription price, to be specified in the Rights Offering Prospectus, prior to the expiry of the Rights. Holders of Rights in Canada are permitted to sell or transfer their Rights instead of exercising their Rights to subscribe for Units. Holders of Rights who exercise their Rights may subscribe pro rata for additional Units pursuant to an additional subscription privilege. The term of the Rights is expected to be three months or less.
10. The Fund has applied, or will apply, to list on the TSX the Rights to be distributed under the Rights Offering, including the Units issuable upon the exercise thereof.
11. The Rights Offering Activities will consist of:
 - (a) the distribution of the Rights Offering Prospectus and the issuance of Rights to holders of Units (as at the record date specified in the Rights Offering Prospectus), after the Rights Offering Prospectus has been filed, and receipts obtained, under the Legislation and the securities legislation of each of the Passport Jurisdictions; and
 - (b) the distribution of Units to holders of the Rights, upon the exercise of the Rights by the holders, through a registered dealer that is registered in a category that permits the registered dealer to make such a distribution.
12. The Fund is in the business of trading by virtue of its portfolio investing and trading activities. As a result, the capital raising activities of the Fund, including the Rights Offering Activities, would require each of the Filers to register as a dealer in the absence of this decision (or another available

exemption from the dealer registration requirement).

13. Section 8.5 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) provides that, after March 26, 2010, the exemptions from the dealer registration requirements set out in sections 3.1 [*Rights offering*] and section 3.42 [*Conversion, exchange, or exercise*] of NI 45-106 no longer apply.

Decision

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

The decision of the principal regulator under the Legislation is that the Fund, and the Manager acting on behalf of the Fund, are not subject to the dealer registration requirement in respect of the Rights Offering Activities.

"Judith N. Robertson"
Commissioner
Ontario Securities Commission

"James Turner"
Vice-Chair
Ontario Securities Commission

2.1.8 Extorre Gold Mines Limited

Headnote

Multilateral Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1 – The filer wants to file its short form prospectus less than 10 days after it files its notice of intention to file a short form prospectus – The issuer has a current annual information form – The issuer believed it had filed a notice of intention or was eligible to file a short form prospectus without first filing a notice under the transitional provisions in s. 2.8(4) – The issuer could suffer significant prejudice if it has to delay filing its preliminary prospectus.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1.

January 30, 2012

**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
EXTORRE GOLD MINES LIMITED
(the Filer)**

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer be exempted from the requirement in section 2.8 of National Instrument 44-101 *Short Form Prospectus Distributions* (NI 44-101) to file a notice declaring its intention to be qualified to file a short form prospectus (Notice of Intention) at least 10 business days prior to the filings of its first preliminary short form prospectus (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 and New Brunswick, and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

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

Representations

- 3 This decision is based on the following facts represented by the Filer:
- 1. the Filer is a corporation that was incorporated on December 21, 2009 under the *Canada Business Corporations Act*; the head office of the Filer is located in Vancouver, British Columbia;
 - 2. the Filer has authorized capital consisting of an unlimited number of common shares (Common Shares) of which 92,616,939 were outstanding as at January 24, 2012;
 - 3. the Filer is a "reporting issuer" within the meaning of applicable securities legislation in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and New Brunswick (the Reporting Jurisdictions);
 - 4. the Filer's Common Shares are listed on the Toronto Stock Exchange and NYSE AMEX;
 - 5. on March 29, 2010 the Filer obtained an exemption (the Previous Exemption) in the Reporting Jurisdictions from certain qualification criteria set out in section 2.2(d)(i) of NI 44-101; the Filer no longer needs to rely on the Previous Exemption, as it now meets all of the basic qualification criteria set out in section 2.2 of NI 44-101;
 - 6. section 2.8 of NI 44-101 provides that an issuer is not qualified to file a short form prospectus unless it has filed a Notice of Intention at least ten business days prior

- to the issuer filing its first preliminary short form prospectus (Preliminary Prospectus); the Filer has not yet filed its first Preliminary Prospectus;
7. the Filer believed that it had filed a Notice of Intention at the time of the Previous Exemption; however, on January 24, 2012, on realizing that it had not yet filed a Notice of Intention, the Filer filed the Notice of Intention; in the absence of the Exemption Sought, the Filer will not be able to file a Preliminary Prospectus until February 7, 2012;
 8. the Filer has been approached by certain underwriters to enter into an enforceable agreement for a bought deal short form prospectus offering (the Offering);
 9. the Filer is not in a position to enter into any enforceable agreement as it would be required to file a preliminary short form prospectus within four business days of execution of the enforceable agreement;
 10. should the Filer delay in entering an enforceable agreement, the Offering may collapse causing a negative impact on the business of the Filer; and
 11. the Filer is not in default of any requirement of securities legislation in any jurisdiction of Canada.

Decision

- 4 Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.
- 5 The decision of the Decisions Makers under the Legislation is that the Exemption Sought is granted.

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

2.1.9 Matco Financial Inc.

Headnote

National Instrument 31-103 Registration Requirements and Exemptions – relief from the requirement for a mutual fund dealer to become a member of the Mutual Fund Dealers Association of Canada – applicant subject to certain terms and conditions on its registration as a mutual fund dealer.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements and Exemptions, ss. 9.2, 15.1.

February 13, 2011

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

AND

IN THE MATTER OF
MATCO FINANCIAL INC.

DECISION

Background

The regulator in Ontario (the “Jurisdiction”) has received an application from Matco Financial Inc. (“Matco”) for a decision under the securities legislation of the Jurisdiction (the “Legislation”) exempting Matco from the requirement imposed on mutual fund dealers to be a member of the Mutual Fund Dealers’ Association under Section 9.2 of National Instrument 31-103 *Registration Requirements and Exemptions* (the “MFDA”) (the “Requested Relief”).

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this decision, including the attached Appendix (the “Appendix”) to this decision, unless they are otherwise defined in this decision or the Appendix.

Representations

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

1. Matco is a corporation subsisting under the laws of the Province of Alberta and is extra-provincially registered in the Provinces of British Columbia and Ontario;
2. Matco is currently registered under the securities legislation of Alberta in the categories of investment fund manager, portfolio manager and mutual fund dealer; under the securities legislation of British Columbia as portfolio manager and mutual fund dealer; and under the securities legislation of the Jurisdiction as mutual fund dealer and portfolio manager;
3. Matco's principal business activity is the provision of investment management and wealth management services;
4. Matco is the manager of various mutual funds that are qualified for distribution under a simplified prospectus in each of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario (the “Matco Funds”). Matco's principal business in Ontario is managing the Matco Funds.”
5. Securities of the Matco Funds are primarily distributed to the public through registered dealers.
6. Matco is not a reporting issuer in any jurisdiction of Canada and is not, to its knowledge, in default of any securities regulation of any jurisdiction of Canada.
7. Matco intends to engage in certain activities as a mutual fund dealer in the Jurisdiction that is incidental to its principal business activity and has agreed to the imposition of terms and conditions on its registration as a mutual fund dealer

set out in the Appendix, which outlines the activities Matco has agreed to restrict itself to in connection with its application for this decision;

8. Membership of the Filer in the MFDA is not appropriate due to the limited nature of the Filer's mutual fund dealer activities;
9. The Filer will maintain its registration as a mutual fund dealer in Ontario and will comply with applicable securities legislation and rules; and
10. Before Matco accepts any person or company as a mutual fund client pursuant to its registration in the Jurisdiction as a mutual fund dealer, Matco shall provide to such person or company prominent written notice using the following words:

*Matco Financial Inc. (**Matco**) is not currently a member, and does not intend to become a member of the Mutual Fund Dealers Association (**MFDA**); consequently, clients of Matco will not have available to them investor protection benefits that would otherwise derive from membership of Matco in the MFDA, including coverage under any investor protection plan for clients of members of the MFDA.*

Decision

The Director is satisfied that the decision meets the test set out in the Legislation to make the decision.

The decision of the Director under the Legislation is that the Requested Relief is granted, provided that Matco's registration as a mutual fund dealer in Ontario is subject to the terms and conditions set out in the attached Appendix.

"Marrianne Bridge"
Deputy Director
Compliance and Registrant Regulation

APPENDIX
TERMS AND CONDITIONS OF REGISTRATION
OF
MATCO FINANCIAL INC.
AS A MUTUAL FUND DEALER
UNDER THE LEGISLATION

Definitions

1. For the purposes hereof, unless the context otherwise requires, defined terms contained in National Instrument 14-101 *Definitions* have the same meaning in this Appendix A:

- (a) “Act” means the *Securities Act*, R.S.O. 1990, as amended;
- (b) “Adviser” means an adviser as defined in section 1 of the Act;
- (c) “Client Name Trade” means, for the Registrant, a trade to, or on behalf of, a person or company, in securities of a mutual fund that is managed by the Registrant or an affiliate of the Registrant, where the person or company is shown on the records of the mutual fund or of another mutual fund managed by the Registrant or an affiliate of the Registrant as the holder of securities of such mutual fund, and the trade consists of:
 - (A) a purchase, by the person or company, through the Registrant, of securities of the mutual fund; or
 - (B) a redemption, by the person or company, through the Registrant, of securities of the mutual fund;

and where, the person or company is either a client of the Registrant that was not solicited by the Registrant or an affiliated entity of the Registrant in respect of the purchase of the mutual funds or was an existing client of the Registrant or an affiliated entity of the Registrant on the Effective Date;

- (d) “Commission” means the Ontario Securities Commission;
- (e) “Effective Date” means May 9, 2011;
- (f) “Employee”, for the Registrant, means:
 - (A) an employee of the Registrant;
 - (B) an employee of an affiliated entity of the Registrant; or
 - (C) an individual that is engaged to provide, on a bona fide basis, consulting, technical, management or other services to the Registrant or to an affiliated entity of the Registrant, under a written contract between the Registrant or the affiliated entity and the individual or a consultant company or consultant partnership of the individual, and, in the reasonable opinion of the Registrant, the individual spends or will spend a significant amount of time and attention on the affairs and business of the Registrant or an affiliated entity of the Registrant;
- (g) “Employee”, for a Service Provider, means an employee of the Service Provider or an affiliated entity of the Service Provider, provided that, at the relevant time, in the reasonable opinion of the Registrant, the employee spends or will spend, a significant amount of time and attention on the affairs and business of:
 - (A) the Registrant or an affiliated entity of the Registrant; or
 - (B) a mutual fund managed by the Registrant or an affiliated entity of the Registrant;
- (h) “Executive”, for the Registrant, means a director, officer or partner of the Registrant or of an affiliated entity of the Registrant;
- (i) “Executive”, for a Service Provider, means a director, officer or partner of the Service Provider or of an affiliated entity of the Service Provider;

- (j) “Exempt Trade”, for the Registrant, means a trade in securities of a mutual fund that the Registrant would be authorized to make if it were registered under the Legislation as an exempt market dealer;
- (k) “Fund-on Fund Trade”, for the Registrant, means a trade that consists of :
 - (i) a purchase, through the Registrant, of securities of a mutual fund that is made by another mutual fund;
 - (ii) a purchase, through the Registrant, of securities of a mutual fund that is made by a person or company where the person or company, an affiliated entity of the person or company, or another person or company is, or will become, the counterparty in a specified derivative or swap with another mutual fund; or
 - (iii) a sale, through the Registrant, of securities of a mutual fund that is made by another mutual fund where the party purchasing the securities is:
 - (A) a mutual fund managed by the Registrant or an affiliated entity of the Registrant; or
 - (B) a person or company that acquired the securities where the person or company, an affiliated entity of the person or company, or another person or company is, or was, the counterparty in a specified derivative or swap with another mutual fund; and

where, in each case, at least one of the referenced mutual funds is a mutual fund that is managed by either the Registrant or an affiliated entity of the Registrant;

- (l) “In Furtherance Trade” means, for the Registrant, a trade by the Registrant that consists of any act, advertisement, or solicitation, directly or indirectly in furtherance of another trade in securities of a mutual fund, where the other trade consists of:
 - (i) a purchase or sale of securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
 - (ii) a purchase or sale of securities of a mutual fund where the Registrant acts as the principal distributor of the mutual fund; and

where, in each case, the purchase or sale is made by or through another registered dealer if the Registrant is not otherwise permitted to make the purchase or sale pursuant to these terms and conditions;

- (m) “Managed Account” means, for the Registrant or an affiliated entity of the Registrant, an investment portfolio account of a client under which the Registrant or an affiliated entity of the Registrant, pursuant to a written agreement made between the Registrant or the Registrant’s affiliated entity and the client, makes investment decisions for the account and has full discretionary authority to trade in securities for the account without obtaining the client’s specific consent to the trade;
- (n) “Managed Account Trade” means, for the Registrant, a trade to, or on behalf of, a Managed Account of the Registrant or an affiliated entity of the Registrant, where the trade consists of a purchase or redemption, through the Registrant of securities of a mutual fund, that is made on behalf of the Managed Account, where, in each case:
 - (i) the Registrant or an affiliate entity of the Registrant is the portfolio adviser to the mutual fund;
 - (ii) the mutual fund is managed by the Registrant or an affiliate of the Registrant; and
 - (iii) either of:
 - (A) the mutual fund is prospectus-qualified in the Jurisdiction; or
 - (B) the trade is not subject to the prospectus requirement under the Legislation of the Jurisdiction;
- (o) “Mutual Fund Instrument” means National Instrument 81-102 *Mutual Funds*, as amended;

- (p) "Permitted Client", for the Registrant, means a person or company that is a client of the Registrant, or an affiliated entity of the Registrant, and that is or was at the time the person or company became a client of the Registrant or an affiliated entity of the Registrant:
 - (i) an Executive or Employee of the Registrant or an affiliated entity of the Registrant;
 - (ii) a Related Party of an Executive or Employee of the Registrant or an affiliated entity of the Registrant;
 - (iii) a Service Provider of the Registrant or an affiliated entity of a Service Provider of the Registrant or an affiliated entity of the Registrant;
 - (iv) an Executive or Employee of a Service Provider of the Registrant or an affiliated entity of the Registrant; or
 - (v) a Related Party of an Executive or Employee of a Service Provider of the Registrant or an affiliated entity of the Registrant;
- (q) "Permitted Client Trade" means, for the Registrant, a trade to a person, who is a Permitted Client or who represents to the Registrant that he or she is a person included in the definition of Permitted Client, in securities of a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant, and the trade consists of a purchase or redemption, by the person, through the Registrant, of securities of the mutual fund;
- (r) "Registered Plan" means a registered pension plan, deferred profit sharing plan, registered retirement savings plan, registered retirement income fund, registered education savings plan or other deferred income plan registered under the Income Tax Act (Canada);
- (s) "Registrant" means Matco Financial Inc.;
- (t) "Related Party", for a person, means another person who is:
 - (i) the spouse of the person;
 - (ii) the issue of:
 - (A) the person,
 - (B) the spouse of the person; or
 - (C) the spouse of any person that is the issue of a person referred to in subparagraphs (A) or (B) above;
 - (iii) the parent, grandparent or sibling of the person, or the spouse of any of them;
 - (iv) the issue of any person referred to in paragraph (iii) above;
 - (v) a Registered Plan established by, or for the exclusive benefit of, one, some or all of the foregoing;
 - (vi) a trust if one or more of the trustees is a person referred to above and the beneficiaries of the trust are restricted to one, some, or all of the foregoing; or
 - (vii) a corporation if all the issued and outstanding shares of the corporation are owned by one, some, or all of the foregoing;
- (u) "securities", for a mutual fund, means shares or units of the mutual fund;
- (v) "Seed Capital Trade" means a trade in securities of a mutual fund made to a persons or company referred to in any of subparagraphs 3.1(1)(a)(i) to 3.1(1)(a)(iii) of the Mutual Fund Instrument; and
- (w) "Service Provider", for the Registrant, means:
 - (i) a person or company that provides or has provided professional, consulting, technical, management or other services to the Registrant or an affiliated entity of the Registrant;

- (ii) an Adviser to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant; or
- (iii) a person or company that provides or has provided professional, consulting, technical, management or other services to a mutual fund that is managed by the Registrant or an affiliated entity of the Registrant.

2. For the purposes hereof:

- (a) a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is controlled by the same person or company; and
- (b) a person or company is considered to be controlled by a person or company if:
 - (i) in the case of a person or company:
 - (A) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and
 - (B) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;
 - (ii) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or
 - (iii) in the case of a limited partnership, the general partner is the second-mentioned person or company.
- (c) a person or company is considered to be a subsidiary entity of another person or company if:
 - (i) it is controlled by:
 - (A) that other; or
 - (B) that other and one or more persons or companies, each of which is controlled by that other; or
 - (C) two or more persons or companies, each of which is controlled by that other; or
 - (ii) it is a subsidiary entity of a person or company that is that other's subsidiary entity;

3. For the purposes hereof,

- (a) "issue" and "sibling" includes any person having such relationship through adoption, whether legally or in fact;
- (b) "parent" and "grandparent" includes a parent or grandparent through adoption, whether legally or in fact;
- (c) "registered dealer" means a person or company that is registered under the Act as a dealer in a category that permits the person or company to act as dealer for the subject trade; and
- (d) "spouse", for an Employee or Executive, means a person who, at the relevant time, is the spouse of the Employee or Executive.

4. For purposes hereof, any terms that are not otherwise defined in National Instrument 14-101 *Definitions* or specifically defined above shall, unless the context otherwise requires, have the meaning:

- (a) specifically ascribed to such term in the Mutual Fund Instrument; or
- (b) if no meaning is specifically ascribed to such term in the Mutual Fund Instrument, the same meaning the term would have for the purposes of the Act.

Restricted Registration Permitted Activities

5. The registration of the Registrant as a mutual fund dealer under the Act shall be for the purposes only of trading by the Registrant and its registered representatives in securities of a mutual fund where the trade consists of:
- (a) a Client Name Trade;
 - (b) an Exempt Trade;
 - (c) a Fund-on-Fund Trade;
 - (d) an In Furtherance Trade;
 - (e) a Managed Account Trade, provided, at the time of the trade, the Registrant or an affiliated entity of the Registrant who is a portfolio manager to the Managed Account, is registered under the Legislation of the Jurisdiction as an adviser in the category of portfolio manager;
 - (f) a Permitted Client Trade; or
 - (g) a Seed Capital Trade;

provided that, in the case of all trades that are only referred to in clauses (a) or (f), the trades are limited and incidental to the principal business of the Registrant.

2.1.10 MOSAID Technologies Incorporated – s. 1(10)

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

Headnote

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

Ontario Statutes

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

February 13, 2012

MOSAID Technologies Incorporated
11 Hines Road, Suite 203
Ottawa, Ontario
Canada K2K 2X1

Dear Sirs/Mesdames:

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

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

As the Applicant has represented to the Decision Makers that:

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

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

2.1.11 Newmont Canada FN Holdings Limited – s. 1(10)

Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

Headnote

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

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

Applicable Legislative Provisions

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

February 10, 2012

Jamie van Diepen
Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Dear Sirs/Mesdames:

Re: Newmont Canada FN Holdings Limited (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer

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

As the Applicant has represented to the Decision Makers that:

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

each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision

2.2 Orders

2.2.1 Maitland Capital Ltd. et al. – ss. 127(1), 127(10)

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

AND

**IN THE MATTER OF
MAITLAND CAPITAL LTD., ALLEN GROSSMAN,
HANOCH ULFAN, LEONARD WADDINGHAM,
RON GARNER, GORD VALDE, MARIANNE
HYACINTHE, DIANNA CASSIDY, RON CATONE,
STEVEN LANY, ROGER MCKENZIE, TOM
MEZINSKI, WILLIAM ROUSE AND JASON SNOW**

ORDER

**relating to MAITLAND CAPITAL LTD.,
ALLEN GROSSMAN and
HANOCH ULFAN**

(Subsections 127(1) and 127(10) of the Securities Act)

WHEREAS on January 24, 2006, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") with respect to Allen Grossman ("Grossman"), Maitland Capital Ltd. ("Maitland"), Hanoch Ulfan ("Ulfan") and others, in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on the same day;

AND WHEREAS on May 19, 2006, the Commission authorized the commencement of a section 122 proceeding in the Ontario Court of Justice against Grossman, Maitland and Ulfan;

AND WHEREAS Grossman, Maitland and Ulfan brought applications returnable September 12, 2006 to adjourn the section 127 proceeding against Grossman, Maitland and Ulfan pending completion of the section 122 proceeding;

AND WHEREAS on September 12, 2006, the Commission ordered that, among other things, the hearing be adjourned until the rendering of judgment in the section 122 proceeding and a hearing scheduled within four to eight weeks of judgment being rendered in the section 122 proceeding;

AND WHEREAS on March 23, 2011, Justice Sparrow of the Ontario Court of Justice found Grossman, Maitland and Ulfan guilty on 10 counts of breaching Ontario securities laws;

AND WHEREAS on May 4, 2011, Justice Sparrow of the Ontario Court of Justice sentenced Grossman and Ulfan each to 21 months in jail and two years of probation for breaches of Ontario securities laws and fined Maitland \$1 million;

AND WHEREAS on May 27, 2011, Staff amended the Notice of Hearing and Statement of Allegations to rely upon previous decisions of the Alberta Securities Commission, the Saskatchewan Financial Services Commission and the Ontario Court of Justice involving Maitland and some of the Respondents;

AND WHEREAS on June 28, 2011, the Commission ordered that, among other things, the hearing in respect of Grossman, Maitland and Ulfan to consider whether an order should be made against them under subsection 127(10) of the Act shall proceed in writing, Staff serve and file its written submissions on or before July 29, 2011, and Grossman, Maitland and Ulfan serve and file any responding submissions by September 1, 2011;

AND WHEREAS by Commission order made July 14, 2011 pursuant to subsection 3.5(3) of the Act, any one of Howard I. Wetston, James E. A. Turner, Kevin J. Kelly, James D. Carnwath, Mary G. Condon, Paulette L. Kennedy, Vern Krishna, Christopher Portner and Edward P. Kerwin, acting alone, is authorized to make orders under section 127 of the Act;

AND WHEREAS the Commission considers it to be in the public interest to make this order;

IT IS ORDERED pursuant to subsections 127(1) and (10) of the Act that:

- a) pursuant to clause 2 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan shall permanently cease trading in any securities;
- b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Grossman, Maitland or Ulfan is permanently prohibited;
- c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Grossman, Maitland or Ulfan permanently;
- d) pursuant to clause 6 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan are reprimanded;
- e) pursuant to clause 7 of subsection 127(1) of the Act, Grossman and Ulfan shall immediately resign all positions that they may hold as a director or officer of any issuer;
- f) pursuant to clause 8 of subsection 127(1) of the Act, Grossman and Ulfan are prohibited permanently from becoming or acting as a director or officer of any issuer;

- g) pursuant to clause 8.1 of subsection 127(1) of the Act, Grossman and Ulfan shall immediately resign all positions that they may hold as a director or officer of any registrant;
- h) pursuant to clause 8.2 of subsection 127(1) of the Act, Grossman and Ulfan are prohibited permanently from becoming or acting as a director or officer of any registrant;
- i) pursuant to clause 8.3 of subsection 127(1) of the Act, Grossman and Ulfan shall immediately resign all positions that they may hold as a director or officer of any investment fund manager;
- j) pursuant to clause 8.4 of subsection 127(1) of the Act, Grossman and Ulfan are prohibited permanently from becoming or acting as a director or officer of any investment fund manager;
- k) pursuant to clause 8.5 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan are prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and
- l) pursuant to subsection 37(1) of the Act, Grossman, Maitland and Ulfan are prohibited permanently from telephoning from within Ontario to residences within or outside Ontario for the purpose of trading in securities.

Dated at Toronto this 8th day of February, 2012.

"Mary G. Condon"

2.2.2 BMO Nesbitt Burns Inc. et al. – s. 80 of the CFA

Headnote

Application for an order pursuant to section 80 of the Commodity Futures Act granting relief from sections 42, 43, 44 and 45 which contain requirements to deliver confirmations and statements to customers in the context of trade "give-ups".

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 42, 43, 44, 45, 80.

November 25, 2011

**IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED
(the CFA)**

AND

**IN THE MATTER OF
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
(the Applicants)**

**ORDER
(Section 80 of the CFA)**

UPON the application by the Applicants to the Ontario Securities Commission (the **Commission**) for an order pursuant to section 80 of the CFA granting relief from sections 42, 43, 44 and 45 of the CFA which contain the requirements to deliver certain confirmations and statements of trade to customers (the **Delivery Requirements**) in respect of trades in commodity futures contracts and commodity futures options in the context of trade "give-ups";

AND WHEREAS the Applicants have represented to the Commission that:

1. Each Applicant is registered as an investment dealer under the securities legislation of all provinces and territories of Canada, as a futures commission merchant under the CFA and *The Commodity Futures Act* (Manitoba) and as a derivatives dealer under the *Derivatives Act* (Quebec).
2. Each Applicant is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**) and the TSX Venture Exchange, an approved participant of the Montreal Exchange and a participating organization of the Toronto Stock Exchange.

3. The head office of each Applicant is located in Toronto, Ontario.
4. Each Applicant acts as an executing and clearing broker for give-up transactions that involve, among other things, the purchase and sale of commodity futures contracts and commodity futures options (**Futures Contracts**).
5. Give-up Transactions are purchases or sales of Futures Contracts by investors, each of whom is an "institutional customer" within the meaning of IIROC Dealer Member Rule 1.1, that have an existing relationship as a client with a clearing broker but wish to use the trade execution services of one or more executing brokers for the purpose of executing such purchases or sales (**Subject Transactions**). Under these circumstances, the executing broker will execute the Subject Transactions in accordance with the institutional client's instructions and then "give up" the Subject Transactions to the clearing broker for clearing, settlement and/or custody (**Give-up Transactions**). The service provided by the executing broker is limited to trade execution only.
6. The clearing broker remains subject to applicable Delivery Requirements in respect of its client in Give-up Transactions. The clearing broker maintains an account for the institutional client that is administered in accordance with the terms and conditions of the account documentation of the clearing broker that has been signed by the institutional client. For a Give-up Transaction, the institutional client does not sign account documentation with the executing broker, and the executing broker does not receive any money, securities, margin or collateral from the institutional client. The institutional client does, however, enter into an agreement with the executing broker and the clearing broker that governs their Give-up Transaction relationship (a **Give-up Agreement**).
7. Although each Applicant is responsible for record-keeping, bookkeeping, custody and other administrative functions (**Account Services**) in respect of its own clients, it does not provide Account Services for execution-only customers in Give-up Transactions, such Account Services remain the responsibility of those clients' clearing brokers.
8. Each Applicant does, however, record in its own books and records and accounting system all Give-up Transactions that it executes, which generally comprise those Futures Contract positions held by it that are not allocated to any of its own institutional client accounts. The Applicant communicates these unallocated positions to the relevant clearing brokers who either accept or reject the positions so allocated on behalf of their clients based on existing Give-Up Agreements. If a clearing broker rejects a proposed allocation, the Applicant contacts the person who executed the trade to obtain clarifying instructions and then allocates the position in accordance with the instructions so received.
9. Each Applicant prepares a monthly or transaction-by-transaction invoice detailing all Give-up Transactions (including the amount of any commission to the Applicant for execution thereof) that the Applicant conducted during the month for each institutional client under a Give-up Agreement. The Applicant delivers such invoice to the clearing broker who then reconciles the Give-up Transaction with its own records.
10. Each Applicant is, to the best of its knowledge, in compliance with all IIROC requirements relating to the maintenance of records of executed transactions.
11. Section 42 of the CFA requires that a registered dealer that has acted as an agent in connection with a trade in a commodity futures contract promptly send customers a written confirmation of the trade.
12. Section 43 of the CFA requires that a registered dealer that has acted as an agent in connection with a liquidating trade in a commodity futures contract promptly send customers a written statement of purchase and sale.
13. Section 44 of the CFA requires that registered dealers send customers a written monthly statement.
14. Section 45 of the CFA requires that a registered dealer that has acted as an agent in connection with a trade in a commodity futures option promptly send customers a written confirmation of the trade.
15. Application of the Delivery Requirements to the Applicants when they provide only trade execution services in respect of Give-Up Transactions would:
 - (a) be duplicative and confusing because delivery of the required trade confirmations and the statements of account to execution-only clients would capture only some, not all, of the information that would be contained in the trade confirmations and statements of account delivered to the same clients by their clearing brokers; and
 - (b) not be required to establish an audit trail or to facilitate reconciliation of give-up trades as between an Applicant and a clearing broker.

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

THIS ORDER of the Commission is that each Applicant is exempt from the requirements of sections 42, 43, 44 and 45 of the CFA provided that:

1. each Applicant provides trade execution services in respect of Give-Up Transactions only for institutional customers within the meaning of IIROC Rule 1.1;
2. each Applicant enters into a Give-Up Agreement with the clearing broker and the institutional customer; and
3. the clearing broker has agreed to provide each institutional customer with written trade confirmations and statements of account that include information for any Subject Transaction.

"James E. A. Turner"
Commissioner
Ontario Securities Commission

"Paulette Kennedy"
Commissioner
Ontario Securities Commission

2.2.3 Nest Acquisitions and Mergers et al.

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

AND

IN THE MATTER OF NEST ACQUISITIONS AND MERGERS, IMG INTERNATIONAL INC., CAROLINE MYRIAM FRAYSSIGNES, DAVID PELCOWITZ, MICHAEL SMITH, AND ROBERT PATRICK ZUK

ORDER

WHEREAS on January 18, 2010, the Secretary to the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to sections 37, 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), for a hearing to commence at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Monday, January 28th, 2010 at 10 a.m., or as soon thereafter as the hearing can be held;

AND WHEREAS on January 18, 2010, Staff of the Commission ("Staff") filed with the Commission a Statement of Allegations in this matter;

AND WHEREAS on January 25, 2011, counsel for Staff, counsel for Robert Patrick Zuk ("Zuk"), and counsel for Caroline Myriam Frayssignes ("Frayssignes") and Nest Acquisitions and Mergers ("Nest") appeared before the Commission for the purpose of a further pre-hearing conference;

AND WHEREAS on January 25, 2011, no one appeared on behalf of David Paul Pelcowitz ("Pelcowitz"), Michael Smith ("Smith") and IMG International Inc. ("IMG"), and the Commission was satisfied that Pelcowitz, Smith and IMG had been provided with notice of the pre-hearing conference;

AND WHEREAS on January 25, 2011, the Commission heard submissions by counsel for Staff, counsel for Frayssignes and Nest, and counsel for Zuk as to the unavailability of certain documents from a third party and to an anticipated motion to be brought by Frayssignes, Nest and Zuk;

AND WHEREAS on January 25, 2011, counsel for Staff, counsel for Zuk, and counsel for Frayssignes and Nest consented that the dates for the hearing on the merits set for January 31, 2011 to February 11, 2011 (except for February 8, 2011) be vacated and agreed to tentative dates for the hearing on the merits from June 20, 2011 to June 30, 2011 (except June 21, 2011);

AND WHEREAS on January 25, 2011, counsel for Staff, counsel for Zuk, and counsel for Frayssignes and

Nest consented to a hearing for the anticipated motion to be held on June 6, 2011;

AND WHEREAS the Commission wished to allow Pelcowitz a further opportunity to make submissions on the tentative dates for the hearing on the merits prior to making an order;

AND WHEREAS on January 25, 2011, the Commission ordered that the dates for the hearing on the merits set for January 31, 2011 to February 11, 2011 be vacated and that the motion by Zuk, Frayssignes and Nest be heard on June 6, 2011;

AND WHEREAS Pelcowitz consented to the scheduling of the hearing on the merits from June 20, 2011 to June 30, 2011 (except June 21, 2011);

AND WHEREAS on March 4, 2011, the Commission ordered that the hearing on the merits be set for June 20, 2011 to June 30, 2011 (except June 21, 2011);

AND WHEREAS on June 20, 2011, Pelcowitz, counsel for Staff and counsel for Zuk attended before the Commission and no one attended on behalf of the other respondents;

AND WHEREAS counsel for Staff requested that the hearing on the merits be adjourned to June 27, 2011;

AND WHEREAS Zuk, through his counsel, and Pelcowitz consented to the adjournment;

AND WHEREAS on June 27, 2011, Zuk, Frayssignes and counsel for Staff attended before the Commission and no one attended on behalf of the other respondents;

AND WHEREAS on June 27, 2011, Frayssignes requested that she be provided with a simultaneous French translation of the hearing on the merits and a translation of the documents Staff proposes to tender at the hearing on the merits;

AND WHEREAS on June 27, 2011, upon hearing submissions from Staff counsel and Zuk, on behalf of Frayssignes, the Commission ordered, *inter alia*, that the hearing on the merits be adjourned to a date to be fixed by the Office of the Secretary, the Commission will provide a simultaneous translation into French of the hearing on the merits, and that a motion be heard in respect of Frayssignes' request for translation of the documents sought to be tendered by Staff on September 26, 2011 at 2:00 p.m. ("Frayssignes' Motion");

AND WHEREAS on September 26, 2011, Zuk, Frayssignes and counsel for Staff attended before the Commission;

AND WHEREAS on September 26, 2011, the Commission adjourned the hearing of Frayssignes' Motion to a date to be fixed by the Office of the Secretary, upon consultation with the parties;

AND WHEREAS on December 16, 2011, Zuk, Frayssignes and counsel for Staff attended before the Commission for the hearing of Frayssignes' Motion;

AND WHEREAS on December 16, 2011, upon hearing submissions from Frayssignes and upon considering the written submissions of Frayssignes and Staff, the Commission dismissed Frayssignes' Motion, with written reasons and decision to follow and ordered that the hearing on the merits be set on a date to be fixed by the Office of the Secretary, upon consultation with the parties;

AND WHEREAS on January 26, 2012, the Commission was advised that Staff, Zuk, Frayssignes, and Pelcowitz consent that the hearing on the merits be set for May 16, 17, 18, 23, 24, and 25, and June 4 and 6, 2012.

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

IT IS ORDERED that the hearing on the merits is set for May 16, 17, 18, 23, 24, and 25, and June 4 and 6, 2012.

DATED at Toronto this 1st day of February, 2012.

"James D. Carnwath"

"Margot C. Howard"

2.2.4 Ground Wealth 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
GROUND WEALTH INC., ARMADILLO ENERGY INC.,
PAUL SCHUETT, DOUG DEBOER, JAMES LINDE,
SUSAN LAWSON, MICHELLE DUNK, ADRIAN SMITH,
BIANCA SOTO AND TERRY REICHERT**

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

WHEREAS the Ontario Securities Commission (the "Commission") issued a temporary order on July 27, 2011 (the "Temporary Order") pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that:

1. pursuant to paragraph 2 of subsection 127(1), all trading in the securities of Armadillo Energy Inc. ("the Armadillo Securities") shall cease;
2. pursuant to paragraph 2 of subsection 127(1), Armadillo Energy Inc. ("Armadillo"), Ground Wealth Inc. ("GWI"), Paul Schuett ("Schuett"), Doug DeBoer ("DeBoer"), James Linde ("Linde"), Susan Lawson ("Lawson"), Michelle Dunk ("Dunk"), Adrian Smith ("Smith"), Bianca Soto ("Soto") and Terry Reichert ("Reichert") (collectively, the "Respondents") shall cease trading in all securities; and
3. pursuant to subsection 127(6), the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on August 11, 2011, the Commission held a hearing to consider whether it was in the public interest to extend the Temporary Order, and heard submissions from Staff of the Commission ("Staff") and from counsel for the Respondents;

AND WHEREAS on August 11, 2011, the Commission extended the Temporary Order to February 13, 2012 (the "Amended Temporary Order") on the same terms and conditions as provided for in the Temporary Order; provided that the Temporary Order shall not prevent a Respondent from trading for the Respondent's own account, solely through a registered dealer or a registered dealer in a foreign jurisdiction (which dealer must be given a copy of the Amended Temporary Order), in (a) any "exchange traded security" or "foreign exchange traded security" within the meaning of National Instrument 21-101, provided the Respondent does not own beneficially or exercise control or direction over more than 5 per cent of the voting or equity securities of the issuer of any such

securities, or (b) any security issued by a mutual fund that is a reporting issuer; and provided the Respondent provides Staff with the particulars of the accounts in which such trading is to occur before any trading in such accounts occurs;

AND WHEREAS on February 8, 2012, the Commission held a hearing to consider whether it was in the public interest to extend the Amended Temporary Order pursuant to subsections 127(7) and 127(8), and heard submissions from Staff and from counsel for the Respondents;

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) & 127(8) of the Act that the Amended Temporary Order is extended on the following terms:

1. pursuant to paragraph 2 of subsection 127(1), all trading in the Armadillo Securities shall cease;
2. pursuant to paragraph 2 of subsection 127(1), the Respondents shall cease trading in Armadillo Securities and/or in securities of a nature similar to Armadillo Securities, which are securities evidencing an interest in the production of barrels of oil still in the ground;
3. this Order shall expire on August 8, 2012, subject to any further order of the Commission; and
4. this Order shall not prevent Staff from applying to the Commission for a variation of this Order if Staff considers that doing so is in the public interest.

DATED at Toronto this 8th day of February, 2012.

"James E. A. Turner"

2.2.5 Irwin Boock et al. – s. 127(1)

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

AND

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

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
IRWIN BOOCK

ORDER
(Subsection 127(1))

WHEREAS by Amended Notice of Hearing dated January 5, 2012, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Irwin Boock ("Boock"), Stanton DeFreitas ("DeFreitas"), Jason Wong ("Wong"), Saudia Allie ("Allie"), Alena Dubinsky ("Dubinsky"), Alex Khodjaants ("Khodjaants"), Select American Transfer Co., ("Select American"), LeaseSmart, Inc. ("LeaseSmart"), Advanced Growing Systems, Inc. (formerly, The Bighub.com, Inc.) ("Bighub"), NutriOne Corporation ("NutriOne"), International Energy Ltd. ("International Energy"), Pocketop Corporation (formerly, Universal Seismic, Inc.) ("Pocketop"), Asia Telecom Ltd. ("Asia Telecom"), Pharm Control Ltd. ("Pharm Control"), Cambridge Resources Corporation ("Cambridge Resources"), Compushare Transfer Corporation ("Compushare"), WGI Holdings, Inc. ("WGI Holdings"), Federated Purchaser, Inc. ("Federated Purchaser"), First National Entertainment Corporation ("First National"), TCC Industries, Inc. ("TCC Industries") and Enerbrite Technologies Group Inc. ("Enerbrite"). The Amended Notice of Hearing was issued in connection with the allegations as set out in the Amended Statement of Allegations of Staff of the Commission ("Staff") dated January 4, 2012;

AND WHEREAS Boock entered into a settlement agreement with Staff dated February 7, 2012 (the "Settlement Agreement") in which Boock agreed to a proposed settlement of the proceeding commenced by the Amended Notice of Hearing dated January 5, 2012, subject to the approval of the Commission;

AND WHEREAS on February 7, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Boock;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff, and upon hearing submissions from Boock and from Staff;

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

IT IS HEREBY ORDERED THAT:

- (a) the Settlement Agreement is approved;

- (b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Boock shall cease permanently from the date of the approval of the Settlement Agreement;
- (c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Boock is prohibited permanently from the date of the approval of the Settlement Agreement;
- (d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Boock permanently from the date of the approval of the Settlement Agreement;
- (e) pursuant to clause 6 of subsection 127(1) of the Act, Boock is reprimanded;
- (f) pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Boock is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager from the date of the approval of the Settlement Agreement;
- (g) pursuant to clause 8.5 of subsection 127(1) of the Act, Boock is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter from the date of the approval of the Settlement Agreement;
- (h) pursuant to clause 9 of subsection 127(1) of the Act, Boock shall pay an administrative penalty in the amount of \$70,000 for his failure to comply with Ontario securities law;
- (i) pursuant to clause 10 of subsection 127(1) of the Act, Boock shall disgorge to the Commission the amount of \$145,300 obtained as a result of his non-compliance with Ontario securities law;
- (j) pursuant to section 127.1 of the Act, Boock shall pay costs of \$55,000; and
- (k) the payments ordered in paragraphs (h) and (i) shall be for allocation to or for the benefit of third parties other than Boock, including investors in LeaseSmart, Inc., Advanced Growing Systems Inc. (formerly the Bighub.com, Inc.), NutriOne Corporation, International Energy Ltd., Pocketop Corporation (formerly, Universal Seismic, Inc.), Asia Telecom Ltd., PharmControl Ltd., Cambridge Resources Corporation, Federated Purchaser, Inc., TCC Industries, Inc. and Enerbrite Technologies Group, in accordance with subsection 3.4(2)(b) of the Act.

DATED at Toronto this 10th day of February, 2012.

“James E. A. Turner”

2.2.6 Irwin Boock et al. – ss. 127, 127.1

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

AND

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

ORDER
(Section 127 and 127.1)

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

AND WHEREAS on October 14, 2009, Staff of the Commission (“Staff”) brought a disclosure motion (the “Motion”) regarding the Respondent, Irwin Boock (“Boock”) which was heard on October 21, 2009; November 2 and 20, 2009 and January 8, 2010;

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

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

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

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

AND WHEREAS on February 24, 2010, the Commission made an order that the Disclosure Decision be stayed until the earlier of the date of a decision in the JR Application, a status hearing scheduled for September 13, 2010 and that the Merits Hearing shall commence on October 18, 2010;

AND WHEREAS on July 15, 2010, the Commission made an order that the dates for the Merits Hearing be vacated and the Disclosure Decision remain stayed until the earlier of the date of a decision in the JR Application or a status hearing scheduled for November 29, 2010;

AND WHEREAS on October 27, 2010, the JR Application was heard and dismissed by the Divisional Court (the “JR Decision”);

AND WHEREAS on November 29, 2010, the Commission ordered that the Stay shall lapse;

AND WHEREAS on January 27, 2011, the Commission held a Status Hearing attended by Staff, counsel for Stanton DeFreitas (“DeFreitas”), and counsel to Jason Wong (“Wong”);

AND WHEREAS pre-hearing conferences were held in this matter on April 19 and May 24, 2011;

AND WHEREAS on May 24, 2011, the Commission ordered that the hearing on the merits shall commence on February 1, 2012, and shall continue as scheduled thereafter;

AND WHEREAS status hearings in this matter were held on October 5 and December 5, 2011;

AND WHEREAS on February 1, 2012, Boock brought a motion to adjourn the hearing on the merits for 30 days on the grounds that Staff made late disclosure of evidence and a witness list;

AND WHEREAS on the same date the respondent, Alex Khodjaiaants, advised the panel of the proper spelling of his name (hereinafter, "Khodjaiaants");

AND WHEREAS counsel for Khodjaiaants brought a motion to adjourn the hearing on the merits until May 2012 to permit Khodjaiaants to retain him for representation at the hearing on the merits;

AND WHEREAS the Commission ordered that the title of proceeding be amended to change "Alex Khodjaiaants" to "Alex Khodjaiaants";

AND WHEREAS the Commission granted an adjournment in part and ordered that the hearing on the merits, previously set to commence February 1, 2012, be adjourned until February 8, 2012 and to continue thereafter as scheduled;

AND WHEREAS on February 7, 2012, Khodjaiaants filed an Application for Judicial Review and Factum with the Divisional Court, seeking to set aside the Commission's order dated February 1, 2012 (the "Second JR Application");

AND WHEREAS Khodjaiaants' Factum for the Second JR Application includes a request for, among other things, an order for a stay of the Commission proceedings;

AND WHEREAS Khodjaiaants has spelled his name "Khodjaiaants" in his Divisional Court materials, contrary to his advice to the Commission on February 1, 2012;

AND WHEREAS on February 8, 2012, Khodjaiaants did not attend before the Commission as scheduled, and Staff advised that Khodjaiaants has not served motion materials or set a date for a motion for a stay;

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

IT IS HEREBY ORDERED that Khodjaiaants clarify the proper legal spelling of his name, failing which the Commission notes that the names "Khodjaiaants" or "Khodjaiaants" are one and the same for the purpose of this proceeding;

AND IT IS FURTHER ORDERED that Staff contact Khodjaiaants to advise him of what procedural steps he must take to bring his motion for a stay before the Divisional Court expeditiously;

AND IT IS FURTHER ORDERED that the hearing on the merits is adjourned until February 10, 2012 at 11:00 a.m., at which time the parties shall advise the Commission of the status of the motion before the Divisional Court.

AND IT IS FURTHER ORDERED that the hearing date of February 9, 2012 is vacated.

Dated at Toronto, this 10th day of February, 2012.

"Vern Krishna"

2.2.7 Irwin Boock et al. – ss. 127, 127.1

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

AND

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

ORDER
(Section 127 and 127.1)

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

AND WHEREAS on October 14, 2009, Staff of the Commission (“Staff”) brought a disclosure motion (the “Motion”) regarding the Respondent, Irwin Boock (“Boock”) which was heard on October 21, 2009; November 2 and 20, 2009 and January 8, 2010;

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

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

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

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

AND WHEREAS on February 24, 2010, the Commission made an order that the Disclosure Decision be stayed until the earlier of the date of a decision in the JR Application, a status hearing scheduled for September 13, 2010 and that the Merits Hearing shall commence on October 18, 2010;

AND WHEREAS on July 15, 2010, the Commission made an order that the dates for the Merits Hearing be vacated and the Disclosure Decision remain stayed until the earlier of the date of a decision in the JR Application or a status hearing scheduled for November 29, 2010;

AND WHEREAS on October 27, 2010, the JR Application was heard and dismissed by the Divisional Court (the “JR Decision”);

AND WHEREAS on November 29, 2010, the Commission ordered that the Stay shall lapse;

AND WHEREAS on January 27, 2011, the Commission held a Status Hearing attended by Staff, counsel for Stanton DeFreitas (“DeFreitas”), and counsel to Jason Wong (“Wong”);

AND WHEREAS pre-hearing conferences were held in this matter on April 19 and May 24, 2011;

AND WHEREAS on May 24, 2011, the Commission ordered that the hearing on the merits shall commence on February 1, 2012, and shall continue as scheduled thereafter;

AND WHEREAS status hearings in this matter were held on October 5 and December 5, 2011;

AND WHEREAS on February 1, 2012, Boock brought a motion to adjourn the hearing on the merits for 30 days on the grounds that Staff made late disclosure of evidence and a witness list;

AND WHEREAS on the same date the respondent, Alex Khodjaiaints, advised the panel of the proper spelling of his name (hereinafter, "Khodjaiaints");

AND WHEREAS counsel for Khodjaiaints brought a motion to adjourn the hearing on the merits until May 2012 to permit Khodjaiaints to retain him for representation at the hearing on the merits;

AND WHEREAS the Commission ordered that the title of proceeding be amended to change "Alex Khodjaiaints" to "Alex Khodjaiaints";

AND WHEREAS the Commission granted an adjournment in part and ordered that the hearing on the merits, previously set to commence February 1, 2012, be adjourned until February 8, 2012 and to continue thereafter as scheduled;

AND WHEREAS on February 7, 2012, Khodjaiaints filed an Application for Judicial Review and Factum with the Divisional Court, seeking to set aside the Commission's order dated February 1, 2012 (the "Second JR Application");

AND WHEREAS Khodjaiaints' Factum for the Second JR Application includes a request for, among other things, an order for a stay of the Commission proceedings;

AND WHEREAS Khodjaiaints has spelled his name "Khodjaiaints" in his Divisional Court materials, contrary to his advice to the Commission on February 1, 2012;

AND WHEREAS on February 8, 2012, Khodjaiaints did not attend before the Commission as scheduled, and Staff advised that Khodjaiaints has not served motion materials or set a date for a motion for a stay;

AND WHEREAS the Commission ordered that Khodjaiaints clarify the proper legal spelling of his name, failing which the Commission notes that the names "Khodjaiaints" or "Khodjaiaints" are one and the same for the purpose of this proceeding;

AND WHEREAS the Commission further ordered that Staff contact Khodjaiaints to advise him of what procedural steps he must take to bring his motion for a stay expeditiously, that the hearing date of February 9, 2012 be vacated, and that the hearing be adjourned until February 10, 2012 at which time the parties shall advise the Commission of the status of the motion before the Divisional Court;

AND WHEREAS Staff and Khodjaiaints attended before the Commission on February 10, 2012 as ordered;

AND WHEREAS Khodjaiaints confirmed that the proper legal spelling of his name is "Khodjaiaints";

AND WHEREAS Khodjaiaints advised that he has not retained legal counsel, has no intention of booking a date for a motion for a stay order, has not booked a hearing date for the Second JR Application, and requested that a status hearing be scheduled for April, 2012;

AND WHEREAS Staff requested a brief adjournment of the hearing on the merits in order to bring a motion to quash the Second JR Application as being improperly constituted;

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

IT IS HEREBY ORDERED that the hearing on the merits is adjourned until February 15, 2012 at 10:30 a.m. at which time the parties shall advise the Commission of the steps taken with regard to the Second JR Application.

Dated at Toronto, this 10th day of February, 2012.

"Vern Krishna"

2.2.8 Magnotta Winery Corporation – s. 1(10)(b)

Headnote

Application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

Statutes Cited

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

February 14, 2012

Magnotta Winery Corporation
271 Chrislea Road
Vaughan, Ontario L4L 8N6

Dear Sirs/Mesdames:

Re: Magnotta Winery Corporation (the Applicant) – Application for an order under clause 1(10)(b) of the Securities Act (Ontario) that the Applicant is not a reporting issuer

The Applicant has applied to the Ontario Securities Commission for an order under clause 1(10)(b) of the Act that the Applicant is not a reporting issuer.

As the Applicant has represented to the Commission that:

- (a) The outstanding securities of the Applicant, including debt securities are beneficially owned, directly or indirectly, by less than 15 security holders in Ontario and less than 51 security holders 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 not in default of any of its obligations under the Act as a reporting issuer; and
- (d) The Applicant will not be a reporting issuer or the equivalent in any jurisdiction in Canada immediately following the Director granting the relief requested.

The Director is satisfied that it would not be prejudicial to the public interest to grant the requested relief and orders that the Applicant is not a reporting issuer.

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

2.2.9 Irwin Boock et al. – ss. 127, 127.1

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

AND

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

ORDER
(Section 127 and 127.1)

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

AND WHEREAS on October 14, 2009, Staff of the Commission (“Staff”) brought a disclosure motion (the “Motion”) regarding the Respondent, Irwin Boock (“Boock”) which was heard on October 21, 2009; November 2 and 20, 2009 and January 8, 2010;

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

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

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

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

AND WHEREAS on February 24, 2010, the Commission made an order that the Disclosure Decision be stayed until the earlier of the date of a decision in the JR Application, a status hearing scheduled for September 13, 2010 and that the Merits Hearing shall commence on October 18, 2010;

AND WHEREAS on July 15, 2010, the Commission made an order that the dates for the Merits Hearing be vacated and the Disclosure Decision remain stayed until the earlier of the date of a decision in the JR Application or a status hearing scheduled for November 29, 2010;

AND WHEREAS on October 27, 2010, the JR Application was heard and dismissed by the Divisional Court (the “JR Decision”);

AND WHEREAS on November 29, 2010, the Commission ordered that the Stay shall lapse;

AND WHEREAS on January 27, 2011, the Commission held a Status Hearing attended by Staff, counsel for Stanton DeFreitas (“DeFreitas”), and counsel to Jason Wong (“Wong”);

AND WHEREAS pre-hearing conferences were held in this matter on April 19 and May 24, 2011;

AND WHEREAS on May 24, 2011, the Commission ordered that the hearing on the merits shall commence on February 1, 2012, and shall continue as scheduled thereafter;

AND WHEREAS status hearings in this matter were held on October 5 and December 5, 2011;

AND WHEREAS on February 1, 2012, Boock brought a motion to adjourn the hearing on the merits for 30 days on the grounds that Staff made late disclosure of evidence and a witness list;

AND WHEREAS on the same date the respondent, Alex Khodjaiaints, advised the panel of the proper spelling of his name (hereinafter, "Khodjaiaints");

AND WHEREAS counsel for Khodjaiaints brought a motion to adjourn the hearing on the merits until May 2012 to permit Khodjaiaints to retain him for representation at the hearing on the merits;

AND WHEREAS the Commission ordered that the title of proceeding be amended to change "Alex Khodjaiaints" to "Alex Khodjaiaints";

AND WHEREAS the Commission granted an adjournment in part and ordered that the hearing on the merits, previously set to commence February 1, 2012, be adjourned until February 8, 2012 and to continue thereafter as scheduled;

AND WHEREAS on February 7, 2012, Khodjaiaints filed an Application for Judicial Review and Factum with the Divisional Court, seeking to set aside the Commission's order dated February 1, 2012 (the "Second JR Application");

AND WHEREAS Khodjaiaints' Factum for the Second JR Application includes a request for, among other things, an order for a stay of the Commission proceedings;

AND WHEREAS Khodjaiaints has spelled his name "Khodjaiaints" in his Divisional Court materials, contrary to his advice to the Commission on February 1, 2012;

AND WHEREAS on February 8, 2012, Khodjaiaints did not attend before the Commission as scheduled, and Staff advised that Khodjaiaints has not served motion materials or set a date for a motion for a stay;

AND WHEREAS the Commission ordered that Khodjaiaints clarify the proper legal spelling of his name, failing which the Commission notes that the names "Khodjaiaints" or "Khodjaiaints" are one and the same for the purpose of this proceeding;

AND WHEREAS the Commission further ordered that Staff contact Khodjaiaints to advise him of what procedural steps he must take to bring his motion for a stay expeditiously, that the hearing date of February 9, 2012 be vacated, and that the hearing be adjourned until February 10, 2012 at which time the parties shall advise the Commission of the status of the motion before the Divisional Court;

AND WHEREAS Staff and Khodjaiaints attended before the Commission on February 10, 2012 as ordered;

AND WHEREAS Khodjaiaints confirmed that the proper legal spelling of his name is "Khodjaiaints";

AND WHEREAS Khodjaiaints advised that he has not retained legal counsel, has no intention of booking a date for a motion for a stay order, has not booked a hearing date for the Second JR Application, and requested that a status hearing be scheduled for April, 2012;

AND WHEREAS Staff requested a brief adjournment of the hearing on the merits in order to bring a motion to quash the Second JR Application as being improperly constituted;

AND WHEREAS the Commission ordered that the hearing on the merits be adjourned until February 15, 2012 for an update on Staff's motion to quash;

AND WHEREAS Staff and Khodjaiaints attended on February 15, 2012, and Staff advised that a Notice of Motion to strike the Second JR Application had been served, returnable on March 6, 2012;

AND WHEREAS Khodjaiaints requested a status hearing be scheduled on a date in March 2012;

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

IT IS HEREBY ORDERED that the hearing dates of February 16, 17, 21, 22, 23, 27, 29 and March 2, 5, and 6, 2012 be vacated;

AND IT IS FURTHER ORDERED that a status hearing be held on March 13, 2012 at 3:00 p.m. and if necessary, on Friday March 23, 2012 at 11:00 a.m.

Dated at Toronto, this 15th day of February, 2012.

“Vern Krishna”

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Maitland Capital Ltd. et al. – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
MAITLAND CAPITAL LTD., ALLEN GROSSMAN,
HANOCH ULFAN, LEONARD WADDINGHAM,
RON GARNER, GORD VALDE, MARIANNE HYACINTHE,
DIANNA CASSIDY, RON CATONE, STEVEN LANY, ROGER MCKENZIE,
TOM MEZINSKI, WILLIAM ROUSE and JASON SNOW

REASONS AND DECISION
relating to MAITLAND CAPITAL LTD., ALLEN GROSSMAN and
HANOCH ULFAN
(Subsections 127(1) and 127(10) of the Securities Act)

Hearing: Written hearing by submissions completed September 1, 2011

Decision: February 8, 2012

Panel: Mary G. Condon – Vice-Chair

Appearances: Derek Ferris – For Staff of the Ontario Securities Commission

– None of the respondents participated in person or in writing.

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**REASONS AND DECISION
relating to MAITLAND CAPITAL LTD., ALLEN GROSSMAN and
HANOCH ULFAN**

I. INTRODUCTION

[1] This matter arose out of a Notice of Hearing issued by the Ontario Securities Commission (the "Commission") on January 24, 2006 and a Statement of Allegations issued by Staff of the Commission ("Staff") on the same day (the "Commission Proceeding"). The Commission Proceeding relates to the following respondents: Maitland Capital Ltd. ("Maitland"), Allen Grossman ("Grossman"), Hanoch Ulfan ("Ulfan"), Leonard Waddingham ("Waddingham"), Ron Garner ("Garner"), Gord Valde ("Valde"), Marianne Hyacinthe ("Hyacinthe"), Dianna Cassidy ("Cassidy"), Ron Catone ("Catone"), Steven Lanys ("Lanys"), Roger McKenzie ("McKenzie"), Tom Mezinski ("Mezinski"), William Rouse ("Rouse") and Jason Snow ("Snow").

[2] Subsequently, an Amended Notice of Hearing and Amended Statement of Allegations were issued on May 27, 2011.

[3] On June 28, 2011, the Commission ordered that the hearing to determine the final order, if any, to be made against Grossman, Maitland and Ulfan (the "Maitland Respondents") should proceed in writing and that Staff's written submissions should be served and filed on or before July 29, 2011 and that any written submissions by Grossman, Maitland and Ulfan should be served and filed by September 1, 2011.

[4] A written hearing was held with respect to the Maitland Respondents to consider whether to make a reciprocal order pursuant to subsection 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") based on convictions by the Ontario Court of Justice and decisions and orders of the Alberta Securities Commission ("ASC") and the Saskatchewan Financial Services Commission ("SFSC").

[5] Staff seeks an order in the public interest which includes permanent trading bans, director and officer bans, registration bans, telephone solicitation bans and an order that Grossman, Maitland and Ulfan jointly disgorge \$5.5 million raised by Maitland's activities. As an alternative disgorgement order, Staff seeks orders that Grossman and Ulfan disgorge amounts received by them from Maitland in the amounts of \$1,579,485.81 (for Grossman) and \$1,553,513.00 (for Ulfan) or an order that Grossman and Ulfan jointly disgorge \$3,132,998.81 as the total amounts paid to them from Maitland.

[6] Staff filed written submissions dated July 27, 2011, an affidavit of Jody Sikora sworn June 16, 2011, an affidavit of Jasmine Handanovic sworn June 16, 2011, a brief of authorities, a brief of orders and decisions relating to the Maitland Respondents and excerpts of the Ontario Court of Justice sentencing proceeding against the Maitland Respondents. The Maitland Respondents did not file any materials or participate in the written hearing although all of the Maitland Respondents were served with the original Notice of Hearing dated January 24, 2006, Grossman and Maitland were served with the Amended Notice of Hearing dated May 27, 2011, attempted service of the Amended Notice of Hearing dated May 27, 2011 on Ulfan was unsuccessful, and the Maitland Respondents were given an opportunity to respond to Staff's submissions.

[7] These are the Reasons and Decision as to whether a subsection 127(10) order should be made against the Maitland Respondents.

II. THE RESPONDENTS

[8] Maitland is an Ontario corporation incorporated on November 2, 2004. Grossman is the president and director of Maitland and Ulfan was the secretary-treasurer of Maitland before his resignation on January 25, 2005.

[9] None of the Maitland Respondents is currently registered under the Act. In *R. v. Maitland Capital Limited et al.* (2011), 105 O.R. (3d) 503 ("*R. v. Maitland*") at paragraph 12, the Ontario Court of Justice found that neither Maitland nor Grossman had ever been registered with the Commission in any capacity and that Ulfan was registered as a salesperson, subject to restrictions, from August 1997 until April 1998.

[10] The remaining named individual respondents were employed by or acted as agents for Maitland and acted as salespersons for Maitland shares.

III. COURT AND REGULATORY DECISIONS RENDERED AGAINST THE MAITLAND RESPONDENTS

[11] The Maitland Respondents engaged in conduct that affected investors in a number of different jurisdictions. This conduct has led to criminal convictions in the Ontario Court of Justice and regulatory decisions and/or orders in other provinces. The following is a summary of the court and regulatory decisions rendered against the Maitland Respondents.

1. The Ontario Provincial Court

[12] The Maitland Respondents were the subject of an OSC Staff prosecution before the Ontario Provincial Court. It was alleged that the Maitland Respondents operated a boiler room, selling large volumes of shares through high pressure telephone sales tactics. Further, it was alleged that this was accomplished through misrepresenting material facts, failing to disclose material facts and selling to investors who were not qualified under securities law to buy the shares (*R. v. Maitland*, *supra* at para. 2). Specifically, the charges laid were as follows:

Count 1 – The offence of trading in securities of Maitland without registration contrary to subsection 25(1) and subsection 122(1)(c) of the *Securities Act*;

Count 2 – The offence of authorizing, permitting or acquiescing in trades in securities of Maitland without Maitland and its salespersons being registered to trade in such securities contrary to subsection 25(1) and subsection 122(3) of the *Securities Act*;

Count 3 – The offence of trading in securities of Maitland without a prospectus contrary to subsection 53(1) and subsection 122(1)(c) of the *Securities Act*;

Count 4 – The offence of authorizing, permitting or acquiescing in trades in securities of Maitland where such trading was a distribution of such securities without a prospectus contrary to subsection 53(1) and subsection 122(3) of the *Securities Act*;

Count 5 – The offence of giving prohibited undertakings as to the future value or price of the securities of Maitland with the intention of effecting trades contrary to subsection 38(2) and subsection 122(1)(c) of the *Securities Act*;

Count 6 – The offence of authorizing, permitting or acquiescing in the giving of undertakings as to the future value or price of the securities of Maitland with the intention of effecting trades contrary to subsection 38(2) and subsection 122(3) of the *Securities Act*;

Count 7 – The offence of making prohibited representations regarding future listing of the securities of Maitland on a stock exchange contrary to subsection 38(3) and subsection 122(1)(c) of the *Securities Act*;

Count 8 – The offence of authorizing, permitting or acquiescing in the making of prohibited representation regarding future listing of the securities of Maitland on a stock exchange with the intention of effecting trades contrary to subsection 38(3) and subsection 122(3) of the *Securities Act*;

Count 9 – The offence of making a misleading or untrue statement contrary to subsection 122(1)(b) of the *Securities Act*; and

Count 10 – The offence of authorizing, permitting or acquiescing in the making of a misleading or untrue statement contrary to subsection 122(1)(b) and subsection 122(3) of the *Securities Act*;

(*R. v. Maitland*, *supra* at para. 3)

[13] With respect to the specific charges against each of the Maitland Respondents, Justice Sparrow of the Ontario Court of Justice noted that:

The prosecutor has explained that in the counts in which Grossman and Ulfan are named alongside the company – counts 1, 3, 5, and 7 – it is alleged that they personally conducted trades and made misrepresentations contrary to the Act. The company is charged in each count as all trades, whether made by Grossman, Ulfan or other salespeople, are alleged to also have been made by the company. In the companion counts 2, 4, 6, and 8, it is alleged that Grossman and Ulfan authorized, permitted or acquiesced in trades or misrepresentations made illegally by salespeople working for the company. In counts 9 and 10 Grossman and Ulfan are charged with making and authorizing or permitting a false statement in a report filed with the Commission.

(*R. v. Maitland*, *supra* at para. 4)

[14] On March 23, 2011, Justice Sparrow convicted the Maitland Respondents of several breaches of Ontario securities law. The specific findings of the Ontario Court of Justice with respect to each count are as follows:

Counts 1 and 3 – Each of the Maitland Respondents was convicted of the offences of: (i) trading in securities of Maitland without registration contrary to subsections 25(1) and 122(1)(c) of the Act; and (ii) trading in securities of Maitland without a prospectus contrary to subsections 53(1) and 122(1)(c) of the Act (*R. v. Maitland, supra* at para. 112). The Court found that Grossman and Ulfan both clearly traded in Maitland securities without being registered and without a prospectus having been issued (*R. v. Maitland, supra* at para. 94). The Court also found that the Maitland Respondents did not demonstrate that their trades fell within the accredited investor exemption and they did not demonstrate that they were duly diligent, or took reasonable care in determining that their trades fell within the exemption (*R. v. Maitland, supra* at paras. 103, 108, 109, 110 and 111).

Counts 2 and 4 – Both Grossman and Ulfan were convicted of the offences of authorizing, permitting or acquiescing in: (i) trades in securities of Maitland without Maitland and its salespersons being registered to trade in such securities contrary to subsections 25(1) and 122(3) of the Act; and (ii) trades in securities of Maitland where such trading was a distribution of such securities without a prospectus contrary to subsections 53(1) and 122(3) of the Act (*R. v. Maitland, supra* at para. 112). Specifically, the Court found that:

- 1) both were involved in the hiring of sales people;
- 2) both passed out contact information to the salespeople;
- 3) salespeople reported to both of them;
- 4) Cassidy testified that both were involved in the day to day operation of the business;
- 5) both signed treasury directives to have shares issued;
- 6) both names appeared on share certificates; and
- 7) both put the investors' cheques in the bank and had signing authority.

(*R. v. Maitland, supra* at para. 98)

Counts 5, 6, 7 and 8 – The court found that Grossman and Ulfan “made undertakings about future value and stock market listings” and that Maitland salespersons also “made representations about value and future listings” (*R. v. Maitland, supra* at paras. 116 and 117). Further, it was found that Grossman and Ulfan authorized, permitted or acquiesced in Maitland’s conduct because:

- 1) They made the prohibited references themselves;
- 2) Ulfan was heard telling salespeople to make these references;
- 3) They were both involved in day to day operations and salespeople referred to both of them as being in charge;
- 4) The Prince script, and all Maitland marketing manuals...strongly suggest that share prices increases and listings were possible, including reference to “pre-IPO opportunity” in the script and in a letter signed by Grossman and untruthful references to previous Maitland IPO successes in the script; and
- 5) They provided no manuals, directives or training to ensure that misrepresentation did not occur.

(*R. v. Maitland, supra* at para. 119)

As a result of the conduct described above, Grossman and Ulfan were convicted of the offences of:

- (i) giving prohibited undertakings as to the future value or price of Maitland securities with the intention of effecting trades contrary to subsections 38(2) and 122(1)(c) of the Act.
- (ii) authorizing, permitting or acquiescing in giving undertakings as to the future value or price of Maitland securities with the intention of effecting trades contrary to subsections 38(2) and 122(3) of the Act.

- (iii) making prohibited representations regarding the future listing of Maitland securities on a stock exchange contrary to subsections 38(3) and 122(1)(c) of the Act.
- (iv) authorizing, permitting or acquiescing in making prohibited representations regarding the future listing of Maitland securities on a stock exchange with the intention of effecting trades contrary to subsections 38(3) and 122(3) of the Act.

In addition, Maitland was convicted as charged, “given that it is responsible for the acts of its directing minds” (*R. v. Maitland*, *supra* at para. 124).

Count 9 – Grossman and Maitland were convicted of the offence of making a misleading or untrue statement contrary to subsection 122(1)(b) of the Act. The Court found that the exempt distribution report filed by Maitland and signed by Grossman contained a material misrepresentation. The report was on an incorrect form, it was not complete and the trades were not exempt as the investors were not accredited investors (*R. v. Maitland*, *supra* at paras. 125 to 127).

Count 10 – Ulfan was convicted of the offence of authorizing, permitting or acquiescing in making a misleading or untrue statement contrary to subsections 122(1)(b) and 122(3) of the Act. This charge against Grossman was dismissed as the Court found count 10 duplicative of count 9 (*R. v. Maitland*, *supra* at paras. 128 and 129).

[15] In a sentencing decision of the Ontario Court of Justice dated May 4, 2011, Grossman and Ulfan were each sentenced to 21 months in jail and Maitland was fined \$1,000,000. The reasoning of the Court for imposing the sentence was as follows:

[Regarding Mr. Grossman] ... concurrent sentences should be imposed on counts one to four, given that they all relate to breaches of the prospectus and registration requirements by Mr. Grossman personally in his director and officer roles. [Mr. Grossman] will be sentenced to ten months concurrently on each of those counts.

On counts five to eight, all which involve misrepresentations as to value and further listing, [Mr. Grossman] will be sentenced to ten months concurrent on each count, but consecutive to the sentence on the first four counts.

With regard to count nine, [Mr. Grossman] will be sentenced to one month consecutive to all other counts. It is serious to file a misleading report re exempt distributions, but I take the principle of totality into account.

The same sentence will be imposed on Mr. Ulfan, although I note that the one month will be imposed on count ten, not count nine.

The total jail sentence is therefore 21 months. The company will be fined \$1 million dollars. It is clear that it cannot be paid but it is imposed to symbolize the severity of the offences.

There will be no fine imposed on Mr. Grossman given that it is not being sought by the Securities Commission and that he has many other outstanding fines.

A two year probation order will be made. The terms will be that he report to probation immediately and thereafter as required and that he refrain from ... trading in securities during that time period.

(*R. v. Maitland*, Sentencing (Excerpt of Proceedings) Transcript, May 4, 2011, at pp. 14 and 15)

2. The Alberta Securities Commission

[16] The ASC proceeding involved distributions of Maitland securities to investors resident in Alberta. It was alleged that Maitland, Grossman, Rouse, Garner, Cassidy and Robert Gellar (“Gellar”) traded in securities of Maitland without being registered to do so, without having filed a prospectus and received a receipt and without any applicable exemptions, thereby engaging in illegal trading and illegal distributions of Maitland securities in Alberta. Further, there were also allegations that prohibited representations and misrepresentations were made to investors, unfair practices were engaged in, misleading and untrue statements were made, there was a failure to file reports of exempt distributions and that attempts were made to conceal or withhold information reasonably required for ASC staff’s investigation by making false statements to an ASC investigator. Ulfan was not named as a respondent in the ASC proceeding.

[17] On June 7, 2007, Maitland, Grossman and the other respondents named in the ASC proceeding were found to have breached various provisions of the *Alberta Securities Act*, R.S.A. 2000, c. S.4 (“ASA”), as amended. The findings of the Panel with respect to Maitland and Grossman were as follows:

By illegally trading and distributing Maitland Capital securities, Maitland Capital, Grossman and the Respondent Salespersons [Rouse, Gardner, Cassidy and Geller] contravened sections 75(1)(a) and 110(1) of the [ASA].

By failing to file reports of exempt distribution as required, Maitland Capital and Grossman acted contrary to section 7.1(1) of MI 45-103 or section 6.1 of NI 45-106, as the case may be.

...

By making statements that he knew or ought reasonably to have known were misrepresentations, Grossman breached section 92(3)(c) of the [ASA].

...

By permitting or encouraging a Maitland Capital salesperson to engage in an unfair practice, Grossman was responsible for that salesperson's breach of section 92(3)(d) of the [ASA].

By making false statements to [an ASC] investigator when he knew or ought reasonably to have known that an investigation was being conducted by the [ASC], Grossman breached section 93.4(1) of the [ASA].

In respect of the contraventions that have been proved and other misconduct, Maitland Capital's, Grossman and the Respondent Salespersons' conduct was contrary to the public interest.

(*Re Maitland Capital Ltd.*, 2007 ABASC 357 (ASC) (the "ASC Merits") at paras. 201 to 208)

[18] The ASC Merits Panel also found that Grossman orchestrated the Maitland investment scheme and was the controlling mind of Maitland. Specifically, the ASC Merits Panel found that:

The evidence established that Grossman has been the controlling mind of Maitland Capital since its incorporation. As Maitland Capital's president, Grossman negotiated and concluded the Share Subscription Agreement with Maitland Energy, instituted the Maitland Capital sales program, hired the Maitland Capital salespersons, implemented the selling activities undertaken by the Maitland Capital salespersons, solicited prospective investors himself, established the Website, provided Maitland Energy and other information to prospective investors and signed the share certificates issued to investors. In other words, Grossman bears significant responsibility for the sale of Maitland Capital common shares to Alberta residents.

(*ASC Merits*, *supra* at para. 137)

[19] The ASC issued its sanctions and costs decision on November 6, 2007. Maitland was ordered to cease trading in or purchasing securities. It was also ordered that all exemptions contained in Alberta securities laws do not apply to Maitland until a prospectus is filed with the ASC and a receipt issued therefor (*Re Maitland Capital Ltd.*, 2007 ABASC 818 (ASC) ("*ASC Sanctions*") at para. 41). The following order was made against Grossman:

- (a) under sections 198(1)(b) and (c) of the Act, that he must cease trading in or purchasing securities or exchange contracts and that all of the exemptions contained in Alberta securities law do not apply to him, in each case for 20 years;
- (b) under sections 198(1)(d) and (e) of the Act, that he must resign any position that he holds as a director or officer of any issuer and that for 20 years he is prohibited from becoming or acting as a director or officer (or both) of any issuer; and
- (c) under section 199 of the Act, that he must pay an administrative penalty in the amount of \$250,000.

(*ASC Sanctions*, *supra* at para. 42)

[20] With respect to the costs of the ASC's investigation and hearing, Maitland was ordered to pay \$15,000 in costs and Grossman was ordered to pay \$40,000 in costs (*ASC Sanctions*, *supra* at para. 50).

[21] Grossman and Maitland appealed the *ASC Merits* and *ASC Sanctions* decisions. The Alberta Court of Appeal dismissed the appeals (*Maitland Capital Ltd. v. Alberta (Securities Commission)*, 2009 ABCA 186 (Alta. C.A.) at paras. 14 and 21).

3. The Saskatchewan Financial Services Commission

[22] On July 22, 2005, the SFSC issued a temporary cease trade order against Maitland, Grossman and Lanys (the “SFSC Order”) on the basis that it appeared that: (1) these respondents traded in securities of Maitland in Saskatchewan; (2) they were not registered; (3) a receipt for a prospectus had not been issued with respect to these securities; (4) there were no exemptions available to the respondents; and (5) the respondents improperly used the accredited investor exemption. It was ordered that trading in all securities by and of these respondents cease forthwith and that exemptions were not available to these respondents. Ulfan was not listed as a respondent in the SFSC Order.

[23] On August 8, 2005, the SFSC extended the SFSC Order and it remains in effect. Maitland, Grossman and Lanys are all subject to the SFSC Order dated July 22, 2005.

4. The New Brunswick Securities Commission

[24] On March 31, 2006, the New Brunswick Securities Commission (“NBSC”) issued a temporary cease trade order against the Maitland Respondents and others (the “NBSC Order”). It was ordered that all trading in the securities of Maitland by Maitland, its officers, directors, employees and/or agents shall cease. In addition, the Maitland Respondents and others were ordered to cease trading in all securities and it was ordered that exemptions in New Brunswick securities law were not available to the Maitland Respondents and others.

[25] On May 24, 2006, the NBSC Order was made permanent against Ulfan, and extended against Grossman and Maitland. Subsequently, on October 11, 2006, the NBSC Order was extended against Grossman and Maitland until the completion of the NBSC hearing.

5. The British Columbia Securities Commission

[26] On July 15, 2008, the British Columbia Securities Commission (“BCSC”) issued a reciprocal order against Grossman and others for conduct relating to Maitland, based on the ASC decision.

[27] Specifically, with respect to Grossman, it was ordered that until November 6, 2027, Grossman: (1) must cease trading in, and is prohibited from purchasing securities and exchange contracts; (2) is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager and must resign from any such position he may hold; (3) is prohibited from becoming or acting as a registrant, investment fund manager or promoter; (4) is prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and (5) is prohibited from engaging in investor relations activities.

IV. STAFF’S REQUESTED ORDER

[28] Staff requests at paragraphs 10, 48, 52 and 59 of its written submissions that the Commission make the following order pursuant to subsections 127(1) and (10) of the Act:

- a) pursuant to clause 2 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan permanently cease trading in securities;
- b) pursuant to clause 2.1 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan permanently cease acquiring securities;
- c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Grossman, Maitland and Ulfan permanently;
- d) pursuant to clause 6 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan are reprimanded;
- e) pursuant to clauses 7, 8.1 and 8.3 of subsection 127(1) of the Act, Grossman and Ulfan shall resign all positions that they hold as a director or officer of any of an issuer, registrant or investment fund manager;
- f) pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Grossman and Ulfan are prohibited permanently from becoming or acting as a director or officer of any of an issuer, registrant, or an investment fund manager;
- g) pursuant to clause 8.5 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan are prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;

- h) pursuant to clause 10 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan shall jointly disgorge \$5,500,000 to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2) of the Act; and
- i) pursuant to subsection 37(1) of the Act, Grossman, Maitland and Ulfan are prohibited permanently from telephoning residences within or outside of Ontario for the purpose of trading in securities.

[29] In the alternative to the disgorgement order listed at paragraph 28(h), Staff requests an order that Grossman and Ulfan disgorge amounts received by them from Maitland in the amounts of \$1,579,485.81 for Grossman and \$1,553,513 for Ulfan or that Grossman and Ulfan jointly disgorge \$3,132,998.81 to be allocated by the Commission to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act.

[30] Staff takes the position at paragraph 65 of its written submissions that the sanctions requested are in the public interest and appropriate in the circumstance of this case because the proposed sanctions:

- a) are consistent with sanctions in other cases involving criminal or quasi-criminal convictions;
- b) reflect an appropriate outcome for Grossman, Maitland and Ulfan given the past harm caused to investors, the individual circumstances of Maitland, Grossman and Ulfan and the threat that Maitland, Grossman and Ulfan pose to the capital markets;
- c) are appropriate given that Grossman is already subject to a 20-year trading ban imposed in *Re First Global Ventures S.A.* (2008), 31 O.S.C.B. 10869 ("*First Global Sanctions*");
- d) are appropriate given that Grossman and Ulfan have been sentenced to 21 months in jail for their conduct;
- e) are appropriate given the findings against Grossman and Maitland in the ASC decisions;
- f) will contribute to the fair and efficient operation of the capital markets and to the responsible co-ordination of securities regulation regimes;
- g) will serve as a deterrent to similar conduct by Grossman, Maitland and Ulfan and/or by like-minded individuals.

V. THE ISSUES

[31] The issues to be addressed in this matter are the following:

1. Have the pre-conditions for an order under subsection 127(10) of the Act been satisfied?
2. Is subsection 127(10) being applied retrospectively?
3. What sanctions, if any, against Grossman, Maitland and Ulfan are appropriate to protect the public interest?

VI. ANALYSIS

1. Have the pre-conditions for an order under subsection 127(10) of the Act been satisfied?

[32] Subsection 127(10) of the Act states:

- (10) Without limiting the generality of subsections (1) and (5), an order may be made under subsection (1) or (5) in respect of a person or company if any of the following circumstances exist:
 1. The person or company has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.
 2. The person or company has been convicted in any jurisdiction of an offence under a law respecting the buying or selling of securities or derivatives.

3. The person or company has been found by a court in any jurisdiction to have contravened the laws of the jurisdiction respecting the buying or selling of securities or derivatives.
4. The person or company is subject to an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company.

...

[33] As set out in *Re Euston Capital Corp.* (2009), 32 O.S.C.B. 6313 ("*Euston*") at paragraph 46, subsection 127(10) of the Act allows the Commission to:

...make an order against the Respondents pursuant to our public interest jurisdiction under section 127 of the Act on the basis of decisions and orders made in other jurisdictions, if we find it necessary in order to protect investors in Ontario and the integrity of Ontario's capital markets.

[34] Staff relies on the inter-jurisdictional enforcement provisions in subsection 127(10) of the Act on the basis that:

- a) Grossman, Maitland and Ulfan have been convicted in Ontario of offences arising from the illegal operation of a boiler room in Ontario which sold Maitland shares using high-pressured sales tactics to investors across Canada and in other countries;
- b) Grossman and Maitland have been sanctioned by the ASC in respect of the same illegal distribution of Maitland shares and for misleading both investors and ASC investigators; and
- c) Grossman and Maitland are subject to an ongoing cease trading order of the SFSC.

(Staff's Written Submissions at para. 3)

[35] While Staff did include the NBSC Order and BCSC reciprocal order in their materials, they did not purport to rely on them in their subsection 127(10) request.

[36] In my view, the decision of the Ontario Court of Justice meets the threshold criterion set out in subsection 127(10)3 of the Act. As set out above, the Ontario Court of Justice found Grossman, Maitland and Ulfan guilty of breaches of subsections 25(1), 38(2), 38(3), 53(1), 122(1)(b) and 122(3) of the Act. These breaches were founded on a course of conduct related to securities within the meaning of subsection 127(10)1 of the Act and related to the buying or selling of securities within the meaning of subsection 127(10)2 of the Act.

[37] Furthermore, the *ASC Merits* and *ASC Sanctions* decisions meet the threshold criterion set out in subsection 127(10)4 of the Act with respect to Grossman and Maitland. The ASC found that Grossman and Maitland breached Alberta securities law and made an order imposing sanctions on Grossman and Maitland, as described above.

[38] Accordingly, the Commission may make an order against the Maitland Respondents under subsections 127(1) and (10) of the Act relying on the decisions of the Ontario Court of Justice and the ASC.

[39] With respect to the SFSC Order, I note that this order is not permanent in nature and a merits hearing has not yet taken place. I did not receive written submissions on the issue of whether the Commission may make a permanent order under subsections 127(1) and (10) of the Act based on a temporary order without findings on the merits. In this case it is unnecessary to address this issue as the Commission can rely on the final decisions of the Ontario Court of Justice (trial and sentencing decisions) and the ASC (merits and sanctions decisions) to make an order against the Maitland Respondents under subsections 127(1) and (10) of the Act.

2. Is subsection 127(10) being applied retrospectively?

[40] The Commission has previously established that it is entitled to make a public interest order under subsection 127(1) of the Act in the circumstances contemplated by subsection 127(10) of the Act notwithstanding the fact that the underlying conduct occurred prior to the coming into force of subsection 127(10) on November 27, 2008. In *Euston*, the Commission concluded that the presumption against retrospectivity does not apply to public interest orders made by the Commission in the circumstances contemplated by subsection 127(10) and that subsection 127(10) may operate retrospectively. Specifically, it was explained in *Euston* at paragraphs 56 and 57:

Based on a plain reading of subsection 127(10) in the context of section 127 as a whole, and after taking into account the Supreme Court of Canada's decisions in *Brosseau* and *Asbestos*, we conclude that the purpose ... of subsection 127(10) is to protect the public. Hence, the presumption against retrospectivity is not applicable, and subsection 127(10) may operate retrospectively.

While the courts in *Brost* and *Thow* had to consider the retrospective application of a provision which expanded the sanctioning powers of a securities regulator, subsection 127(10) of the Act does no such thing. Rather, subsection 127(10) of the Act simply allows the Commission to consider any convictions or orders made against an individual in other jurisdictions, when deciding whether or not to make an order under subsection 127(1) or (5) in the public interest.

[41] *Euston* has subsequently been followed by the Commission in other decisions (see for example: *Re Elliot* (2009), 32 O.S.C.B. 6931 at paras. 16 to 26, *Re Lech* (2010), 33 O.S.C.B. 4795 ("*Lech*") at paras. 24 to 32, and *Re Landen* (2010), 33 O.S.C.B. 9489 at paras. 24 to 29).

[42] Therefore, although the conduct in this matter took place in 2004, the Commission has the ability to make an order pursuant to subsections 127(1) and (10) of the Act.

3. What sanctions, if any, against Grossman, Maitland and Ulfan are appropriate to protect the public interest?

a. The Law on Sanctions

[43] Pursuant to section 1.1 of the Act, the Commission has the mandate to: (i) provide protection to investors from unfair, improper or fraudulent practices; and (ii) foster fair and efficient capital markets and confidence in capital markets. As stated by the Supreme Court of Canada in *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 ("*Asbestos*") at paragraph 42, the Commission's public interest mandate is neither remedial nor punitive; instead, it is protective and preventive, and it is intended to prevent future harm to Ontario's capital markets. Specifically:

... the above interpretation is consistent with the scheme of enforcement in the Act. The enforcement techniques in the Act span a broad spectrum from purely regulatory or administrative sanctions to serious criminal penalties. The administrative sanctions are the most frequently used sanctions and are grouped together in s. 127 as "Orders in the public interest". Such orders are not punitive: *Re Albino* (1991), 14 O.S.C.B. 365. Rather, the purpose of an order under s. 127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. The role of the OSC under s. 127 is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets: *Re Mithras Management Ltd.* (1990), 13 O.S.C.B. 1600. In contradistinction, it is for the courts to punish or remedy past conduct under ss. 122 and 128 of the Act respectively: see D. Johnston and K. Doyle Rockwell, *Canadian Securities Regulation* (2nd ed. 1998), at pp. 209-11.

...

... pursuant to s. 127(1), the OSC has the jurisdiction and a broad discretion to intervene in Ontario capital markets if it is in the public interest to do so. ... 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.

(*Asbestos*, *supra* at paras. 43 and 45 [emphasis added])

[44] In determining the appropriate sanctions to order in this matter, the Commission's preventive and protective mandate set out in section 1.1 of the Act must be considered along with the specific circumstances in this case to ensure that the sanctions are proportionate (*Re M.C.J.C. Holdings* (2002), 25 O.S.C.B. 1133 at 1134).

[45] The case law sets out the following list of non-exhaustive factors that are important to consider when imposing sanctions:

- (a) the seriousness of the allegations;
- (b) the respondent's experience in the marketplace;

- (c) the level of a respondent's activity in the marketplace;
- (d) whether or not there has been a recognition of the seriousness of the improprieties;
- (e) the need to deter a respondent, and other like-minded individuals, from engaging in similar abuses of the capital markets in the future;
- (f) whether the violations are isolated or recurrent;
- (g) the size of any profit gained or loss avoided from the illegal conduct;
- (h) any mitigating factors, including the remorse of the respondent;
- (i) the effect any sanction might have on the livelihood of the respondent;
- (j) the effect any sanction might have on the ability of a respondent to participate without check in the capital markets;
- (k) in light of the reputation and prestige of the respondent, whether a particular sanction will have an impact on the respondent and be effective;
- (l) the size of any financial sanctions or voluntary payment when considering other factors.

(See, for example, *Re M.C.J.C. Holdings*, (2002), 25 O.S.C.B. 1133 at 1136 and *Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at 7746)

[46] The applicability and importance of each factor will vary according to the facts and circumstances of the case.

[47] Deterrence is another factor that the Commission could consider when determining appropriate sanctions. In *Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 ("*Cartaway*") at paragraph 60, the Supreme Court of Canada explained that deterrence is "...an appropriate, and perhaps necessary, consideration in making orders that are both protective and preventative". Further, the Supreme Court emphasized that deterrence may be specific to the respondent or may be general to deter the public at large:

Deterrent penalties work on two levels. They may target society generally, including potential wrongdoers, in an effort to demonstrate the negative consequences of wrongdoing. They may also target the individual wrongdoer in an attempt to show the unprofitability of repeated wrongdoing. The first is general deterrence; the second is specific or individual deterrence: see C. C. Ruby, *Sentencing* (5th ed. 1999). In both cases deterrence is prospective in orientation and aims at preventing future conduct.

(*Cartaway*, *supra* at para. 52)

[48] As stated above, the sanctions imposed must be protective and preventive. The role of the Commission is to impose sanctions that will protect investors and the capital markets from exposure to similar conduct in the future. As articulated by the Commission in *Re Mithras Management Inc.* (1990), 13 O.S.C.B. 1600 ("*Mithras*");

...the role of this Commission is to protect the public interest by removing from the capital markets -
- wholly or partially, permanently or temporarily, as the circumstances may warrant -- those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.

(*Mithras*, *supra* at 1610 and 1611)

b. Specific Sanctioning Factors Applicable in this Matter

[49] Overall, the sanctions imposed in this matter must protect investors and Ontario capital markets by barring or restricting the Maitland Respondents from participating in those markets in the future.

[50] In considering the sanctioning factors set out in the case law, and applying these factors to the facts as found in the Ontario Court of Justice and the ASC decisions, the following specific factors and circumstances are relevant in this matter:

- (a) The seriousness of the allegations – The proceeding before the Ontario Court of Justice involved charges against the Maitland Respondents on 10 different counts relating to the selling of Maitland shares. As set out above at paragraph 14, the Court found that the Maitland Respondents breached subsections 25(1), 38(2), 38(3), 53(1), 122(1)(b) and 122(3) of the Act. As a result of these serious findings, the Court sentenced Grossman and Ulfan to 21 months in jail and Maitland was fined \$1,000,000. The proceeding before the ASC also involved serious misconduct involving a distribution of Maitland securities to Alberta-resident investors. As set out at paragraph 17 above, the ASC found that Grossman and Maitland breached numerous provisions of the ASA and ordered that for a period of 20 years: (1) Grossman cease trading, (2) exemptions do not apply; and (3) he cannot act as a director or officer of any issuer. In addition, he was ordered to pay an administrative penalty of \$250,000 and costs of \$40,000. The ASC also ordered that Maitland cease trading in securities and that exemptions do not apply to it until it files a prospectus with the ASC. Maitland was ordered to pay \$15,000 in costs.
- (b) The respondents' experience in the marketplace – Ulfan was previously registered with the Commission from August 1997 to April 1998. Grossman and Maitland were never registered with the Commission (*R. v. Maitland*, *supra* at para. 12).
- (c) The level of the respondents' activity in the marketplace – The Ontario Court of Justice found that Maitland raised approximately \$5.5 million (*R. v. Maitland*, *supra* at para. 10). The conduct of the Maitland Respondents was not limited to raising funds from Ontario investors. The Ontario Court of Justice found that 275,520 long distance phone calls were made to solicit investors throughout Canada and in seven other countries (*R. v. Maitland*, *supra* at para. 9). These facts were not contested before the Ontario Court of Justice.
- (d) Whether or not there has been a recognition of the seriousness of the improprieties – The Maitland Respondents did not take responsibility for their actions or show any remorse before the Ontario Court of Justice or the ASC. Ulfan did not attend the criminal trial before the Ontario Court of Justice. Justice Sparrow also found that Grossman did not show remorse and that during his cross-examination he “demonstrated his contempt for provincial securities regulators” (*R. v. Maitland*, Sentencing (Excerpt of Proceedings) Transcript, May 4, 2011, at p. 6). Grossman’s testimony during the criminal trial also demonstrated that he had no respect for securities law. Specifically, the Court found:

As noted in the summary of Grossman’s testimony, he simply boldly denied commission of these offences. In my view, this testimony is not credible. As found previously, he made and authorized or permitted prohibited trades, and filed a misleading report with the Commission. Marketing documents sent to investors and the website were misleading, representing Maitland Capital as the energy explorer. Misleading representations were made in many documents sent to investors. He clearly has no respect for the prohibitions in the Act, given his strong criticisms of certain provisions. His statement that he did not and perhaps still does not understand the meaning of “accredited investor”, a straightforward concept, is not believable. He put \$1.5 million of investor monies into his own business. He was in the office daily in earshot of the misrepresentations of salespeople who he did not train, monitor or guide. His flat denials are simply not credible, and contradicted by the bulk of the evidence.

(*R. v. Maitland*, *supra* at para. 120)

- (e) Whether the violations are isolated or recurrent – The selling of Maitland shares was not an isolated event. Maitland shares were sold on an ongoing, widespread basis during 2004 and 2005. The Ontario Court of Justice found that 234 Maitland investors in various provinces invested in Maitland and that 1755 Maitland share certificates were issued (*R. v. Maitland*, *supra* at para. 8). In addition, Grossman is a recidivist offender of securities law. In *Re First Global Ventures S.A.* (2007), 30 O.S.C.B. 10473 (“*First Global Merits*”) at paragraph 185, the Commission found that Grossman used high pressure sales tactics to sell First Global securities and was involved in unregistered trading and illegal distribution of securities in breach of subsections 25(1) and 53(1) of the Act. He also breached a temporary cease trade order issued by the Commission in the Maitland matter.
- (f) The size of any profit gained or loss avoided from the illegal conduct – Staff filed an affidavit of Jody Sikora sworn June 16, 2011, which included exhibits showing that (i) Grossman’s company, A.E.I. Construction Management (“A.E.I.”), received payments from Maitland’s TD Canada Trust Account totalling \$1,579,485.81;

(ii) Ulfan's company, Landrite Limited, received payments from Maitland's TD Canada Trust Account totalling \$1,504,339.05, and (iii) Ulfan's son received payments from Maitland's TD Canada Trust Account totalling \$49,174.40. This information is consistent with findings made by the Ontario Court of Justice in sentencing Grossman, Maitland and Ulfan on May 4, 2011.

- (g) The effect any sanction might have on the livelihood of the respondent – The Ontario Court of Justice sentenced Grossman to 21 months in jail for breaches of Ontario securities law. In addition, in *First Global Sanctions, supra* at paragraph 73, the Commission ordered Grossman to cease trading for a period of 20 years. It further ordered that exemptions from Ontario securities law do not apply to Grossman for 20 years, that Grossman may not act as an officer or director of any issuer for 20 years and that he was prohibited from telephoning residences within or outside Ontario for the purpose of trading in securities for 20 years. Despite this order, Grossman has been involved in other Commission matters involving the solicitation, selling and distribution of securities. Staff submits that permanent bans are required to prevent Grossman from participating in the capital markets in order to protect the public.
- (h) The size of any financial sanctions or voluntary payment when considering other factors – The ASC imposed on Grossman an administrative penalty of \$250,000 and costs of \$40,000. The ASC imposed costs on Maitland of \$15,000. The Ontario Court of Justice imposed a \$1,000,000 fine on Maitland. Staff did not request further administrative penalties given the jail sentences and the fine imposed by the Ontario Court of Justice. In addition, in *First Global Sanctions, supra* at paragraph 73, Grossman was ordered to pay an administrative penalty of \$200,000 and to pay, jointly and severally with First Global, \$50,000 in costs plus \$2,573.74 in disbursements.

c. Trading and Other Prohibitions

Trading

[51] Staff takes the position that in the circumstances of this case, it would be appropriate to order that the Maitland Respondents cease trading in securities and be prohibited from acquiring securities and that exemptions contained in Ontario securities law not apply to any of the Maitland Respondents permanently. In particular, Staff referred the Commission to a number of aggravating factors to support their request for a permanent ban.

[52] In my view, the following aggravating factors are relevant:

- (a) Maitland raised approximately \$5.5 million and only \$500,000 was invested in Maitland Energy. Maitland Energy has no value as Maitland investors have lost their entire investments (*R. v. Maitland*, Sentencing (Excerpt of Proceedings) Transcript, May 4, 2011, at p. 5);
- (b) Maitland paid \$1,579,485.81 to A.E.I. Construction (Grossman) and \$1,504,339 to Landrite (Ulfan) and \$49,174 to Elan Ulfan (*R. v. Maitland*, Sentencing (Excerpt of Proceedings) Transcript, May 4, 2011, at pp. 5 and 6);
- (c) Grossman misled Staff and ASC Staff. Specifically, Justice Sparrow found that Grossman misled Staff's investigator in November 2005 when he advised the investigator that Maitland was only selling shares to accredited investors and it only sold shares to 33 investors (*R. v. Maitland*, Sentencing (Excerpt of Proceedings) Transcript, May 4, 2011, at p. 6). In addition, the ASC also found that Grossman made false statements to an ASC investigator (*ASC Merits, supra* at paras. 192 to 195);
- (d) Maitland provided misleading documents to investors. As noted at paragraph 50(d) above, the Ontario Court of Justice found that "Misleading representations were made in many documents sent to investors" (*R. v. Maitland, supra* at para. 120). In addition, the ASC found that "Grossman clearly set out to mislead prospective investors as to the entity in which they were purchasing securities" (*ASC Merits, supra* at para. 198); and
- (e) Maitland's salespersons targeted unsophisticated and unaccredited investors with no attempt to comply with securities laws. Specifically, the Court found that Grossman and Ulfan authorized, permitted or acquiesced in the behaviour of the Maitland salespersons and that they made prohibited representations about the listing of Maitland shares on a stock exchange and the future value of Maitland shares (*R. v. Maitland, supra* at paras. 115 to 119). In addition, the Court found that "Neither Grossman or [sic] Ulfan took reasonable steps to ascertain whether the investors they dealt with fell within the definition of accredited investors, or to ensure that the salespeople were taking proper measures" (*R. v. Maitland, supra* at para. 109).

[53] I find that a permanent cease trade order, a permanent prohibition on acquiring securities and a permanent removal of exemptions is appropriate in this case. Based on the findings of the Ontario Court of Justice and the ASC, the Maitland Respondents breached numerous provisions of securities law and their conduct adversely affected investors in multiple provinces.

[54] I agree with Staff's submission that trading carve-outs should not be granted to the Maitland Respondents because they were found guilty of criminal conduct (for examples of subsection 127(10) Commission cases involving criminal conduct where the Commission refused to grant carve-outs see: *Lech, supra* and *Re Graham* (2009), 32 O.S.C.B. 7202). Specifically, in *Lech*, the Commission stated at paragraph 66:

...In the present case, the conduct at issue is criminal fraud related to securities. Lech's conduct was egregious and demonstrates a serious risk to the public. In this case, it is better to err on the side of caution. We therefore find that it is neither appropriate nor in the public interest to provide such a carve-out.

[55] While fraud was not alleged in this matter, the Maitland Respondents did engage in a pattern of misconduct affecting many investors in multiple provinces and the seriousness of their violations indicates an ongoing disregard for the rules governing the sale of securities to investors.

[56] Taking into consideration the findings of the Ontario Court of Justice set out at paragraph 14 and the findings of multiple breaches of securities law by the ASC set out at paragraph 17, it is inappropriate to grant any trading carve-outs to the Maitland Respondents.

Director, Officer and Other Bans

[57] Staff also requests that Grossman and Ulfan resign any positions that they may hold as an officer or director of an issuer, registrant or investment fund manager and that they be prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager. Further, Staff requests that Grossman, Maitland and Ulfan be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter.

[58] These bans requested by Staff are appropriate and necessary to protect investors from the future involvement of Grossman and Ulfan in the capital markets. In *Mithras*, the Commission explained that the removal of individuals from the capital markets is an effective mechanism for protecting the public. In addition to trading prohibitions, officer, director and other bans are an effective way to remove persons from participating in the capital markets.

[59] Grossman and Ulfan were respectively the president and director of Maitland and the secretary-treasurer of Maitland. As set out at paragraphs 14 and 18 above, the ASC found Grossman to be the directing mind of Maitland, and the Ontario Court of Justice held Maitland liable for the acts of Ulfan and Grossman, Maitland's two directing minds. The permanent bans requested by Staff will ensure that Grossman and Ulfan will not be put in a position of control or trust with any issuer, registrant, investment fund manager or promoter. This is important because the misconduct in this matter was facilitated by Grossman and Ulfan in their capacity as officers of Maitland who had substantial influence and decision-making power over the company.

Section 37 of the Act

[60] At the time the conduct in this matter took place, subsection 37(1) of the Act provided:

37. (1) The Commission may by order suspend, cancel, restrict or impose terms and conditions upon the right of any person or company named or described in the order to,

(a) call at any residence; or

(b) telephone from within Ontario to any residence within or outside Ontario,

for the purpose of trading in any security or in any class of securities.

[61] The current version of subsection 37(1) of the Act is substantially identical except that it also refers to derivatives, in addition to securities.

[62] Staff has requested pursuant to subsection 37(1)(b) of the Act that the Maitland Respondents be prohibited permanently from telephoning any residence within or outside Ontario for the purpose of trading in any security or in any class of securities.

[63] Since the conduct found to have occurred by the Ontario Court of Justice involved a systematic process of solicitation and sale of Maitland securities by telephone, it is appropriate to make an order under subsection 37(1)(b) of the Act to prevent permanently the Maitland Respondents from telephoning from within Ontario to any residence within or outside Ontario to solicit trades.

d. Disgorgement

[64] Staff requests that a disgorgement order be made in this matter. Staff takes the position that Grossman and Ulfan have both been found guilty by the Ontario Court of Justice of the illegal distribution of Maitland shares and making prohibited representations both personally and in their roles as officers and directors of Maitland. As a result, Grossman and Ulfan are both responsible for the entire illegal distribution of Maitland shares. According to Staff, based on this conduct, Grossman and Ulfan ought to jointly disgorge with Maitland the entire amount of \$5.5 million obtained in breach of the Act. Staff relies on *Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 to support its disgorgement request and submits that its disgorgement request is consistent with the disgorgement order made in that case.

[65] Further, Staff submits that a disgorgement order is appropriate given the findings of the Ontario Court of Justice and the ASC, the need to adequately protect Ontario's capital markets and the fact that no other disgorgement or restitution orders have been issued against Grossman, Maitland or Ulfan in this matter.

[66] In the first place, Staff has brought this matter before the Commission as a request for a reciprocal order under subsection 127(10) of the Act. As disgorgement orders were not made by the Ontario Court of Justice or the other securities commissions, it is inappropriate, in my view, to make a reciprocal disgorgement order in this case.

[67] In support of their request for a disgorgement order, Staff filed an affidavit of Jody Sikora sworn June 16, 2011. This affidavit indicates that investors wired funds into Maitland's TD Canada Trust account; however, no supporting documents were included as exhibits to the affidavit to actually show Ontario investor deposits into the Maitland TD Canada Trust Account. There were also no documents to support the total amount of Ontario funds deposited and the total number of Ontario investors. In the absence of documentary evidence showing Ontario investor funds deposited into Maitland's TD Canada Trust Account and the number of Ontario investors, it is inappropriate to make a disgorgement order in Ontario.

VII. CONCLUSION

[68] I consider that it is important in this case to protect Ontario capital markets by imposing sanctions that not only deter the Respondents but also like-minded people from engaging in future conduct that violates securities law.

[69] I will issue a separate order giving effect to my decision pursuant to subsections 127(1) and (10) of the Act and I order that:

- a) pursuant to clause 2 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan shall permanently cease trading in any securities;
- b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Grossman, Maitland or Ulfan is permanently prohibited;
- c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Grossman, Maitland or Ulfan permanently;
- d) pursuant to clause 6 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan are reprimanded;
- e) pursuant to clause 7 of subsection 127(1) of the Act, Grossman and Ulfan shall immediately resign all positions that they may hold as a director or officer of any issuer;
- f) pursuant to clause 8 of subsection 127(1) of the Act, Grossman and Ulfan are prohibited permanently from becoming or acting as a director or officer of any issuer;
- g) pursuant to clause 8.1 of subsection 127(1) of the Act, Grossman and Ulfan shall immediately resign all positions that they may hold as a director or officer of any registrant;
- h) pursuant to clause 8.2 of subsection 127(1) of the Act, Grossman and Ulfan are prohibited permanently from becoming or acting as a director or officer of any registrant;
- i) pursuant to clause 8.3 of subsection 127(1) of the Act, Grossman and Ulfan shall immediately resign all positions that they may hold as a director or officer of any investment fund manager;

- j) pursuant to clause 8.4 of subsection 127(1) of the Act, Grossman and Ulfan are prohibited permanently from becoming or acting as a director or officer of any investment fund manager;
- k) pursuant to clause 8.5 of subsection 127(1) of the Act, Grossman, Maitland and Ulfan are prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and
- l) pursuant to subsection 37(1) of the Act, Grossman, Maitland and Ulfan are prohibited permanently from telephoning from within Ontario to residences within or outside Ontario for the purpose of trading in securities.

Dated at Toronto this 8th day of February, 2012.

“Mary G. Condon”

3.1.2 Irwin Boock et al.

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

AND

**IN THE MATTER OF
IRWIN BOOCK, STANTON DEFREITAS, JASON
WONG, SAUDIA ALLIE, ALENA DUBINSKY, ALEX
KHODJAIANTS, 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**

**SETTLEMENT AGREEMENT
BETWEEN STAFF AND IRWIN BOOCK**

PART I – INTRODUCTION

1. By Amended Notice of Hearing dated January 5, 2012, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), to consider whether it is in the public interest to make orders, as specified therein, against Irwin Boock (“Boock”), Stanton DeFreitas (“DeFretas”), Jason Wong (“Wong”), Saudia Allie (“Allie”), Alena Dubinsky (“Dubinsky”), Alex Khodjaiants (“Khodjaiants”), Select American Transfer Co., (“Select American”), LeaseSmart, Inc. (“LeaseSmart”); Advanced Growing Systems, Inc. (formerly, The Bighub.com, Inc.) (“Bighub”); NutriOne Corporation (“NutriOne”); International Energy Ltd. (“International Energy”); Pocketop Corporation (formerly, Universal Seismic, Inc.) (“Pocketop”); Asia Telecom Ltd. (“Asia Telecom”); Pharm Control Ltd. (“Pharm Control”); Cambridge Resources Corporation (“Cambridge Resources”); Compushare Transfer Corporation (“Compushare”), WGI Holdings, Inc. (“WGI Holdings”); Federated Purchaser, Inc. (“Federated Purchaser”); First National Entertainment Corporation (“First National”); TCC Industries, Inc. (“TCC Industries”); and Enerbrite Technologies Group Inc. (“Enerbrite”). The Amended Notice of Hearing was issued in connection with the allegations as set out in the Amended Statement of Allegations of Staff of the Commission (“Staff”) dated January 4, 2012.

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Boock.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the amended Notice of Hearing dated January 5, 2012 against Boock (the “Proceeding”) in accordance with the terms and conditions set out below. Boock consents to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III – AGREED FACTS

4. Boock agrees with the facts set out in Part III. To the extent Boock does not have direct personal knowledge of certain facts as described below, Boock believes the facts to be true and accurate.

5. Staff and Boock agree that the facts and admissions set out in Part III and Part IV for the purpose of this settlement are without prejudice to Boock in any other proceedings of any kind including, but without limiting the generality of the foregoing, any other proceedings brought by the Commission under the Securities Act (subject to paragraph 41 below) or any civil or other proceedings currently pending or which may be brought by any other person, corporation or agency (subject to paragraph 39 below). Nothing in this settlement agreement is intended to be an admission of civil or criminal liability by Boock to any person or company; such liability is expressly denied by Boock.

6. Select American is a Delaware corporation that was established by Boock in April 2005 with the assistance of DeFreitas and Wong. Select American was operated as a transfer agent, by DeFreitas and with the active involvement and oversight by Boock and Wong, using nominees and aliases until April 2007 when it was sold and underwent a name change to Fairross Transfer Agent, which never carried on business. Select American was the subject of a cease trade order issued by the Commission on May 18, 2007.

7. Compushare Transfer Corporation ("Compushare") is also a Delaware corporation that operated out of Toronto as a transfer agent. Compushare was incorporated by Boock in September 2006 and was operated by him using aliases and nominees until May 2008, when it ceased operations due to cease trade orders and other regulatory action by the Commission.

8. By virtue of the corporate hijacking scheme described herein, the following entities are fraudulently created U.S. corporations, the securities of which were quoted for trading on the Pink Sheets LLC in the over-the-counter securities market in the U.S.:

- (a) LeaseSmart, Inc.;
 - (b) Advanced Growing Systems, Inc. (formerly, The Bighub.com, Inc.);
 - (c) NutriOne Corporation;
 - (d) International Energy Ltd.;
 - (e) Pocketop Corporation (formerly, Universal Seismic, Inc.);
 - (f) Asia Telecom Ltd.;
 - (g) Pharm Control Ltd.;
 - (h) Cambridge Resources Corporation;
 - (i) Federated Purchaser, Inc.;
 - (j) TCC Industries, Inc.; and
 - (k) Enerbrite Technologies Group Inc.
- (collectively, the "Issuers").

9. Select American and Compushare acted as the transfer agents to the Issuers and were the primary vehicles through which the corporate hijackings and share issuances were carried out.

i) THE FRAUDULENT SECURITIES SCHEME

A. Corporate Hijacking

10. The corporate hijacking scheme used to perpetrate securities fraud with respect to the Issuer Respondents was carried out in the following manner:

- (a) Corporate documents were filed with the relevant Secretary of State in the U.S. (either Delaware, Nevada, California or Florida) to incorporate a company with the same name as a defunct public issuer. Typically, the directors, officers and registered agents listed on the corporate documents were either fictitious identities or nominees and the purported corporate addresses for the newly created entities would be mailbox locations obtained through UPS or other virtual mailbox providers;
- (b) Shortly thereafter, amendment documents were filed with the relevant Secretary of State to effect a name change of the newly created entity and a consolidation of the company's shares in the form of a reverse stock split;
- (c) Subsequently, steps were taken to obtain a new CUSIP number (a unique identifier for most issued securities which appears on the face of the security) for the renamed, newly created entity as if it was the successor company to the defunct public issuer; and

- (d) Documents containing false representations were then filed by the transfer agent with NASDAQ to obtain a new trading symbol for the renamed company and to effect the reverse stock split of the company's shares thereby minimizing the share capital of the legitimate shareholders.

B. Select American Transfer Co.

11. DeFreitas, Boock and Wong were involved in the creation of Select American. Between April and August 2005, DeFreitas and Wong operated Select American jointly and were the directing minds of Select American with Boock providing material advice on a number of matters including how to run the company. Boock worked primarily to assist in the hijacking of defunct corporate entities for illegal purposes.
12. Between April 2005 and July 2005, Boock, with assistance from DeFreitas and Wong, usurped the corporate identity of a number of defunct public issuers using the corporate hijacking scheme described above, including but not limited to LeaseSmart, Bighub, and International Energy.
13. Boock, DeFreitas and Wong, using Select American as the vehicle, caused the companies to obtain quotations for trading on the Pink Sheets as if they were the legitimate defunct public issuers whose identities had been hijacked and, further, caused the companies to issue fraudulent shares.
14. In or around August 2005, Wong ceased to be openly involved in the daily operations of Select American. DeFreitas continued to operate Select American using aliases and nominees, with the continued involvement and oversight of Boock.
15. Following Wong's departure, Boock with assistance from DeFreitas, created additional fraudulent shell companies for which Select American acted as the transfer agent, including but not limited to Pocketop, Asia Telecom, and Pharm Control.
16. Boock and DeFreitas, using Select American as the vehicle, caused the companies to obtain quotations for trading on the Pink Sheets as if they were the legitimate defunct public issuers whose identities had been hijacked and, further, caused the companies to issue fraudulent shares.
17. In certain cases, DeFreitas and Wong, on the instructions of Boock, also caused these companies to set up false web sites and issue false or promotional press releases as a means of creating a market for the fraudulent shares.
18. Some of the fraudulently created shell companies were sold to third parties who were seeking to "go public" by way of a reverse takeover or reverse merger with an existing privately-held company. In other cases, the fraudulent shell companies were purely vehicles to issue and trade fraudulent securities.

C. Compushare as a Vehicle for Additional Shell Companies

19. Between August 2006 and March 2007, Boock used Compushare as a separate vehicle through which to perpetrate securities fraud. In that period, Boock created the following fraudulent entities: Federated Purchaser and Enerbrite.
20. Using Compushare as the vehicle, Boock then caused the companies to obtain quotations for trading on the Pink Sheets as if they were the legitimate defunct public issuers whose identities had been hijacked and, further, caused the companies to issue fraudulent shares.

D. Cease Trade of Select American and Continued Operation of Compushare

21. In or around April 2007, DeFreitas caused Select American to be sold to a third party in Montreal. Shortly thereafter, on or around May 18, 2007, the Commission issued temporary cease trade orders in respect of Select American and others, including DeFreitas and the fraudulent shell companies identified above for which Select American was the transfer agent. Following the cease trade orders, Select American ceased operations.
22. Boock, however, continued to perpetrate securities fraud using Compushare as the vehicle to carry out corporate hijackings and to issue and trade securities of the hijacked entities.
23. In February 2008, Boock incorporated TCC Industries. Compushare acted as the transfer agent and, using Compushare as the vehicle, Boock caused the entity to issue fraudulent shares.

E. Cease Trade of Compushare

24. On May 5, 2008, the Commission issued temporary cease trade orders against Boock, Compushare and others, including the fraudulently created entities for which Compushare acted as the transfer agent. Following the cease trade orders issued by the Commission, Compushare ceased operations.

F. Trading by Boock

25. In January 2007, Boock and DeFreitas arranged for the opening of a corporate trading at Scottrade, a retail brokerage firm in the U.S. that offers discount brokerage services online, in order to trade additional fraudulent securities (the "Scottrade Account"). The Scottrade Account was opened in the name of For Better Living Inc., a company created by DeFreitas and Boock using at least one alias.

26. In February and March 2007, Boock and DeFreitas caused share certificates representing millions of fraudulent shares in International Energy, Asia Telecom, Pharm Control and Universe Seismic to be issued by the respective entities and to be deposited to the Scottrade Account. Using the online trading services of Scottrade, Boock sold these fraudulently issued shares from Ontario between February and October 2007. IP addresses for login sessions to this account verify that 82 of the 84 trading sessions in the Scottrade account originated from Boock's home address. By July 2007 in excess of \$150,000 was in the account.

27. In July 2007, approximately \$120,000 of the proceeds of the trading in the Scottrade Account were transferred to Ontario to a third party account owned by a numbered company which was not owned by or affiliated with Boock.

PART IV – CONDUCT CONTRARY TO THE ACT AND CONTRARY TO THE PUBLIC INTEREST

28. Boock, by his involvement in the securities scheme described above, engaged in acts, practices or courses of conduct relating to securities that he knew or reasonably ought to have known resulted in or contributed to a misleading appearance of trading activity in, or an artificial price for, the securities contrary to subsection 126.1(a) of the Act and, further, perpetrated a fraud on persons or companies contrary to subsection 126.1(b) of the Act.

29. Boock admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in paragraph 28 above.

PART V – SECURITIES AND EXCHANGE COMMISSION PROCEEDINGS

30. On September 29, 2009, the Securities and Exchange Commission of the United States ("SEC") initiated an action in the United States District Court for the Southern District of New York ("NY District Court") naming Boock, DeFreitas and Wong and two others as defendants (the "SEC action") which alleged breaches of U.S. federal securities laws. The conduct underlying the alleged breaches also forms the basis of the Statement of Allegations issued by Staff in this proceeding.

31. On March 26, 2010, the NY District Court entered a default judgment against Boock and DeFreitas. A motion by the SEC for summary judgment against Wong was granted on August 25, 2011 and a reconsideration of the summary judgment was dismissed on November 9, 2011. A proceeding to determine the amount of the disgorgement to be required of Boock, DeFreitas and Wong is pending.

32. Boock has previously been a respondent in a matter involving the SEC. On November 22, 2002, in *SEC v. Leah Industries, Inc.*, a consent judgment was entered against Boock enjoining him against trading in penny stocks, ordering the disgorgement of \$379,619 and the payment of a civil penalty of \$50,000. The monetary relief has not been paid.

PART V – ONTARIO PROCEEDINGS

33. Boock has been involved in breaches of the Act previously. On January 2, 1991, Boock, under a previous name, settled outstanding allegations with the Ontario Securities Commission (the "Commission"), which included the filing of forged documents with the Commission and a transfer agent. Boock paid \$15,000, and was banned from trading, or being a director, officer, promoter or 10% shareholder of a public company for ten years.

34. In May 1993, Boock was convicted of fraud, attempted fraud, false pretences, forgery and uttering forged documents. He was sentenced to three years imprisonment on each charge, to be served concurrently, and ordered to pay restitution of \$64,449.70.

35. In September, 1998, Boock was charged with fraud over \$5,000 and received a suspended sentence and two years probation.

PART VI – TERMS OF SETTLEMENT

36. Boock agrees to the terms of settlement listed below.

37. The Commission will make an order, pursuant to subsection 127(1) of the Act, that:
- (a) the Settlement Agreement is approved;
 - (b) trading in any securities by Boock cease permanently from the date of the approval of the Settlement Agreement;
 - (c) the acquisition of any securities by Boock is prohibited permanently from the date of the approval of the Settlement Agreement;
 - (d) any exemptions contained in Ontario securities law do not apply to Boock permanently from the date of the approval of the Settlement Agreement;
 - (e) Boock is reprimanded;
 - (f) Boock is prohibited permanently from the date of the approval of the Settlement Agreement from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
 - (g) Boock is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter;
 - (h) Boock shall pay an administrative penalty in the amount of \$70,000 for his failure to comply with Ontario securities law; and
 - (i) Boock shall disgorge to the Commission the amount of \$145,300 obtained as a result of his non-compliance with Ontario securities law; and
 - (j) Boock shall pay costs of in the amount of \$55,000.
38. Any amounts paid to the Commission under the disgorgement and administrative penalty orders in this matter shall be allocated to or for the benefit of third parties other than Boock, including investors, in accordance with subsection 3.4(2)(b) of the Act.
39. Boock undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in sub-paragraphs 37(a) to 37(g) above.

PART VI – STAFF COMMITMENT

40. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Boock in relation to the facts set out in Part III herein, subject to the provisions of paragraph 41 below.
41. If this Settlement Agreement is approved by the Commission, and at any subsequent time Boock fails to comply with any of the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Boock based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement. The Commission is entitled to bring any proceedings necessary to recover the amounts set out in paragraphs 37 (h), (i) and (j).

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

42. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Boock for the scheduling of the hearing to consider the Settlement Agreement.
43. Staff and Boock agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Boock's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.
44. If this Settlement Agreement is approved by the Commission, Boock agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

45. If this Settlement Agreement is approved by the Commission, neither Staff nor Boock will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

46. Whether or not this Settlement Agreement is approved by the Commission, Boock agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

47. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Boock leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Boock; and
- (b) Staff and Boock shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

48. The terms of this Settlement Agreement will be treated as confidential by all parties hereto and obligations of confidentiality shall terminate upon commencement of the public hearing. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Boock and Staff or as may be required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

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

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

Dated this "10th" day of February, 2012

Signed in the presence of:

"Donna Campbell"

Witness:

"Irwin Boock"

Irwin Boock

Dated this 10th day of February, 2012

"Tom Atkinson"

STAFF OF THE ONTARIO SECURITIES COMMISSION
per Tom Atkinson
Director, Enforcement Branch

Dated this 10th day of February, 2012

Schedule "A"

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

AND

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

AND

**IN THE MATTER OF A
SETTLEMENT AGREEMENT BETWEEN STAFF OF
THE ONTARIO SECURITIES COMMISSION AND
IRWIN BOOCK**

**ORDER
(Section 127(1))**

WHEREAS by Amended Notice of Hearing dated January 5, 2012, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Irwin Boock ("Boock"), Stanton DeFreitas ("DeFretas"), Jason Wong ("Wong"), Saudia Allie ("Allie"), Alena Dubinsky ("Dubinsky"), Alex Khodjaoints ("Khodjaoints"), Select American Transfer Co., ("Select American"), LeaseSmart, Inc. ("LeaseSmart"); Advanced Growing Systems, Inc. (formerly, The Bighub.com, Inc.) ("Bighub"); NutriOne Corporation ("NutriOne"); International Energy Ltd. ("International Energy"); Pocketop Corporation (formerly, Universal Seismic, Inc.) ("Pocketop"); Asia Telecom Ltd. ("Asia Telecom"); Pharm Control Ltd. ("Pharm Control"); Cambridge Resources Corporation ("Cambridge Resources"); Compushare Transfer Corporation ("Compushare"), WGI Holdings, Inc. ("WGI Holdings"); Federated Purchaser, Inc. ("Federated Purchaser"); First National Entertainment Corporation ("First National"); TCC Industries, Inc. ("TCC Industries"); and Enerbrite Technologies Group Inc. ("Enerbrite"). The Amended Notice of Hearing was issued in connection with the allegations as set out in the Amended Statement of Allegations of Staff of the Commission ("Staff") dated January 4, 2012.

AND WHEREAS Boock entered into a settlement agreement with Staff dated February ____, 2012 (the "Settlement Agreement") in which Boock agreed to a proposed settlement of the proceeding commenced by the Amended Notice of Hearing dated January 5, 2012, subject to the approval of the Commission;

WHEREAS on February ____, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Boock;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff, and upon hearing submissions from Boock and from Staff;

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

IT IS HEREBY ORDERED THAT:

- (a) the Settlement Agreement is approved;

- (b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Boock shall cease permanently from the date of the approval of the Settlement Agreement;
- (c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Boock is prohibited permanently from the date of the approval of the Settlement Agreement;
- (d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Boock permanently from the date of the approval of the Settlement Agreement;
- (e) pursuant to clause 6 of subsection 127(1) of the Act, Boock is reprimanded;
- (f) pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Boock is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager from the date of the approval of the Settlement Agreement;
- (g) pursuant to clause 8.5 of subsection 127(1) of the Act, Boock is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter from the date of the approval of the Settlement Agreement;
- (h) pursuant to clause 9 of subsection 127(1) of the Act, Boock shall pay an administrative penalty in the amount of \$70,000 for his failure to comply with Ontario securities law; and
- (i) pursuant to clause 10 of subsection 127(1) of the Act, Boock shall disgorge to the Commission the amount of \$145,300 obtained as a result of his non-compliance with Ontario securities law;
- (j) pursuant to section 127.1 of the Act, Boock shall pay costs of \$55,000; and
- (k) the payments ordered in paragraphs (h), (i) and (j) shall be for allocation to or for the benefit of third parties other than Boock, including investors in LeaseSmart, Inc., Advanced Growing Systems Inc (formerly the Bighub.com, Inc.), NutriOne Corporation, International Energy Ltd., Pocketop Corporation (formerly, Universal Seismic, Inc.), Asia Telecom Ltd., PharmControl Ltd., Cambridge Resources Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings Inc., and Enerbrite Technologies Group, in accordance with subsection 3.4(2)(b) of the Act.

DATED at Toronto this ____ day of _____, 2012.

3.1.3 Morgan Dragon Development Corp. et al.

**IN THE MATTER OF
STAFF'S RECOMMENDATION TO SUSPEND THE REGISTRATIONS OF
MORGAN DRAGON DEVELOPMENT CORP, JOHN CHEONG, AND HERMAN TSE**

**OPPORTUNITY TO BE HEARD BY THE DIRECTOR
UNDER SECTION 31 OF THE SECURITIES ACT**

Director's decision

1. My decision is that the registrations of Morgan Dragon Development Corp. (Morgan Dragon), John Cheong, and Herman Tse (collectively, the Applicants) are suspended effective January 27, 2012. My decision is based on the:
 - a. verbal arguments of Mark Skuce, Legal Counsel, Compliance and Registrant Regulation Branch (CRR) for Staff of the Ontario Securities Commission (OSC), and John Cheong on behalf of the Applicants,
 - b. testimony of Teresa D'Amata, Kelly Everest (both Staff of CRR), and Cheong, and
 - c. evidence provided at the opportunity to be heard (OTBH).

Registration history of the Applicants

2. Morgan Dragon was initially registered as a limited market dealer in early 2009. By operation of law, Morgan Dragon became registered as an exempt market dealer (EMD) in September 2009.
3. Cheong is the Chief Compliance Officer (CCO) and the only dealing representative of Morgan Dragon. Tse is the Ultimate Designated Person (UDP) of Morgan Dragon. Cheong and Tse each own 50% of Morgan Dragon.

Suspension letter to the Applicants

4. By letter dated November 22, 2011 (as amended by letter dated December 1, 2011), Staff advised the Applicants that it had recommended to the Director that:
 - a. Morgan Dragon's registration as an EMD
 - b. Cheong's registration as CCO and the only dealing representative of Morgan Dragon, and
 - c. Tse's registration as UDP of Morgan Dragon

be suspended. Pursuant to section 31 of the Securities Act (Ontario) (Act), Morgan Dragon, Cheong, and Tse are entitled to an OTBH before a decision is made by me, as Director. The OTBH occurred on January 27, 2012. Cheong appeared at the OTBH on behalf of the Applicants. Mr. Tse, the UDP of Morgan Dragon, did not appear.

Staff's allegations

5. Staff's suspension recommendations were based on the following allegations:
 - a. failure to collect know your client (KYC) information and ensure trade suitability,
 - b. reliance on an inappropriate prospectus exemption,
 - c. failure to deal fairly, honestly, and in good faith with clients,
 - d. late delivery of 2010 audited annual financial statements and significant working capital deficiency, and
 - e. inappropriate use of investor proceeds.

Failure to collect KYC information and ensure trade suitability

6. Staff argued that the Applicants breached section 1.5 of OSC Rule 31-505 *Conditions of Registration* (OSC Rule 31-505) (as in force at the relevant time) and sections 13.2 and 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103). The Applicants obtained signed

accredited investor forms from investors at the time they invested in units of Morgan Dragon's related issuer limited partnerships (LPs). No information on the accredited investor forms was verified by the Applicants and therefore Staff alleges that the Applicants were not able to ensure that the trades were suitable for clients. As well, some of the trades (and the related accredited investor forms) were completed prior to Morgan Dragon becoming registered in Ontario.

7. The client KYC forms were not completed until some time after the trades were made. In many cases, the client KYC information obtained by the Applicants conflicted with the information on the accredited investor forms, and no follow up was done by the Applicants. As well, many of the KYC forms indicated a low to medium risk tolerance by the investor or a one to three year investment horizon, both of which indicated that the client investments in the LPs (all of which were speculative, high risk and medium to long term real estate investments) were not suitable.

Reliance on an inappropriate prospectus exemption

8. Staff argued that the Applicants breached the requirements of paragraph 1.1(j) of National Instrument 45-106 *Prospectus and Registration Exemptions*. In at least four cases cited by Staff, the investor in an LP was a corporation. In these cases, the investor purportedly relied on an exemption that is only available to individual investors. The Applicants accepted these incorrect accredited investor forms. In responding to questions at the OTBH, Cheong (as CCO and the only dealing representative of Morgan Dragon) did not appear to be aware that corporations cannot rely on exemptions for individuals (such as the net financial assets exemption). He also didn't know the correct income tests for individuals as accredited investors.

Failure to deal fairly, honestly, and in good faith with clients

9. By not collecting KYC information or ensuring trade suitability, Staff argued that the Applicants failed to deal fairly, honestly, and in good faith with their clients, contrary to section 2.1 of OSC Rule 31-505.

Late delivery of 2010 audited annual financial statements and significant working capital deficiency

10. The December 31, 2010 audited financial statements of Morgan Dragon were delivered on December 1, 2011, approximately eight months after they were due. The notes to the financial statements stated that Morgan Dragon was capital deficient as at December 31, 2010 by \$5,846 and that the "company has made plan and arrangement to satisfy the working capital requirement by injecting additional funds to the company". As at January 27, 2012, neither Cheong or Tse had injected any further funds into Morgan Dragon.
11. Staff argued that Morgan Dragon was capital deficient for more than two days and that it did not report the capital deficiency to Staff as required by section 12.1 of NI 31-103. Morgan Dragon's disclosed capital deficiency of \$5,846 was based on an assumption that three related party loans (\$74,401 from Tse, \$74,401 from Cheong, and \$32,898 from Morgan Dragon Capital Fund Inc. (a related company owned by Tse and Cheong that is the general partner of one of the LPs)) were all appropriately included as assets in the capital calculation because subordinated loan agreements had been entered into. However, no subordinated loan agreements have ever been filed with the OSC. At the OTBH, Cheong produced the signed subordinated loan agreements, each dated as of December 31, 2010. On questioning by me, he advised that the agreements had been signed sometime after October 27, 2011.
12. Based on Staff's calculations (which excludes the three related party loans described above), Morgan Dragon's capital deficiency was approximately \$188,000. Because the subordination agreements were not filed with the OSC prior to the OTBH, the correct capital deficiency for Morgan Dragon as at December 31, 2010 was approximately \$188,000.

Inappropriate use of investor proceeds

13. The audited balance sheet of Morgan Dragon shows a related party receivable and a related party payable to the same related party – Morgan Dragon Capital Fund Inc. During the OTBH, a number of questions were raised regarding these related party transactions (particularly the related party receivable). I was advised by Cheong that the funds for these related party transactions are from the investors in one of the LPs and that neither he or Tse (who collectively own Morgan Dragon Capital Fund Inc.) had provided sufficient funding to that entity to fund the related party transactions with Morgan Dragon. Staff argued, and I concur, that this is an inappropriate use of investor proceeds from the LP.

Summary of Staff's arguments

14. Staff argued that in light of the allegations outlined above, the Applicants' lack the requisite integrity, proficiency, and solvency and their registrations should be suspended. Staff also argued that section 28 of the Act permits me, as Director, to suspend the registrations of the Applicants on the basis that the Applicants are not suitable for registration, have failed to comply with Ontario securities law, or that their registrations are otherwise objectionable.

Cheong asks that the Applicants be permitted to surrender their registrations

15. Late in the OTBH, Cheong asked that the Applicants be permitted to surrender their registrations, rather than face suspensions of their registrations. He argued that he would like to someday return to the securities industry after he had completed some further courses and developed into a proficient securities professional. He acknowledged that he had made some mistakes, but advised that he would like to continue to work in the securities industry.

Decision on the suspension of the Applicants

16. My decision is to suspend the registration of Morgan Dragon, Cheong and Tse as of January 27, 2012. My decision was communicated verbally to Cheong, on behalf of the Applicants, at the OTBH on January 27, 2012.

17. My decision was made as a result of the allegations outlined above – all of which were proven by Staff. In my view, the Applicants' conduct clearly demonstrates a fundamental lack of understanding regarding Ontario securities law and a pattern of non-compliance with Ontario securities law. As I said in *Carter Securities Inc., Re* (2010), 33 OSCB 8691:

“In conclusion, in my view the evidence in this case supports my decision that Carter's registration should be suspended. I concur with staff's assessment that Carter has engaged in a pattern of conduct – through its individual registrants – that demonstrates that it lacks the integrity required of registered firms under the Act.”

18. Morgan Dragon has had a very significant (and ongoing) capital deficiency for some time. During the OTBH, I was advised that, despite disclosing in their annual audited financial statements filed with the OSC that they had a plan to rectify the capital deficiency, no injections of capital by either Cheong or Tse have been made.
19. I was also very concerned about the improper use of investor proceeds as outlined above under “Inappropriate use of investor proceeds” and the apparent registerable activity carried on by the Applicants prior the registration of the Applicants in Ontario as described under “Failure to collect KYC information and ensure trade suitability”. In my view, this conduct clearly demonstrates that the Applicants are unsuitable for registration and that their ongoing registrations would be objectionable.
20. My view is that Cheong has, as described by Staff during the OTBH, exhibited a “dangerous lack of proficiency” by his conduct to date. As well, I did not find his evidence at the OTBH to be credible. He was not responsive generally to Staff's or my questions and appeared to lack even a basic understanding of Ontario securities laws. As a result, I decided that suspension of the Applicants was more appropriate than the request for them to surrender their registrations.
21. Lastly, as I advised verbally at the OTBH, in my view the suspensions of Cheong, Tse and Morgan Dragon should be permanent. Very serious – and proven – allegations were made by Staff during the OTBH. In my view, the nature and seriousness of these proven allegations leads me to conclude that none of Cheong, Tse or Morgan Dragon should again be permitted to be registered under Ontario securities law.

“Marrianne Bridge”, FCA
Deputy Director,
Compliance and Registrant Regulation Branch
Ontario Securities Commission

February 10, 2012

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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
Cayenne Gold Mines Ltd.	15 Feb 12	27 Feb 12		

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
Pacrim International Capital Inc.	30 Dec 11	11 Jan 12	11 Jan 12		

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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 SecuritiesSource (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
01/20/2012	1	2278419 Ontario Inc. - Common Shares	10,000.00	200,000.00
01/03/2011 to 10/03/2011	2	All Weather Portfolio Limited - Common Shares	2,078,819,275.65	2,048,427.71
01/23/2012	4	Allevio Clinic #1 Toronto Inc. - Common Shares	297,000.00	2,700.00
01/02/2012 to 01/10/2012	10	Alliance Mining Corp. - Units	300,000.00	3,000,000.00
02/01/2012	14	Amaya Gaming Group Inc. - Special Warrants	3,750,000.00	3,750.00
01/18/2012	8	Amerigroup Corporation - Notes	2,758,409.56	8.00
06/01/2011 to 12/31/2011	30	Artemis Asset Allocation Fund - Trust Units	19,200.00	18,300.00
01/16/2012	1	Axela Inc. - Debenture	1,000,000.00	1.00
10/18/2011	1	Baker Gilmore & Associates Bond Fund - Trust Units	1,800,000.00	169,217.64
06/01/2011 to 12/01/2011	130	Balestra Global Ltd. - Common Shares	759,196,898.49	3,309.00
01/17/2012	3	Bard Ventures Ltd. - Units	50,000.00	1,000,000.00
12/01/2011	1	Baring Canadian Investment Trust - Focused International Plus Fund - Units	213,994,487.53	2,229,271.10
02/01/2011 to 07/01/2011	7	BloombergSen Partners Bond Fund - Trust Units	318,665.49	30,160.18
01/01/2011 to 12/01/2011	136	BloombergSen Partners Fund - Limited Partnership Units	80,208,168.86	78,557.89
01/01/2011 to 12/01/2011	115	BloombergSen Partners RSP Fund - Trust Units	7,876,336.71	656,600.58
12/06/2011	7	Blue Sky Uranium Corp. - Units	135,000.00	1,350,000.00
01/01/2011 to 12/31/2011	14	BluMont Hirsch Performance Fund - Units	309,163.81	12,297.23
01/01/2011 to 12/31/2011	99	BluMont Innovation PE Strategy Fund 1 - Units	19,113,614.48	19,113.88
01/03/2011 to 06/01/2011	1	Bridgewater All Weather Portfolio II, Ltd. - Common Shares	17,937,245.00	15,426.81
01/03/2011 to 11/01/2011	5	Bridgewater Pure Alpha Funds II, Ltd. - Common Shares	275,836,209.09	259,424.06
01/03/2011 to 10/03/2011	2	Bridgewater Pure Alpha Funds, Ltd. - Common Shares	18,223,107.60	6,595.71

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Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
02/01/2011 to 11/01/2011	7	Bridgewater Pure Alpha Major Markets II, Ltd. - Common Shares	211,920,141.02	212,778.20
10/03/2011 to 12/01/2011	2	Bridgewater Pure Alpha Major Markets, Ltd. - Common Shares	60,362,035.00	50,195.87
11/03/2011	3	Canadian Continental Exploration Corp. - Common Shares	750,000.00	1,250,000.00
01/01/2011 to 12/31/2011	2	CC&L All Strategies Fund - Trust Units	727,816.57	8,064.02
01/01/2011 to 12/31/2011	6	CC&L Bond Fund - Trust Units	3,003,820.91	274,543.86
01/01/2011 to 12/31/2011	7	CC&L Bond Fund - Trust Units	12,435,020.46	1,149,824.01
01/01/2011 to 12/31/2011	3	CC&L Canadian Equity Fund - Trust Units	14,332.82	1,580.84
01/01/2011 to 12/31/2011	5	CC&L Canadian Equity Fund - Trust Units	8,616,365.51	986,994.15
01/01/2011 to 12/31/2011	6	CC&L Canadian Q Core Fund - Trust Units	41,078,697.95	4,559,192.81
01/01/2011 to 12/31/2011	1	CC&L Canadian Q Growth Fund - Trust Units	23,561,931.23	2,357,266.97
01/01/2011 to 12/31/2011	1	CC&L Canadian Small Cap Fund - Trust Units	145,298.96	11,631.62
01/01/2011 to 12/31/2011	4	CC&L EAFE Equity Fund - Trust Units	66,268.10	7,485.11
01/01/2011 to 12/31/2011	1	CC&L EAFE Equity Fund - Trust Units	383,991.56	46,635.97
01/01/2011 to 12/31/2011	3	CC&L Genesis Fund - Trust Units	4,222,079.82	3,026,236.90
01/01/2011 to 12/31/2011	7	CC&L Global Fund - Trust Units	3,684,785.45	298,804.30
01/01/2011 to 12/31/2011	2	CC&L Group Balanced Plus Fund II - Trust Units	87,968,873.83	53,721,875.00
01/01/2011 to 12/31/2011	2	CC&L Group Bond Fund II - Trust Units	25,257,783.68	2,270,896.47
01/01/2011 to 12/31/2011	2	CC&L Group Canada Plus Fund II - Trust Units	6,493,497.60	628,138.24
01/01/2011 to 12/31/2011	3	CC&L Group Canadian Equity Fund - Trust Units	259,269,999.28	13,658,490.43
01/01/2011 to 12/31/2011	1	CC&L Group Global Fund - Trust Units	4,078,659.08	531,829.55
01/01/2011 to 12/31/2011	7	CC&L Group Money Market Fund - Trust Units	3,271,602.87	327,160.29
01/01/2011 to 12/31/2011	1	CC&L High Income Fund - Trust Units	6,128,353.84	416,692.32

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Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
01/01/2011 to 12/31/2011	10	CC&L Long Bond Fund - Trust Units	37,734,362.30	3,332,200.18
01/01/2011 to 12/31/2011	14	CC&L Select Balanced Growth Portfolio - Trust Units	733,721.39	73,147.39
01/01/2011 to 12/31/2011	7	CC&L Select Balanced Income Portfolio - Trust Units	627,747.53	59,876.69
01/01/2011 to 12/31/2011	17	CC&L Select Balanced Portfolio - Trust Units	194,523.41	15,759.65
01/01/2011 to 12/31/2011	6	CC&L Select Growth Portfolio - Trust Units	35,201.41	3,576.31
01/01/2011 to 12/31/2011	57	CC&L Small Cap Market-Neutral Fund - Trust Units	6,647,000.00	678,989.06
01/01/2011 to 12/31/2011	2	CC&L US Equity Fund - Trust Units	72,762.06	10,212.14
01/01/2011 to 12/31/2011	1	CC&L US Equity Fund - Trust Units	600,814.14	90,226.36
01/20/2012	35	Colwood City Centre Limited Partnership - Notes	1,956,000.00	1,956,000.00
02/28/2011 to 11/30/2011	12	Core Canadian Equity Fund - Units	1,848,700.00	152,986.68
11/25/2011	15	Cub Energy Inc. (Formerly 3P International Energy Corp. - Common Shares	7,260,000.00	13,659,156.00
01/31/2011 to 11/25/2011	51	Davis Rea Balanced Pooled Fund - Units	1,324,112.81	113,398.30
06/17/2011 to 12/23/2011	89	Davis Rea Equity Pooled Fund - Units	4,482,058.06	446,405.23
06/17/2011 to 12/09/2011	172	Davis Rea Fixed Income Pooled Fund - Units	33,809,914.93	3,337,398.47
06/17/2011 to 12/30/2011	32	Davis Rea Partners Pooled Fund - Units	4,351,300.95	436,094.37
11/11/2011	1	Detour Gold Corporation - Common Shares	158,450.00	5,000.00
05/31/2011 to 11/30/2011	4	Discovery Fund - Units	672,850.00	25,479.07
03/31/2011 to 12/30/2011	81	Dixon Mitchell Small Cap Fund - Trust Units	4,553,027.65	468,877.55
01/23/2012	4	Donnycreek Energy Inc. - Common Shares	194,949.75	259,933.00
01/01/2011 to 12/31/2011	5	Duncan Ross Equity Fund - Units	108,830.64	663.72
01/01/2011 to 12/31/2011	1	Duncan Ross Pooled Trust - Units	226,076.00	659.81
10/19/2010 to 05/02/2011	1	Excel China Fund - Units	3,292,500.00	167,055.60
11/04/2010 to 04/11/2011	1	Excel Emerging Europe Fund - Units	2,208,000.00	292,083.83

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Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
10/19/2010 to 04/01/2011	1	Excel India Fund - Units	2,273,500.00	110,589.42
04/30/2011 to 12/31/2011	30	FAM Balanced Fund - Trust Units	11,613,805.00	108,268.13
04/30/2011 to 12/31/2011	55	FAM Registered Balanced Fund - Trust Units	3,338,199.00	30,699.93
01/01/2011	1	Federated Property Limited Partnership - Units	8,250,702.00	8,250.70
01/19/2012	1	Fuel Transfer Technologies Inc. - Common Shares	500.00	500.00
01/19/2011 to 12/30/2011	6	GIIC Global Fund - Units	54,048,410.88	4,703,342.80
01/01/2011 to 12/31/2011	1	Global Alpha Long-Short Equity Fund - Trust Units	50,000.00	500.00
01/01/2011 to 12/31/2011	23	Goodwood Fund - Units	5,196,227.13	485,651.23
05/19/2011 to 12/12/2011	4	Gryphon EuroPac Fund - Units	9,604,511.00	1,080,494.57
01/01/2011 to 03/30/2011	3	Guardian Balanced Fund - Units	1,132,245.77	76,348.19
01/01/2011 to 12/31/2011	2	Guardian Canada Plus 130/30 Equity Fund - Units	1,392,783.97	185,152.77
01/01/2011 to 03/30/2011	10	Guardian Canadian Bond Fund - Units	1,933,553.93	181,335.82
01/01/2011 to 03/30/2011	13	Guardian Canadian Equity Fund - Units	5,725,799.31	40,955.82
01/01/2011 to 03/30/2011	5	Guardian Canadian Growth Equity Fund - Units	18,884,856.26	703,621.45
01/01/2011 to 03/30/2011	13	Guardian Canadian Maple Equity Fund - Units	152,845.52	14,119.00
01/01/2011 to 03/30/2011	67	Guardian Canadian Plus Equity Fund - Units	1,414,914.27	138,200.85
01/01/2011 to 03/30/2011	486	Guardian Canadian Short-Term Investment Fund - Units	395,890,144.88	39,589,014.48
01/01/2011 to 03/30/2011	3	Guardian Canadian Small/Mid Cap Equity Fund - Units	11,698.66	414.08
01/01/2011 to 03/30/2011	7	Guardian Canadian Value Equity Fund - Units	200,151.72	14,982.01
01/01/2011 to 03/30/2011	20	Guardian Equity Income Fund - Units	243,430.57	17,264.91
01/01/2011 to 12/31/2011	2	Guardian Global 130/30 Equity Fund - Units	44,642.50	5,803.65
01/01/2011 to 03/30/2011	9	Guardian Global Dividend Growth Fund - Units	154,058.33	13,210.70

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Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
01/01/2011 to 03/30/2011	7	Guardian Global Equity Fund - Units	1,027,859.51	111,759.09
01/01/2011 to 03/30/2011	36	Guardian High Yield Bond Fund - Units	1,424,587.71	136,124.66
01/01/2011 to 03/30/2011	59	Guardian International Equity Fund - Units	11,555,971.68	1,575,062.05
01/01/2011 to 03/30/2011	34	Guardian U.S. Equity Fund - Units	405,171.09	45,673.38
12/20/2011	1	HedgeForum CFM, Ltd. - Units	205,220.00	N/A
12/20/2011	1	HedgeForum SVP, Ltd. - Units	102,610.00	N/A
01/16/2012 to 01/20/2012	9	IGW Real Estate Investment Trust - Units	266,608.50	266,608.50
01/16/2012 to 01/20/2012	6	IGW Real Estate Investment Trust - Units	201,312.37	191,726.00
01/09/2012 to 01/13/2012	14	IGW Real Estate Investment Trust - Units	873,793.57	N/A
01/01/2011 to 09/01/2011	9	Inflection Strategic Opportunities Fund - Trust Units	5,000,000.00	500,000.00
01/31/2011 to 12/30/2011	56	JC Clark Focused Opportunities Fund - Trust Units	3,251,191.39	22,744.29
01/31/2011 to 12/30/2011	70	JC Clark Patriot Trust - Trust Units	7,251,738.86	39,460.80
01/01/2011 to 12/30/2011	53	JC Clark Preservation Trust - Trust Units	5,435,570.23	50,594.72
12/23/2011 to 12/30/2011	12	Kermode Resources Ltd. - Common Shares	300,000.00	3,750,000.00
11/01/2011	1	MCM CreditAlpha Market Neutral Premier MultiCurrency Fund, Ltd. - Common Shares	75,509,690.41	75,000.00
11/14/2011	24	Meadow Bay Gold Corporation - Common Shares	2,366,000.00	2,366,000.00
01/09/2012 to 01/13/2012	6	Member-Partners Solar Energy Limited Partnership - Units	198,000.00	198,000.00
01/18/2012 to 01/20/2012	4	Member-Partners Solar Energy Limited Partnership - Units	220,000.00	220,000.00
01/23/2012	3	Micromem Technologies Inc. - Units	77,000.00	770,000.00
01/16/2012	16	Multivision Communications Corp. - Units	600,000.00	4,000,000.00
01/16/2012 to 01/19/2012	8	Myca Health Inc. - Common Shares	3,424,757.00	715,747.00
01/01/2011 to 12/31/2011	1	New Star EAFE Fund - Trust Units	5,909.16	260.66
01/01/2011 to 12/31/2011	1	New Star EAFE Fund - Trust Units	1,753,888.52	81,310.65

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Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
01/01/2011 to 12/31/2011	1	New Star EAFE Fund - Trust Units	374,754.81	17,639.65
01/01/2011 to 12/31/2011	6	Northern Rivers Conservative Growth Fund LP - Units	2,746,793.01	1,671.70
01/01/2011 to 12/31/2011	15	Northern Rivers Innovation RSP Fund - Units	772,177.17	80,795.25
01/01/2011 to 12/31/2011	9	OCP Debt Opportunity International Ltd. - Common Shares	21,259,028.44	20,295.59
08/01/2011	1	OCP Debt Opportunity Partners, LP - Limited Partnership Interest	958,000.00	1.00
01/01/2011 to 12/31/2011	2	OCP Senior Credit Fund International, Ltd. - Common Shares	182,602.84	140.01
08/01/2011	1	OCP Senior Credit Partners, LP - Limited Partnership Interest	958,000.00	1.00
01/01/2011 to 03/01/2011	2	OCP Senior Floating Income International, Ltd. - Common Shares	550,000.00	550.00
08/01/2011	1	OCP Senior Floating Income Partners, LP - Limited Partnership Interest	958,000.00	1.00
01/21/2011 to 12/30/2011	3	Optimum Gestion de Placements Inc. - Units	1,093,144.93	101,217.76
01/01/2011 to 12/31/2011	12	Panorama Fund - Limited Partnership Units	19,480,000.00	1,698,949.77
01/31/2011 to 12/31/2011	327	Panorama Private Client Fund - Trust Units	23,455,570.99	1,346,560.53
01/01/2011 to 12/31/2011	6	PCJ Absolute Return Fund - Trust Units	425,000.00	4,250.00
01/01/2011 to 12/31/2011	2	PCJ Canadian Equity Fund - Trust Units	697,919.47	71,914.69
01/01/2011 to 12/31/2011	1	PCJ Canadian Equity Fund - Trust Units	1,269,152.05	129,112.72
01/01/2011 to 12/31/2011	1	PCJ Canadian Small Cap Fund - Trust Units	270,260.45	22,072.11
01/15/2011 to 12/31/2011	471	Perennial Equity Portfolio - Units	87,625,590.34	6,820,554.88
01/15/2011 to 12/31/2011	192	Perennial Fixed Income Portfolio - Units	12,278,465.41	1,072,070.03
01/01/2011 to 04/01/2011	4	Periscope Fund LP - Limited Partnership Units	1,500,000.00	1,475.00
01/16/2012	53	Petrocapita Income Trust - Units	983,139.00	983,139.00
12/29/2011	45	Potash Ridge Corporation - Common Shares	10,490,224.50	13,990,966.00
01/01/2011 to 12/31/2011	61	Private Client Balanced Growth Portfolio - Trust Units	4,808,432.28	461,113.77

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Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
01/01/2011 to 12/31/2011	7	Private Client Balanced Income Portfolio - Trust Units	625,940.27	59,943.39
01/01/2011 to 12/31/2011	94	Private Client Balanced Portfolio - Trust Units	5,728,739.57	455,017.51
01/01/2011 to 12/31/2011	212	Private Client Bond Portfolio - Trust Units	19,233,279.55	1,724,243.37
01/01/2011 to 12/31/2011	346	Private Client Canadian Equity Income & Growth Portfolio II - Trust Units	7,867,497.09	510,346.81
01/01/2011 to 12/31/2011	142	Private Client Canadian Equity Portfolio - Trust Units	4,787,613.69	264,841.64
01/01/2011 to 12/31/2011	151	Private Client Canadian Value Portfolio - Trust Units	4,654,459.14	270,314.58
01/01/2011 to 12/31/2011	152	Private Client Global Equity Portfolio - Trust Units	11,919,128.90	2,022,624.74
01/01/2011 to 12/31/2011	2	Private Client Global Small Cap Portfolio - Trust Units	150,000.00	13,276.35
01/01/2011 to 12/31/2011	27	Private Client Growth Portfolio - Trust Units	1,674,498.10	164,226.25
01/01/2011 to 12/31/2011	237	Private Client High Yield Bond Portfolio - Trust Units	7,812,113.75	755,150.20
01/01/2011 to 12/31/2011	20	Private Client Infrastructure Portfolio - Trust Units	159,870.00	15,987.00
01/01/2011 to 12/31/2011	28	Private Client International Equity Portfolio - Trust Units	470,771.26	53,486.23
01/01/2011 to 12/31/2011	265	Private Client Money Market Portfolio - Trust Units	34,539,541.13	3,455,052.95
01/01/2011 to 12/31/2011	16	Private Client Multi Strategy Portfolio - Trust Units	502,277.71	42,829.36
01/01/2011 to 12/31/2011	20	Private Client Real Estate Portfolio - Trust Units	784,680.00	76,681.58
01/01/2011 to 12/31/2011	127	Private Client Short Term Bond Portfolio - Trust Units	3,310,713.91	323,404.83
01/01/2011 to 12/31/2011	130	Private Client Small Cap Portfolio II - Trust Units	1,827,030.11	117,570.36
02/16/2011	1	Private Client Socially Responsible Canadian Equity Portfolio - Trust Units	19,990.00	1,797.36
01/01/2011 to 12/31/2011	60	Private Client US Equity Income & Growth Portfolio - Trust Units	2,188,576.21	212,230.09
01/01/2011 to 12/31/2011	13	Private Client US Equity Portfolio - Trust Units	98,076.11	19,090.09
01/01/2011 to 12/31/2011	1	Private Client US Market Neutral Portfolio - Trust Units	50,000.00	500.00
01/01/2011 to 12/31/2011	4	Private Client US Short Term Bond Portfolio - Trust Units	323,485.05	33,531.63

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12/31/2011	1	Pursuit Federated Property Fund - Units	3,632,986.71	2,943.99
01/31/2011 to 10/31/2011	1	Pursuit High Income Fund - Units	670,146.82	59,425.00
01/17/2012	14	Quant Interpretations Inc. - Units	160,000.00	1,600,000.00
02/02/2012	1	Rainy River Resources Ltd. - Warrants	1.00	100,000.00
02/01/2011 to 11/01/2011	14	Rayne Capital Limited Partnership - Limited Partnership Units	4,600,000.00	3,359.00
01/11/2012	3	Return On Innovation Capital Ltd. - Investment Trust Interests	6,588,189.11	6,588,189.11
01/09/2012	3	Return On Innovation Capital Ltd. - Units	1,950,000.00	1,950,000.00
01/13/2012	2	Return On Innovation Capital Ltd. - Units	3,200,000.00	3,200,000.00
01/09/2012	3	Return On Innovation Capital Ltd. - Units	2,500,000.00	2,500,000.00
01/11/2012	3	Return On Innovation Capital Ltd. - Units	1,411,591.81	1,411,591.81
01/11/2012	3	Return On Innovation Capital Ltd. - Units	1,472,900.91	1,472,900.91
01/11/2012	3	Return On Innovation Capital Ltd. - Units	2,305,766.23	2,305,766.23
01/11/2012	3	Return On Innovation Capital Ltd. - Units	7,212,497.97	7,212,497.97
01/11/2012	3	Return On Innovation Capital Ltd. - Units	2,634,001.43	2,634,001.43
01/11/2012	3	Return On Innovation Capital Ltd. - Units	1,746,361.09	1,743,361.09
01/11/2012	3	Return On Innovation Capital Ltd. - Units	2,149,236.68	2,149,236.68
01/26/2012	12	Royal Bank of Canada - Notes	1,697,620.00	1,700.00
01/31/2011 to 06/30/2011	13	Salida Global Energy Fund - Units	1,170,390.00	262,371.08
01/31/2011 to 12/31/2011	401	Salida Strategic Growth Fund - Units	16,381,365.28	951,874.72
01/31/2011 to 12/31/2011	260	Salida Wealth Preservation Fund - Units	13,274,773.21	3,356,807.34
12/29/2011	14	Saturn Minerals Inc. - Units	500,000.00	2,500,000.00
01/01/2011 to 12/31/2011	4	Scheer, Rowlett & Associates Balanced Fund - Trust Units	23,279,549.61	2,107,435.29
01/01/2011 to 12/31/2011	1	Scheer, Rowlett & Associates Bond Fund - Trust Units	5,483,588.61	525,814.87
01/01/2011 to 12/31/2011	8	Scheer, Rowlett & Associates Canadian Equity Fund - Trust Units	71,471,291.21	4,813,349.39
01/01/2011 to 12/31/2011	5	Scheer, Rowlett & Associates Canadian Equity Fund - Trust Units	5,594,921.88	388,406.65
01/01/2011 to 12/31/2011	3	Scheer, Rowlett & Associates EAFE Fund - Trust Units	2,782,775.80	394,123.98

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Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
01/01/2011 to 12/31/2011	2	Scheer, Rowlett & Associates Money Market Fund - Trust Units	568,358.64	56,835.86
01/01/2011 to 12/31/2011	1	Scheer, Rowlett & Associates Short Term Bond Fund - Trust Units	7,721,431.05	762,469.05
01/01/2011 to 12/31/2011	3	Scheer, Rowlett & Associates U.S. Equity Fund - Trust Units	1,252,185.67	211,339.46
10/11/2011	1	Schroder Global Alpha Fund - Common Shares	131,297,062.29	13,129,706.23
01/31/2012	1	Shoal Point Energy Ltd. - Common Shares	135,000.00	500,000.00
01/16/2011	66	Skyline Apartment Real Estate Investment Trust - Trust Units	6,933,498.00	630,318.00
01/01/2011 to 12/31/2011	1	SRA/PCJ Canadian Equity Core Fund - Trust Units	7,453,975.60	905,124.82
11/01/2011	86	StageVentures 2011 Limited Partnership - Limited Partnership Units	13,245,530.00	12,379.00
01/30/2012	12	Starcore International Mines Ltd. - Units	2,252,500.00	9,010,000.00
01/01/2011 to 12/31/2011	3	State Street Institutional US Government Money Market Fund - Common Shares	46,078,007.00	46,809,205.00
06/01/2006 to 12/01/2011	8	Taconic Opportunity Offshore Fund Ltd. - Common Shares	45,793,300.00	45,000.00
07/01/2011 to 07/31/2011	1	The Alpha Scout Fund - Limited Partnership Units	500,000.00	500.00
01/13/2012	1	The Toronto United Church Council - Notes	100,000.00	100,000.00
02/01/2011 to 10/01/2011	5	Triumph Aggressive Opportunities Fund L.P. - Limited Partnership Units	5,749,566.45	5,676.85
04/29/2011 to 10/31/2011	57	Triumph Aggressive Opportunities Trust - Trust Units	4,604,176.30	473,802.65
02/01/2011 to 12/01/2011	14	Triumph Capital Appreciation Fund L.P. - Limited Partnership Units	26,828,968.39	26,828.97
04/29/2011 to 11/30/2011	62	Triumph Capital Appreciation Trust - Trust Units	22,459,038.09	2,297,447.27
01/10/2012 to 01/13/2012	21	UBS AG, Jersey Branch - Certificates	4,173,222.94	21.00
01/16/2012 to 01/20/2012	39	UBS AG, Jersey Branch - Certificates	10,271,978.41	N/A
01/10/2012 to 01/12/2012	6	UBS AG, Zurich - Certificates	2,088,601.02	6.00
01/18/2012 to 01/20/2012	4	UBS AG, Zurich - Certificates	589,229.43	4.00
09/30/2011 to 10/31/2011	2	UTAM Canadian Credit Fund - Units	463,973,962.18	46,397,294.34
06/01/2011 to 10/03/2011	2	UTAM Canadian Equity Fund - Units	628,610,913.07	62,931,752.61

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Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price (\$)	No. of Securities Distributed
06/01/2011 to 10/31/2011	2	UTAM Canadian Fixed Income Fund - Units	731,644,064.62	73,134,093.73
06/01/2011 to 12/30/2011	2	UTAM International Equity Fund - Units	586,591,783.91	58,934,936.87
06/01/2011	2	UTAM US Equity Fund - Units	76,360,373.77	7,636,037.38
01/17/2012	2	U.S. Water Filters, Inc. - Preferred Shares	6,400,000.00	6,400,000.00
07/31/2011		Valt.X Holdings Inc. - Common Shares	52,700.00	123,100.00
02/28/2011	62	Valt.X Holdings Inc. - Common Shares	326,950.00	1,175,280.00
01/20/2012	16	Walton AZ Casa Grande LP - Units	581,472.00	57,600.00
01/20/2012	83	Walton Canadian Land 1 Development Investment Corporation - Common Shares	1,939,323.95	204,139.36
01/20/2012	36	Walton Canadian Land Development LP 1 - Limited Partnership Units	3,322,927.93	444,518.73
01/04/2011 to 12/01/2011	13	Waratah Income Limited Partnership - Units	14,709,839.50	147,098.40
01/04/2011 to 12/01/2011	9	Waratah One Limited Partnership - Units	18,733,084.20	187,330.84
01/04/2011 to 12/01/2011	23	Waratah Performance Limited Partnership - Units	55,840,170.10	558,401.70
01/03/2011 to 12/01/2011	6	Winton Futures Fund Limited - Common Shares	117,886,550.70	771,939.15
03/31/2011 to 12/31/2011	50	Wolverine Opportunity Fund - Units	4,272,250.00	846,524.00
07/31/2011	1	Zynga Inc. - Preferred Shares	14,472,017.08	846,812.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:

Armada Exploration Corp.
Principal Regulator - British Columbia

Type and Date:

Preliminary Long Form Prospectus dated February 7, 2012
NP 11-202 Receipt dated February 10, 2012

Offering Price and Description:

\$860,000.00 - 4,300,000 Shares Price: \$0.20 per Share

Underwriter(s) or Distributor(s):

Haywood Securities Inc.

Promoter(s):

Andrew Brown

Project #1857903

Issuer Name:

Canada Dominion Resources 2012 Limited Partnership
Principal Regulator - Ontario

Type and Date:

Preliminary Long Form Prospectus dated February 8, 2012
NP 11-202 Receipt dated February 9, 2012

Offering Price and Description:

\$50,000,000.00 (Maximum) - 2,000,000 Limited

Partnership Units Price per Unit: \$25.00

Minimum Subscription: \$5,000 (200 Units)

Underwriter(s) or Distributor(s):

RBC DOMINION SECURITIES INC.

CIBC WORLD MARKETS INC.

SCOTIA CAPITAL INC.

NATIONAL BANK FINANCIAL INC.

BMO NESBITT BURNS INC.

DUNDEE SECURITIES LTD.

TD SECURITIES INC.

MACQUARIE CAPITAL MARKETS CANADA LTD.

CANACCORD GENUITY CORP.

MANULIFE SECURITIES INCORPORATED

RAYMOND JAMES LTD.

DESJARDINS SECURITIES INC.

GMP SECURITIES L.P.

Promoter(s):

CANADA DOMINION RESOURCES 2012 CORPORATION

DUNDEE SECURITIES LTD.

Project #1856948

Issuer Name:

Capital Power Corporation
Principal Regulator - Alberta

Type and Date:

Preliminary Base Shelf Prospectus dated February 10, 2012

NP 11-202 Receipt dated February 10, 2012

Offering Price and Description:

\$2,000,000,000.00:

Common Shares

Preference Shares

Subscription Receipts

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1857799

Issuer Name:

Cominar Real Estate Investment Trust
Principal Regulator - Quebec

Type and Date:

Preliminary Short Form Prospectus dated February 14, 2012

NP 11-202 Receipt dated February 14, 2012

Offering Price and Description:

\$175,007,350.00 - 7,973,000 Units Price: \$21.95 per Unit

Underwriter(s) or Distributor(s):

NATIONAL BANK FINANCIAL INC.

BMO NESBITT BURNS INC.

DESJARDINS SECURITIES INC.

CIBC WORLD MARKETS INC.

SCOTIA CAPITAL INC.

RBC DOMINION SECURITIES INC.

TD SECURITIES INC.

CANACCORD GENUITY CORP.

DUNDEE SECURITIES LTD.

MACQUARIE CAPITAL MARKETS CANADA LTD.

Promoter(s):

-

Project #1858718

Issuer Name:

Epsilon Energy Ltd.
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated February 10, 2012

NP 11-202 Receipt dated February 13, 2012

Offering Price and Description:

\$40,000,000.00 - 7.75% Convertible Unsecured
Subordinated Debentures \$1,000 per Debenture

Underwriter(s) or Distributor(s):

Cormark Securities Inc.
Clarus Securities Inc.
CIBC World Markets Inc.
Raymond James Ltd.
Stonecap Securities Inc.

Promoter(s):

Zoran Arandjelovic
Kurt Portmann

Project #1857826

Issuer Name:

Freehold Royalties Ltd.
Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated February 14, 2012

NP 11-202 Receipt dated February 14, 2012

Offering Price and Description:

\$61,500,000.00 -3,000,000 Common Shares

Underwriter(s) or Distributor(s):

CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.

Promoter(s):

-

Project #1858810

Issuer Name:

Manulife Canadian Equity Balanced Class
Manulife Canadian Equity Balanced Fund
Manulife Corporate Bond Class
Manulife Dividend Income Class
Manulife Dividend Income Fund
Manulife Strategic Balanced Yield Class
Manulife Strategic Balanced Yield Fund
Principal Regulator - Ontario

Type and Date:

Preliminary Simplified Prospectuses dated February 10, 2012

NP 11-202 Receipt dated February 10, 2012

Offering Price and Description:

Advisor Series, Series F, Series I, Series IT and Series T6
Securities

Underwriter(s) or Distributor(s):

Manulife Asset Management Limited

Promoter(s):

Manulife Asset Management Limited

Project #1857581

Issuer Name:

MC Partners Inc.
Principal Regulator - British Columbia

Type and Date:

Preliminary CPC Prospectus dated February 9, 2012

NP 11-202 Receipt dated February 10, 2012

Offering Price and Description:

\$500,000.00 - 5,000,000 Common Shares Price: \$0.10 per
Common Share

Underwriter(s) or Distributor(s):

Haywood Securities Inc.

Promoter(s):

-

Project #1857456

Issuer Name:

Premier Gold Mines Limited
Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated February 10, 2012

NP 11-202 Receipt dated February 10, 2012

Offering Price and Description:

\$51,750,000.00 - 9,000,000 Common Shares PRICE:
\$5.75 per Offered Share

Underwriter(s) or Distributor(s):

RBC DOMINION SECURITIES INC.
CANACCORD GENUITY CORP.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
GOLDMAN SACHS CANADA INC.
STONECAP SECURITIES INC.
OCTAGON CAPITAL CORPORATION
VERSANT PARTNERS INC.

Promoter(s):

-

Project #1857674

Issuer Name:

PYROGENESIS CANADA INC.

Principal Regulator - Quebec

Type and Date:

Preliminary Short Form Prospectus dated February 13, 2012

NP 11-202 Receipt dated February 14, 2012

Offering Price and Description:

\$ * (Minimum Offering)

\$ * (Maximum Offering)

A minimum of * Units and

a maximum of * Units

Underwriter(s) or Distributor(s):

VERSANT PARTNERS INC.

STONECAP SECURITIES INC.

Promoter(s):

P. Peter Pascali

Project #1858393

Issuer Name:

Rio Novo Gold Inc.

Principal Regulator - Ontario

Type and Date:

Preliminary Short Form Prospectus dated February 14, 2012

NP 11-202 Receipt dated February 14, 2012

Offering Price and Description:

\$20,025,000.00 - 26,700,000 Units Price: \$0.75 per Unit

Underwriter(s) or Distributor(s):

CANACCORD GENUITY CORP.

CLARUS SECURITIES INC.

DUNDEE SECURITIES LTD.

GMP SECURITIES L.P.

UBS SECURITIES CANADA INC.

Promoter(s):

-

Project #1858751

Issuer Name:

Rubicon Minerals Corporation

Principal Regulator - British Columbia

Type and Date:

Preliminary Short Form Prospectus dated February 10, 2012

NP 11-202 Receipt dated February 10, 2012

Offering Price and Description:

\$200,900,000.00 - 49,000,000 Common Shares Price:

\$4.10 per Offered Share

Underwriter(s) or Distributor(s):

GMP Securities L.P.

TD Securities Inc.

USB Securities Canada Inc.

Mackie Research Capital Corporation

Scotia Capital Inc.

NCP Northland Capital Partners Inc.

Promoter(s):

-

Project #1857860

Issuer Name:

Shoreline Energy Corp.

Principal Regulator - Alberta

Type and Date:

Preliminary Short Form Prospectus dated February 10, 2012

NP 11-202 Receipt dated February 10, 2012

Offering Price and Description:

Up to \$12,000,000.00 - Up to * Offered Shares Price: \$ *

per Offered Share

Underwriter(s) or Distributor(s):

Macquarie Capital Markets Canada Ltd.

MGI Securities Inc.

Dundee Securities Ltd.

GMP Securities L.P.

HSBC Securities (Canada) Inc.

Jennings Capital Inc.

PI Financial Corp.

Promoter(s):

-

Project #1857684

Issuer Name:

Sojourn Ventures Inc.

Principal Regulator - British Columbia

Type and Date:

Preliminary CPC Prospectus dated February 10, 2012

NP 11-202 Receipt dated February 10, 2012

Offering Price and Description:

\$350,000.00 - 3,500,000 OFFERED SHARES Price: \$0.10

per Offered Share

Underwriter(s) or Distributor(s):

Canaccord Genuity Corp.

Promoter(s):

John Meekison

Project #1857749

Issuer Name:

ZADAR VENTURES LTD.

Principal Regulator - British Columbia

Type and Date:

Amended and Restated Preliminary Long Form Prospectus dated February 9, 2012

NP 11-202 Receipt dated February 10, 2012

Offering Price and Description:

\$550,000.00 - 2,200,000 COMMON SHARES AT A PRICE OF \$0.25 PER SHARE

Underwriter(s) or Distributor(s):

WOLVERTON SECURITIES LTD.

Promoter(s):

MARK TOMMASI

PETER WILSON

JOHN ROOZENDAAL

Project #1803435

Issuer Name:

Bank of Montreal
Principal Regulator - Ontario

Type and Date:

Final Base Shelf Prospectus dated February 8, 2012
NP 11-202 Receipt dated February 9, 2012

Offering Price and Description:

\$8,000,000,000.00:
Debt Securities (subordinated indebtedness)
Common Shares
Class A Preferred Shares
Class B Preferred Shares

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1852423

Issuer Name:

Bank of Nova Scotia, The

Type and Date:

Final Base Shelf Prospectus dated February 13, 2012
Receipted on February 13, 2012

Offering Price and Description:

US\$16,000,000,000.00:
Senior Debt Securities
Subordinated Debt Securities (subordinated indebtedness)

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1855721

Issuer Name:

Cambridge Canadian Equity Corporate Class (Class IT5 and IT8 Shares)
CI American Managers Corporate Class (Class AT8 and IT8 Shares)
CI American Small Companies Corporate Class (Class AT8 and IT8 Shares)
CI Can-Am Small Cap Corporate Class (Class AT8 and IT8 Shares)
CI Emerging Markets Corporate Class (Class AT8 and IT8 Shares)
CI Global Corporate Class (Class IT8 Shares)
CI Global Managers Corporate Class (Class AT8 and IT8 Shares)
CI Global Small Companies Corporate Class (Class AT8 and IT8 Shares)
CI Global Value Corporate Class (Class IT8 Shares)
CI International Corporate Class (Class IT8 Shares)
CI International Value Corporate Class (Class IT8 Shares)
CI Value Trust Corporate Class (Class IT8 Shares)
Synergy American Corporate Class (Class AT8 and IT8 Shares)
Synergy Canadian Corporate Class (Class AT8 and IT8 Shares)
Synergy Global Corporate Class (Class IT8 Shares)
CI Global Bond Corporate Class (Class IT8 Shares)
CI Short-Term Advantage Corporate Class (Class AT8 and IT8 Shares)
Signature Canadian Bond Corporate Class (Class IT8 Shares)
Signature Corporate Bond Corporate Class (Class IT8 Shares)
Signature Dividend Corporate Class (Class IT8 Shares)
Signature High Income Corporate Class (Class IT8 Shares)
Principal Regulator - Ontario

Type and Date:

Amendment #4 dated January 31, 2012 to the Simplified Prospectuses and Annual Information Form dated July 27, 2011

NP 11-202 Receipt dated February 10, 2012

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

CI Investments Inc.

Project #1769246

Issuer Name:

Brookfield Office Properties Canada
Principal Regulator - Ontario

Type and Date:

Final Base Shelf Prospectus dated February 13, 2012
NP 11-202 Receipt dated February 13, 2012

Offering Price and Description:

\$750,000,000.00:

Trust Units

Debt Securities

Underwriter(s) or Distributor(s):

-

Promoter(s):

-

Project #1847563

Issuer Name:

BTB Real Estate Investment Trust
Principal Regulator - Quebec

Type and Date:

Final Short Form Prospectus dated February 8, 2012
NP 11-202 Receipt dated February 8, 2012

Offering Price and Description:

\$15,000,600.00 - 16,305,000 Units \$0.92 per Unit

Underwriter(s) or Distributor(s):

NATIONAL BANK FINANCIAL INC.

CANACCORD GENUITY CORP.

DUNDEE SECURITIES LTD.

GMP SECURITIES L.P.

DESJARDINS SECURITIES INC.

HSBC SECURITIES (CANADA) INC.

RAYMOND JAMES LTD.

Promoter(s):

-

Project #1854751

Issuer Name:

Dalradian Resources Inc.
Principal Regulator - Ontario

Type and Date:

Final Short Form Prospectus dated February 8, 2012
NP 11-202 Receipt dated February 9, 2012

Offering Price and Description:

\$25,000,000.00 - 12,500,000 Common Shares Price:

\$2.00 per Common Share

Underwriter(s) or Distributor(s):

BMO NESBITT BURNS INC.

CLARUS SECURITIES INC.

STIFEL NICOLAUS CANADA INC.

GMP SECURITIES L.P.

Promoter(s):

-

Project #1854709

Issuer Name:

SouthTech Capital Corporation
Principal Regulator - Alberta

Type and Date:

Final CPC Prospectus dated February 7, 2012
NP 11-202 Receipt dated February 8, 2012

Offering Price and Description:

\$200,000.00 - 2,000,000 common shares Price: \$0.10 per common share

Underwriter(s) or Distributor(s):

Macquarie Private Wealth Inc.

Promoter(s):

Wade J. Larson

Project #1850136

Issuer Name:

PYROGENESIS CANADA INC.
Principal Jurisdiction - Quebec

Type and Date:

Preliminary Short Form Prospectus dated November 7, 2011

Withdrawn on February 14, 2012

Offering Price and Description:

Up to \$* - Up to * Common Shares Price: \$* per Offered Share

Underwriter(s) or Distributor(s):

Versant Partners Inc.

Stonecap Securities Inc.

Promoter(s):

-

Project #1820157

Issuer Name:

Canada Pacific Capital Corp.
Principal Jurisdiction - Ontario

Type and Date:

Preliminary Long Form Prospectus dated May 13, 2011
Closed on February 14, 2012

Offering Price and Description:

-

Underwriter(s) or Distributor(s):

-

Promoter(s):

Shen Dapeng

Project #1745604

Issuer Name:

Kensington Global Private Equity Fund

Principal Jurisdiction - Ontario

Type and Date:

Preliminary Long Form Prospectus dated July 27, 2011

Closed on February 10, 2012

Offering Price and Description:

Class A and Class F Units

Underwriter(s) or Distributor(s):

-

Promoter(s):

Kensington Capital Advisors Inc.

Project #1778325

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	Ullico Investment Advisors, Inc.	Portfolio Manager	February 9, 2012
Change in Registration Category	Performance Capital Limited	From: Investment Fund Manager, Exempt Market Dealer To: Investment Fund Manage, Portfolio Manager, and Exempt Market Dealer	February 10, 2012

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 IIROC Rules Notice – Request for Comment – Proposed Amendments to Dealer Member Rules to Permit Partial Swap Offset Strategies

IIROC RULES NOTICE – REQUEST FOR COMMENT – PROPOSED AMENDMENTS TO DEALER MEMBER RULES TO PERMIT PARTIAL SWAP OFFSET STRATEGIES

The Commission is publishing for comment IIROC's proposed Amendments to its Dealer Member Rules to allow partial swap offset strategies. The proposed rules and IIROC's Rules Notice can be found at <http://www.osc.gov.on.ca>. Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin.

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Chapter 25

Other Information

25.1 Consents

25.1.1 CUB Energy Inc. – s. 4(b) of the Regulation

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Canada Business Corporations Act.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.

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

Regulations Cited

Regulation made under the Business Corporations Act, O. Reg. 289/00, as am., s. 4(b).

**IN THE MATTER OF
R.R.O. 1990, REGULATION 289/00, AS AMENDED
(the "Regulation") MADE UNDER
THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990 c. B.16, AS AMENDED (the "OBCA")**

AND

**IN THE MATTER OF
CUB ENERGY INC.**

**CONSENT
(Subsection 4(b) of the Regulation)**

UPON the application of CUB Energy Inc. (the "Applicant") to the Ontario Securities Commission (the "Commission") requesting the consent from the Commission to continue in another jurisdiction pursuant to subsection 4(b) of the Regulation;

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

AND UPON the Applicant representing to the Commission that:

1. The Applicant was formed by articles of incorporation under the OBCA dated April 3, 2008 under the name Colonnade Capital Corp. By articles of amendment dated July 14, 2010, the name of the Applicant was changed to, "3P International Energy Corp.", and by articles of amendment dated January 26, 2012, the name of the Applicant was changed to its current name, "CUB Energy Inc."

2. The authorized share capital of the Applicant consists of an unlimited number of common shares. As at the date of November 23, 2011, an aggregate of 67,077,344 common shares were issued and outstanding. The common shares of the Applicant are listed for trading on the TSX Venture Exchange under the symbol "KUB".
3. The Applicant's registered office is located at 50 Richmond Street East, Suite 101, Toronto, Ontario, M5C 1N7.
4. The Applicant has made an application to the Director under the OBCA pursuant to section 181 of the OBCA (the "Application for Continuance") for authorization to continue as a corporation under the CBCA (the "Continuance").
5. Pursuant to subsection 4(b) of the Regulation, where a corporation is an offering corporation, the Application for Continuance must be accompanied by consent from the OSC.
6. The Applicant is an offering corporation under the OBCA and is a reporting issuer under the *Securities Act* (Ontario) (the "Act"). The Applicant is also a reporting issuer under the securities legislation of each of the provinces of Alberta and British Columbia. The Applicant intends to remain a reporting issuer under the securities legislation of each of the foregoing provinces following the Continuance.
7. The Applicant is not in default under any provision of the Act or the regulations or rules made under the Act or under the securities legislation of any other jurisdiction where it is a reporting issuer.
8. The Applicant is not a party to any proceedings or to the best of its knowledge, information and belief, any pending proceeding under the Act.
9. The holders of the common shares of the Applicant (the "Shareholders") were asked to consider and, if thought fit, pass a special resolution authorizing the Continuance at the Annual and Special Meeting of Shareholders held on Friday, December 2, 2011 (the "Meeting"). The special resolution authorizing the Continuance was approved at the Meeting by 100% of the votes cast.
10. The management information circular dated October 27, 2011 (the "Information Circular") provided to all Shareholders in connection with the Meeting included full disclosure of the reasons for, and the implications of, the proposed

Continuance, a summary of the material differences between the OBCA and the CBCA and advised the Shareholders of their dissent rights in connection with the application for continuance pursuant to section 185 of the OBCA.

11. The principal reason for the Continuance is because the Applicant is an international company and would like to benefit from the advantages of being regulated federally.
12. Pursuant to section 185 of the OBCA, all Shareholders of record as of the record date for the Meeting were entitled to exercise dissent rights with respect to the Application for Continuance. The management information circular provided to the shareholders in connection with the Meeting advised the Shareholders of their dissent rights under the OBCA.
13. The material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by the OBCA. Such rights provided to Shareholders by the articles to be filed in connection with the Continuance cannot be amended without the consent of the Shareholders.

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a corporation under the CBCA.

DATED at Toronto on this 8th day of February, 2012.

"James Turner"
VICE-CHAIR

"Vern Krishna"
Commissioner

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