The Ontario Securities Commission

OSC Bulletin

March 23, 2012

Volume 35, Issue 12

(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)

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Published under the authority of the Commission by:
Carswell, a Thomson Reuters business
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
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U.S.	$175
Outside North America	$400

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ISSN 0226-9325

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1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

March 23, 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
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Judith N. Robertson	—	JNR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

March 26, 2012 11:00 a.m.	**Shaun Gerard McErlean, Securus Capital Inc., and Acquiesce Investments** s. 127 M. Britton in attendance for Staff Panel: VK/JDC
March 28 and March 30 – April 3, 2012 10:00 a.m.	
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
June 18 and June 20-22, 2012 10:00 a.m.	
March 28, 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 29, 2012 11:00 a.m. April 10, 2012 2:30 p.m.	**North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti** s. 127 M. Vaillancourt in attendance for Staff Panel: MGC

April 3, 2012 10:00 a.m.	**International Strategic Investments, International Strategic Investments Inc., Somin Holdings Inc., Nazim Gillani and Ryan J. Driscoll.** s. 127 C. Watson in attendance for Staff Panel: MGC
April 4, 2012 10:00 a.m.	**Moncasa Capital Corporation and John Frederick Collins** s. 127 T. Center in attendance for Staff Panel: JEAT
April 4-5, April 11 and April 13-16, 2012 10:00 a.m.	**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)** s. 127 and 127.1 D. Ferris in attendance for Staff Panel: VK/MCH
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
April 11, 2012 11:00 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
April 17, 2012 10:00 a.m.	**Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Vadim Tsatskin, Michael Schaumer, Elliot Feder, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff** s. 37, 127 and 127.1 C. Watson in attendance for Staff Panel: PLK/JNR
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
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

April 25, April 27, May 3-7, May 11, May 17-18, June 4 and June 7, 2012 10:00 a.m.	**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** s. 127 and 127.1 D. Campbell in attendance for Staff Panel: VK
April 30, 2012 11:00 a.m. May 1-7, May 9-18 and May 23-25, 2012 10:00 a.m.	**Rezwealth Financial Services Inc., Pamela Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc., Sylvan Blackett, 1778445 Ontario Inc. and Willoughby Smith** s. 127(1) and (5) A. Heydon in attendance for Staff Panel: 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
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: JEAT
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 7, 2012 11:30 a.m.	**Systematech Solutions Inc., April Vuong and Hao Quach** s. 127 J. Feasby in attendance for Staff Panel: JEAT
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 5-10, September 12-14 and September 19-21, 2012 10:00 a.m.	**Vincent Ciccone and Medra Corp.** s. 127 M. Vaillancourt 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 C. Watson 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

November 5, 2012 10:00 a.m.	**Heir Home Equity Investment Rewards Inc.; FFI First Fruit Investments Inc.; Wealth Building Mortgages Inc.; Archibald Robertson; Eric Deschamps; Canyon Acquisitions, LLC; Canyon Acquisitions International, LLC; Brent Borland; Wayne D. Robbins; Marco Caruso; Placencia Estates Development, Ltd.; Copal Resort Development Group, LLC; Rendezvous Island, Ltd.; The Placencia Marina, Ltd.; and The Placencia Hotel and Residences Ltd.** s. 127 B. Shulman in attendance for Staff Panel: TBA
November 21 – December 3 and December 5-14, 2012 10:00 a.m.	**Bernard Boily** s. 127 and 127.1 M. Vaillancourt/U. Sheikh in attendance for Staff Panel: TBA
January 7 – February 5, 2013 10:00 a.m.	**Jowdat Waheed and Bruce Walter** s. 127 J. Lynch in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 K. Daniels in attendance for Staff Panel: TBA
TBA	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric** s. 127 and 127(1) D. Ferris in attendance for Staff Panel: TBA
TBA	**Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale** s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	**Shane Suman and Monie Rahman** s. 127 and 127(1) C. Price in attendance for Staff Panel: TBA
TBA	**Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan** s. 127 H. Craig in attendance for Staff Panel: TBA

TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Abel Da Silva

s. 127

C. Watson in attendance for Staff

Panel: TBA

TBA

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

s. 127

T. Center/D. Campbell in attendance for Staff

Panel: TBA

TBA

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

s. 127

S. Horgan in attendance for Staff

Panel: TBA

TBA

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

s. 127

H. Craig/C.Rossi in attendance for Staff

Panel: TBA

TBA

Paul Donald

s. 127

C. Price in attendance for Staff

Panel: TBA

TBA

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

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

TBA

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

s. 127(1) and 127(5)

C. Watson in attendance for Staff

Panel: TBA

TBA

Normand Gauthier, Gentree Asset Management Inc., R.E.A.L. Group Fund III (Canada) LP, and CanPro Income Fund I, LP

s. 127

B. Shulman in attendance for Staff

Panel: TBA

TBA

FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun

s. 127

C. Price in attendance for Staff

Panel: TBA

TBA

2196768 Ontario Ltd carrying on business as Rare Investments, Ramadhar Dookhie, Adil Sunderji and Evgueni Todorov

s. 127

D. Campbell in attendance for Staff

Panel: TBA

TBA

York Rio Resources Inc., Brilliante Brasilcan Resources Corp., Victor York, Robert Runic, George Schwartz, Peter Robinson, Adam Sherman, Ryan Demchuk, Matthew Oliver, Gordon Valde and Scott Bassingdale

s. 127

H. Craig/C. Watson in attendance for Staff

Panel: TBA

TBA

Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA

Marlon Gary Hibbert, Ashanti Corporate Services Inc., Dominion International Resource Management Inc., Kabash Resource Management, Power to Create Wealth Inc. and Power to Create Wealth Inc. (Panama)

s. 127

J. Lynch/S. Chandra in attendance for Staff

Panel: TBA

TBA

Richvale Resource Corp., Marvin Winick, Howard Blumenfeld, John Colonna, Pasquale Schiavone, and Shafi Khan

s. 127(7) and 127(8)

J. Feasby in attendance for Staff

Panel: TBA

TBA

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

s. 127 and 127.1

C. Johnson in attendance for Staff

Panel: TBA

TBA

L. Jeffrey Pogachar, Paola Lombardi, Alan S. Price, New Life Capital Corp., New Life Capital Investments Inc., New Life Capital Advantage Inc., New Life Capital Strategies Inc., 1660690 Ontario Ltd., 2126375 Ontario Inc., 2108375 Ontario Inc., 2126533 Ontario Inc., 2152042 Ontario Inc., 2100228 Ontario Inc., and 2173817 Ontario Inc.

s. 127

M. Britton in attendance for Staff

Panel: TBA

TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Zungui Haixi Corporation, Yanda Cai and Fengyi Cai

s. 127

J. Superina in attendance for Staff

Panel: TBA

TBA

David M. O'Brien

s. 37, 127 and 127.1

B. Shulman in attendance for Staff

Panel: TBA

TBA

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

s. 127

S. Schumacher in attendance for Staff

Panel: TBA

TBA

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

s. 127

C. Watson 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

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

TBA

Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc.

s. 37, 127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

TBA

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: TBA

TBA

Empire Consulting Inc. and Desmond Chambers

s. 127

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

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

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

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

1.1.2 Repeal of OSC Rule 21-501 – Deferral of Information Transparency Requirements for Government Debt Securities In National Instrument 21-101 – Marketplace Operation

REPEAL OF
ONTARIO SECURITIES COMMISSION RULE 21-501
– DEFERRAL OF INFORMATION TRANSPARENCY
REQUIREMENTS FOR GOVERNEMENT DEBT
SECURITIES IN NATIONAL INSTRUMENT 21-101
– MARKETPLACE OPERATION.

The Ontario Securities Commission (OSC) has repealed OSC Rule 21-501 *Information Transparency Requirements for Government Debt Securities in National Instrument 21-101 – Marketplace Operation* (the Rule). Under subsection 143.3 of the Act, notice of the repeal of the Rule was delivered to the Minister of Finance for approval on March 22, 2012. Unless the Minister rejects the repeal or returns it to the Commission for further consideration, it will be effective on July 1, 2012.

The Rule is repealed as it will become redundant when amendments to National Instrument 21-101 *Marketplace Operation* come into effect on July 1, 2012, also subject to the Minister's approval.

1.1.3 Maitland Capital Ltd. et al.

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, DIANA CASSIDY, RON CATONE, STEVEN LANYS, ROGER MCKENZIE, TOM MEZINSKI, WILLIAM ROUSE AND JASON SNOW

NOTICE OF WITHDRAWAL

WHEREAS on January 24, 2006, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing to consider whether it was in the public interest to make certain order against Maitland Capital Ltd., Allen Grossman, Hanoch Ulfan, Leonard Waddingham, Ron Garner, Gord Valde, Marianne Hyacinthe, Diana Cassidy, Ron Catone, Steven Lanys, Roger Mckenzie, Tom Mezinski, William Rouse and Jason Snow ("the Respondents") and Staff filed a Statement of Allegations in respect of the Respondents, and pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended;

AND WHEREAS William Rouse was served with the Temporary Order dated January 24, 2006, the Notice of Hearing and the Statement of Allegations in this matter;

AND WHEREAS on May 27, 2011, Staff amended the Statement of Allegations;

AND WHEREAS Staff has been advised by two persons that William Rouse died in 2011;

TAKE NOTICE that Staff withdraws the allegations as against the respondent, William Rouse, as of February 15, 2012.

February 15, 2012

Staff of the Ontario Securities Commission
20 Queen Street West, Suite 1900
Toronto, ON M5H 3S8

Derek J. Ferris
Senior Litigation Counsel
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1.3 News Releases

1.3.1 OSC Findings Against Rene Pardo Set Aside by Divisional Court

FOR IMMEDIATE RELEASE
March 14, 2012

ONTARIO SECURITIES COMMISSION FINDINGS AGAINST RENE PARDO SET ASIDE BY DIVISIONAL COURT

TORONTO – On November 10, 2011, the Ontario Superior Court of Justice (Divisional Court) made an order overturning the findings and sanctions of the Ontario Securities Commission against Rene Pardo in the September 7, 2010 and January 26, 2011 decisions and orders of the OSC.

The Endorsement by the Court further provided that the OSC would convene a new panel to review and consider either the September 29, 2009 settlement agreement between Mr. Pardo and OSC Staff, or another settlement agreement agreed to by the parties.

A hearing to review and consider a settlement agreement between Mr. Pardo and Staff has not yet been scheduled.

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

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1.4 Notices from the Office of the Secretary

1.4.1 Shane Suman and Monie Rahman

FOR IMMEDIATE RELEASE
March 19, 2012

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

AND

IN THE MATTER OF
SHANE SUMAN AND MONIE RAHMAN

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

A copy of the Reasons and Decision dated March 19, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.2 Heir Home Equity et al.

FOR IMMEDIATE RELEASE
March 19, 2012

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

AND

IN THE MATTER OF
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.

TORONTO – The Commission issued an Order in the above named matter which provides that (i) the hearing on the merits in this matter shall commence on November 5, 2012, and continue for four weeks thereafter, or on such further or other dates as agreed to by the parties and set by the Office of the Secretary; and (ii) a further pre-hearing conference is scheduled for April 20, 2012 at 10:00 a.m.

A copy of the Order dated March 14, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.3 Majestic Supply Co. Inc. et al.

FOR IMMEDIATE RELEASE
March 20, 2012

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

AND

IN THE MATTER OF
MAJESTIC SUPPLY CO. INC., SUNCASTLE DEVELOPMENTS CORPORATION, HERBERT ADAMS, STEVE BISHOP, MARY KRICFALUSI, KEVIN LOMAN AND CBK ENTERPRISES INC.

TORONTO – The Commission issued an Order in the above named matter which provides that (i) the Motion is dismissed, with reasons for this order to be provided with the reasons and decision on the merits in this matter; and (ii) the parties contact the Office of the Secretary within 10 days to schedule a date for oral closing submissions in respect of the Merits Hearing.

A copy of the Order dated March 20, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

For media inquiries:
media_inquiries@osc.gov.on.ca

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Director, Communications & Public Affairs
416-593-8120

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Dylan Rae
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416-595-8934

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

1.4.4 Maitland Capital Ltd. et al.

FOR IMMEDIATE RELEASE
March 21, 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, DIANA CASSIDY, RON CATONE, STEVEN LANYS, ROGER MCKENZIE, TOM MEZINSKI, WILLIAM ROUSE AND JASON SNOW

TORONTO – Staff of the Ontario Securities Commission filed a Notice of Withdrawal against the respondent, William Rouse, as of February 15, 2012.

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

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1.4.5 Eda Marie Agueci et al.

FOR IMMEDIATE RELEASE
March 21, 2012

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued an Order in the above noted matter which provides that this matter is adjourned to a confidential pre-hearing conference which shall take place on April 9, 2012 at 10:00 a.m.

A copy of the Order dated March 21, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Claymore Investments, Inc. and BlackRock, Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval granted for change of manager of a mutual fund for the purpose of 5.5(1)(a) – unitholders have received timely and adequate disclosure regarding the change of manager – change of manager is not detrimental to unitholders or the public interest.

Applicable Legislative Provisions

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

March 6, 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
CLAYMORE INVESTMENTS, INC.
(the "Filer")

AND

IN THE MATTER OF
BLACKROCK, INC.
("BlackRock")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for approval pursuant to section 5.5(1)(a) of National Instrument 81-102 *Mutual Funds* ("**NI 81-102**") of a change in the manager of the exchange-traded funds (the "**Claymore ETFs**") and closed-end funds (together with the Claymore ETFs, the "**Claymore Funds**") managed by the Filer and listed in Schedule A (the "**Approval Sought**").

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

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

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

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. Except as otherwise stated, all dollar amounts herein are expressed in Canadian dollars.

Representations

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

1. Certain direct and indirect shareholders of the Filer, BlackRock, BlackRock Holdco 7, Inc. ("**Holdco 7**") and the Filer have entered into an agreement and plan of merger dated as of January 11, 2012 (the "**Merger Agreement**"). Pursuant to the Merger Agreement, Holdco 7, an indirect wholly-owned subsidiary of BlackRock, has agreed to be merged with and into Guggenheim Funds Services Group, Inc. (the "**Company**"), the sole shareholder of the Filer (the "**Merger**"). The Company shall continue as the surviving entity of the Merger (the "**Surviving Corporation**"). By virtue of the Merger, BlackRock will become the sole indirect shareholder of all of the common stock of the Surviving Corporation, such that the Filer will become an indirect wholly-owned subsidiary of BlackRock. While the Merger Agreement contemplates the Merger, depending on the circumstances, the parties may ultimately determine to restructure the transaction (e.g., as a sale of all of the outstanding stock of the Company to BlackRock). Regardless of the legal steps taken to effect the acquisition (the "**Acquisition**"), as a result thereof, BlackRock will obtain control of all of the Filer's shares. The completion of the Acquisition is subject to the

satisfaction of closing conditions, which include obtaining all required regulatory approvals and approval of securityholders of the Claymore Funds.

2. Because BlackRock may wish to integrate the Filer's operations into its own following the completion of the Acquisition or at some point in the future, for the purposes of section 5.5 of NI 81-102, the Acquisition will result in a change in the manager of the Claymore Funds.

3. As required by section 11.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, a press release dated January 11, 2012 disclosing the Acquisition has been issued and filed on SEDAR, a material change report of all of the Claymore Funds describing the Acquisition was filed on SEDAR on January 13, 2012, and amendments to the prospectuses of the Claymore ETFs disclosing the Acquisition were filed on SEDAR on January 13, 2012.

4. The Filer is a corporation incorporated under the *Canada Business Corporations Act* and is the manager, principal portfolio manager and promoter of the Claymore Funds. The Filer is also the trustee of the Claymore Funds that are organized as investment trusts. The head office of the Filer is located at 200 University Avenue, 13th Floor, Toronto, Ontario. The Filer employs approximately 23 staff in its head office in Toronto. The Filer is registered as (a) an investment fund manager in Ontario; (b) a portfolio manager in Ontario; and (c) a dealer in the category of exempt market dealer in Ontario. As at the date hereof, 100 common shares of the Filer were issued and outstanding, all of which were held by the Company.

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

6. The Claymore Funds, which include 34 exchange-traded mutual funds and two closed-end mutual funds, are reporting issuers in the Jurisdictions. The securities of each of the Claymore Funds are qualified for distribution in the Jurisdictions by way of a long-form prospectus.

7. The securities of each of the Claymore ETFs are currently offered as follows: (a) the securities of Claymore Gold Bullion ETF are offered under a long-form prospectus dated January 31, 2012; (b) the securities of Claymore Advantaged Convertible Bond ETF are offered under a long-form prospectus dated June 7, 2011, as amended by Amendment No. 1 dated January 13, 2012; (c) the securities of Claymore Premium Money Market ETF, Claymore Natural Gas Commodity ETF, Claymore Broad Commodity ETF, Claymore Managed Futures ETF, Claymore Canadian Financial Monthly Income ETF and Claymore Equal Weight Banc & Lifeco ETF are offered under a long-form prospectus dated November 28, 2011, as amended by Amendment No. 1 dated January 13, 2012; and (d) the securities of the remaining Claymore ETFs listed on Schedule A are offered under a long-form prospectus dated May 12, 2011, as amended by Amendment No. 1 dated January 13, 2012 (collectively, the "**Claymore ETF Prospectuses**"). The Claymore ETFs are subject to NI 81-102 and the Claymore ETF Prospectuses are prepared and filed in accordance with Form 41-101F2 *Information Required in an Investment Fund Prospectus*.

8. The securities of each of the Claymore Funds that are closed-end funds (as identified in Schedule A) were offered as follows: (a) the securities of Big Bank Big Oil Split Corp. were initially offered under a prospectus dated May 26, 2006; and (b) the securities of Claymore Silver Bullion Trust were initially offered under a prospectus dated June 29, 2009.

9. The Claymore Funds are not in default of securities legislation in any jurisdiction of Canada, except that, through inadvertence, each of Claymore Advantaged Canadian Bond ETF, Claymore Advantaged Convertible Bond ETF, Claymore Advantaged High Yield Bond ETF, Claymore Advantaged Short Duration High Income ETF, Claymore Managed Futures ETF and Claymore Broad Commodity ETF is a party to one or more forward purchase and sale agreements providing the Claymore Fund with exposure to the portfolio of another mutual fund (each, a "**Reference Fund**"), the securities of which are not qualified for distribution in the local jurisdiction, and which is not subject to NI 81-102 or National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, contrary to the Legislation.

10. Claymore Advantaged Canadian Bond ETF, Claymore Advantaged Convertible Bond ETF, Claymore Advantaged High Yield Bond ETF, Claymore Advantaged Short Duration High Income ETF, Claymore Managed Futures ETF and Claymore Broad Commodity ETF have filed an application dated March 1, 2012 for a decision granting exemptive relief from sections 2.5(2)(a) and 2.5(2)(c) of NI 81-102 that would remedy such default (the **Exemption Sought**). The Exemption Sought provides that each such Claymore Fund may, through one or more forward purchase and sale agreements, obtain exposure to the portfolio of a Reference Fund that has filed a non-offering prospectus prepared in accordance with National Instrument 41-101 *General Prospectus Requirements* and is a reporting issuer in the Province of Quebec.

11. Holdco 7 was incorporated as an indirect, wholly-owned subsidiary of BlackRock under Delaware General Corporation Law on January 6, 2012, for

the purpose of completing the Acquisition. To date, Holdco 7 has not engaged in any activities other than those incidental to its organization, the entering into of the Merger Agreement and the performance of its obligations thereunder. The registered office of Holdco 7 is c/o The Corporation Service Company, 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, State of Delaware, 19808.

12. BlackRock is a Delaware corporation that is a leader in investment management, risk management and advisory services for institutional and retail clients worldwide. As at December 31, 2011, BlackRock had U.S.$3.513 trillion in assets under management. BlackRock offers products that span the risk spectrum to meet clients' needs, including active, enhanced and index strategies across markets and asset classes. Products are offered in a variety of structures including separate accounts, mutual funds, iShares® (exchange-traded funds), and other pooled investment vehicles. BlackRock also offers risk management, advisory and enterprise investment system services to a broad base of institutional investors through BlackRock Solutions®. Headquartered in New York City, as of December 31, 2011, the firm has approximately 10,100 employees in 27 countries and a major presence in key global markets, including North and South America, Europe, Asia, Australia and the Middle East and Africa.

13. BlackRock's principal executive offices are located at 55 East 52nd Street, New York, New York, 10055.

14. The common stock of BlackRock is listed on the New York Stock Exchange. BlackRock has no single majority stockholder and has a majority of independent directors. The PNC Financial Services Group, Inc. and Barclays PLC own economic interests in BlackRock approximating 21.0% and 19.7%, respectively, with the remainder owned by institutional and individual investors, as well as BlackRock's employees. Other than PNC Financial Services Group, Inc., no other entity beneficially owns, directly or indirectly, controls or directs shares of BlackRock's common stock carrying more than 10% of the voting rights attached to such common stock.

15. The iShares business is a global leader in exchange-traded funds with over 460 funds globally across equities, fixed income and commodities, which trade on 19 exchanges worldwide. The iShares funds are bought and sold like common stocks on securities exchanges. The iShares funds are attractive to many individual and institutional investors and financial intermediaries because of their relative low cost, tax efficiency and trading flexibility. Investors can purchase and sell securities through any brokerage firm, financial advisor or online broker and hold the funds in any type of brokerage account. The iShares customer base consists of the institutional segment of pension plans and fund managers, as well as the retail segment of financial advisors and individual investors.

16. BlackRock is the ultimate parent of BlackRock Asset Management Canada Limited ("**BlackRock Canada**"), which is the trustee, manager and portfolio adviser of the iShares exchange-traded funds in Canada (the "**iShares Funds**"). BlackRock Canada is the leading exchange-traded funds provider in Canada. As at December 31, 2011, BlackRock Canada offered 48 exchange-traded funds, representing approximately $29 billion in assets under management. The units of the Canadian iShares Funds are listed on the Toronto Stock Exchange and offer investors the opportunity to diversify their portfolios, implement tactical asset allocation strategies and quickly and cost-effectively adjust their exposures.

17. The principal office of BlackRock Canada is located at 161 Bay Street, Suite 2500, Toronto, Ontario, M5J 2S1.

18. BlackRock Canada is registered as a portfolio manager, exempt market dealer and investment fund manager in each of the provinces and territories of Canada and as a commodity trading manager in Ontario.

19. BlackRock Canada is not in default of securities legislation in any jurisdiction of Canada.

20. Following the completion of the Acquisition, the Filer will become part of the organization comprising BlackRock's asset management business. The directors and officers of each of the Filer and Big Bank Big Oil Split Corp. (the "**Corporate Fund**") are expected to be individuals who are currently officers or employees of the Filer and/or BlackRock Canada and/or its affiliates. The proposed directors and officers of the Filer and the Corporate Fund have the integrity and experience required under sub-paragraph 5.7(1)(a)(v) of NI 81-102.

21. BlackRock is a leader in investment management, risk management and advisory services for institutional and retail clients worldwide. As the provider of the Canadian iShares Funds, which are also subject to NI 81-102, BlackRock and its affiliates have a solid record of experience in the Canadian investment fund industry.

22. Immediately following the change in control of the Filer, the Filer will continue to act as the manager of the Claymore Funds, although BlackRock expects to change the Filer's name to reflect BlackRock's ownership. In addition, BlackRock Institutional Trust Company, N.A. ("**BTC**"), a

national banking association organized under the laws of the United States, and/or other BlackRock affiliates, are expected to be appointed as sub-adviser of the Claymore Funds. In the short-term, it is possible that certain services will continue to be provided by Guggenheim Partners, LLC for a period following the change in control of the Filer. BlackRock expects that the shares of the Filer will be transferred within the BlackRock group of companies and that the Filer will be amalgamated or otherwise consolidated with one or more wholly-owned subsidiaries of BlackRock that do not have active business operations (i.e., not BlackRock Canada). In the longer term, the management of the Claymore Funds may be transferred from the Filer to BlackRock Canada and/or the Filer may be amalgamated or otherwise consolidated with BlackRock Canada.

23. Both the Filer and BlackRock have accumulated a great deal of investment management and operational expertise. The Filer and BlackRock do not foresee that the Acquisition will give rise to material conflicts of interest.

24. BlackRock does not expect the acquisition of control of the Filer to have negative consequences on the ability of the Filer to satisfy its obligations to the Claymore Funds or to adversely affect the operation and administration of the Claymore Funds.

25. At special meetings of securityholders of the Claymore Funds held on February 24, 2012 and March 6, 2012, securityholders of the Claymore Funds approved the Acquisition.

26. BlackRock has no current intention to change the fundamental investment objectives of the Claymore Funds following closing of the Acquisition. Following the completion of the Acquisition, the Filer may implement changes to certain Claymore Funds. Any changes will be implemented in accordance with the prospectus disclosure of the Claymore Funds and applicable securities laws. For example, to the extent that any changes made to the Claymore Funds following the Acquisition would constitute "material changes" within the meaning of National Instrument 81-106 *Investment Fund Continuous Disclosure*, press releases will be issued, material change reports filed and amendments made to the prospectuses of the applicable Claymore Funds.

27. Securityholders will continue to be able to sell or buy securities of the Claymore Funds on the Toronto Stock Exchange or other applicable public exchanges in the normal course.

Decision

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

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

"Raymond Chan"
Manager, Investment Funds Branch

SCHEDULE A

CLAYMORE FUNDS

Exchange-Traded Funds

1. Claymore 1-10 Yr Laddered Corporate Bond ETF
2. Claymore 1-10 Yr Laddered Government Bond ETF
3. Claymore 1-5 Yr Laddered Corporate Bond ETF
4. Claymore 1-5 Yr Laddered Government Bond ETF
5. Claymore Advantaged Canadian Bond ETF
6. Claymore Advantaged Convertible Bond ETF
7. Claymore Advantaged High Yield Bond ETF
8. Claymore Advantaged Short Duration High Income ETF
9. Claymore Balanced Growth CorePortfolio™ ETF
10. Claymore Balanced Income CorePortfolio™ ETF
11. Claymore BRIC ETF
12. Claymore Broad Commodity ETF
13. Claymore Broad Emerging Markets ETF
14. Claymore Canadian Financial Monthly Income ETF
15. Claymore Canadian Fundamental Index ETF
16. Claymore China ETF
17. Claymore Equal Weight Banc & Lifeco ETF
18. Claymore Global Agriculture ETF
19. Claymore Global Infrastructure ETF
20. Claymore Global Monthly Advantaged Dividend ETF
21. Claymore Global Real Estate ETF
22. Claymore Gold Bullion ETF
23. Claymore International Fundamental Index ETF
24. Claymore Inverse 10 Yr Government Bond ETF
25. Claymore Japan Fundamental Index ETF C$ hedged
26. Claymore Natural Gas Commodity ETF
27. Claymore Oil Sands Sector ETF
28. Claymore Premium Money Market ETF
29. Claymore S&P Global Water ETF
30. Claymore S&P US Dividend Growers ETF
31. Claymore S&P/TSX Canadian Dividend ETF
32. Claymore S&P/TSX CDN Preferred Share ETF
33. Claymore S&P/TSX Global Mining ETF
34. Claymore US Fundamental Index ETF
35. Claymore Canadian Balanced Income CorePortfolio™ ETF
36. Claymore Conservative CorePortfolio™ ETF
37. Claymore Managed Futures ETF
38. Claymore Small-Mid Cap BRIC ETF

Closed-End Funds

1. Big Bank Big Oil Split Corp.
2. Claymore Silver Bullion Trust

2.1.2 Aston Hill Asset Management Inc. et al.

Headnote

National Policy 11-203 – Process for Exemptive Relief in Multiple Jurisdictions – One time transfer of assets of a non-redeemable investment fund to a mutual fund subject to NI 81-102, both advised by the same portfolio manager, to implement a merger – Costs of the merger borne by the manager – Sale of securities exempt from the self-dealing prohibition in paragraph s.13.5(2)(b)(iii), National Instrument 31-103 – Registration Requirements and Exemptions.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements and Exemptions, ss. 13.5(2)(b)(iii), 15.1.

March 16, 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
ASTON HILL ASSET MANAGEMENT INC.
(the Filer)

AND

IA CLARINGTON ASTON HILL TACTICAL YIELD FUND
(The Terminating Fund) AND
IA CLARINGTON TACTICAL INCOME FUND
(the Continuing Fund, and together with
the Terminating Fund, the Funds)

DECISION

Background

The securities regulatory authority or regulator in the Jurisdiction (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdiction for exemptive relief from Section 13.5(2)(b)(iii) of National Instrument 31-103 – *Registration Requirements and Exemptions* (**NI 31-103**) in connection with the transfer of the investment portfolio of the Terminating Fund to the Continuing Fund in order to implement the merger (the **Merger**) of the Terminating Fund into the Continuing Fund (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 Passport System (**MI 11-102**) is intended to be relied upon in each of the provinces and territories of Canada (collectively with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is a corporation amalgamated under the laws of Ontario. The Filer's head office is located in Toronto, Ontario.

2. The Filer is registered as an investment fund manager in Ontario and as a portfolio manager under the securities legislation of each of Ontario, Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia and Quebec (the **Legislation**).

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

4. IA Clarington Investments Inc. (the **Manager**) is the manager and trustee of the Funds and the Filer is the portfolio advisor of the Funds.

5. The Manager proposes to effect the Merger of the Terminating Fund into the Continuing Fund, subject to obtaining this approval, on or about April 30, 2012 (the **Merger Date**).

6. Each Fund was established pursuant to a declaration of trust under the laws of the Province of Ontario.

7. The Funds are reporting issuers under the securities legislation of each province and territory of Canada and are not on the list of defaulting reporting issuers maintained under such legislation.

8. Unless an exemption has been obtained, each of the Funds follows the standard investment restrictions and practices established under the applicable securities legislation of each province and territory of Canada.

9. The Terminating Fund is a "non-redeemable investment fund" as defined in the Legislation and units of the Terminating Fund (the **Units**) are listed on the Toronto Stock Exchange (**TSX**).

10. The Terminating Fund was established under the laws of the Province of Ontario pursuant to a declaration of trust dated March 29, 2010 (the **Terminating Fund Declaration**) and completed its initial public offering on April 19, 2010.

11. The Continuing Fund is a "mutual fund" as defined in the Legislation and currently offers series A, E, E6, F, F6, F8, I, L, L6, L8, O, T6 and T8 units pursuant to a simplified prospectus dated July 12, 2011, as amended on July 29, 2011, September 19, 2011 and on November 28, 2011 (collectively, the **Prospectus**).

12. The Continuing Fund has filed amendments dated February 15, 2012, to its simplified prospectus and annual information form to qualify the Series X Units to be used in the Merger. These amendments were receipted on February 27, 2012.

13. Series X Units of the Continuing Fund have a distribution policy which seeks to provide unitholders with monthly distributions.

14. The investment objectives of the Terminating Fund are "(i) to provide unitholders with monthly cash distributions, initially targeted to be 6.0% per trust unit per annum on the original offering price of $10.00 per unit ($0.05 per trust unit per month or $0.60 per trust unit per annum); and (ii) to maximize total returns for unitholders, consisting of both cash distributions and capital appreciation, while reducing risk and preserving capital". As of March 15, 2012, the Terminating Fund's holdings of illiquid securities meet the requirements of s. 2.4 of NI 81-102.

15. The investment objective of the Continuing Fund is "to seek to achieve a steady flow of monthly income by investing primarily in trust units, equity securities and fixed income securities of Canadian issuers".

16. The Merger will not be a material change for the Continuing Fund, as the net asset value (**NAV**) of the Continuing Fund is larger than the NAV of the Terminating Fund. The NAV for units of each Fund is calculated on a daily basis on each day that the TSX is open for trading.

17. The Merger will be effected in accordance with the "conversion" provision set out in the Terminating Fund Declaration. This provision provides that the Manager may merge the Terminating Fund with an open-ended mutual fund managed by the Manager or an affiliate thereof, provided that:

    (a) the open-ended mutual fund must have similar investment objectives as set forth in its governing instrument, as deter-

mined by the Manager in its sole discretion;

(b) the Manager must have determined that there likely will be a percentage reduction in the general, administrative and operating expenses attributed to the combined fund as a result of the merger as compared to those of the Terminating Fund prior to the merger;

(c) the merger is completed on a relative net asset value per security basis; and

(d) the merger is accomplished on a tax-deferred rollover basis under the *Income Tax Act* (Canada) (the **Tax Act**) for unitholders of the Terminating Fund pursuant to section 132.2 of the Tax Act (as may be amended).

Although the Terminating Fund is a non-redeemable investment fund and not a mutual fund, the Terminating Fund Declaration also provides that the approval of unitholders of the Terminating Fund is not required if the merger is approved by the independent review committee (**IRC**) of the Terminating Fund under s. 5.2(2) of NI 81-107 and if the Terminating Fund is being reorganized with, or its assets are being transferred to, a mutual fund to which National Instrument 81-102 – *Mutual Funds* and National Instrument 81-107 – *Independent Review Committee for Investment Funds* (**NI 81-107**) apply and that is managed by the Manager, or an affiliate of the Manager.

18. The Manager has determined that the investment objectives of the Funds are similar and that there will likely be a percentage reduction in the general, administrative and operating expenses attributed to the combined fund as a result of the merger as compared to those of the Terminating Fund prior to the merger. In addition, the Merger will be completed on a relative net asset value per security basis and on a tax-deferred rollover basis under the Tax Act.

19. The board of directors of the Manager has approved the Merger.

20. The Manager has sent written notice of the Merger to the unitholders of the Terminating Fund on February 15, 2012, which is at least 75 days prior to the Merger Date.

21. As required by NI 81-107, an IRC has been appointed for each of the Funds. The Manager presented the terms of the Merger to the IRC and the IRC approved the Merger in accordance with the requirements of s. 5.2(2) of NI 81-107 on the basis that the Merger would achieve a fair and reasonable result for each of the Funds.

22. A press release and material change report announcing the conversion of the Terminating Fund by way of merger into the Continuing Fund was filed on SEDAR under the profile of the Terminating Fund on February 17, 2012. A press release and material change report in respect of the Merger will be filed on SEDAR under the profile of each of the Funds upon completion of the Merger.

23. At the present time, no TSX approval is required for the Merger. However, the Terminating Fund will need to comply with the requirements of the TSX to delist.

24. All costs and expenses associated with the Merger will be borne by the Manager. No sales charges, redemption fees or other fees or commissions will be payable by unitholders of the Funds in connection with the Merger.

25. Following the Merger, the Continuing Fund will continue as a publicly offered open-end mutual fund and the Terminating Fund will be wound up and terminated.

26. The Filer is a "responsible person" as defined in the Legislation as a result of being the portfolio advisor of the Funds.

27. The transfer of the investment portfolio of the Terminating Fund to the Continuing Fund (and the corresponding purchase of such investment portfolio by the Continuing Fund) as a step in the Merger may be considered a purchase or sale of securities, knowingly caused by a registered adviser that manages the investment portfolio of the Funds, from or to the investment portfolio of an investment fund for which a "responsible person" acts as an adviser, contrary to NI 31-103.

28. The Merger is expected to take place using the following steps:

(a) Prior to the Merger Date, the Terminating Fund will sell any securities in its portfolio that do not meet the investment objective and investment strategies of the Continuing Fund. As a result, the Terminating Fund may temporarily hold cash or money market instruments and may not be fully invested in accordance with its investment objectives for a brief period of time prior to the Merger.

(b) Effective as of close of business on or about April 25, 2012, which is approximately three business days prior to the Merger Date, the Units of the Terminating Fund will be de-listed from the TSX.

(c) The value of the Terminating Fund's portfolio and other assets will be deter-

mined at the close of business on the Merger Date in accordance with the Terminating Fund Declaration.

(d) The Continuing Fund will acquire the investment portfolio and other assets of the Terminating Fund in exchange for Series X Units of the Continuing Fund.

(e) The Continuing Fund will not assume liabilities of the Terminating Fund and the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the Merger Date.

(f) The Series X Units of the Continuing Fund received by the Terminating Fund will have an aggregate NAV equal to the value of the Terminating Fund's portfolio assets and other assets that the Continuing Fund is acquiring, and the Series X Units will be issued at their applicable series NAV per unit as of the close of business on the Merger Date.

(g) The Terminating Fund will distribute to its unitholders a sufficient amount of its net income and net realized capital gains so that it will not be subject to tax under Part I of the *Tax Act* for its taxation year ending on the Merger Date.

(h) Immediately thereafter, the Terminating Fund will be terminated and the Series X Units of the Continuing Fund received by the Terminating Fund will be distributed to unitholders of the Terminating Fund on a dollar for dollar basis in exchange for their Units in the Terminating Fund.

(i) As soon as reasonably possible following the Merger, the Terminating Fund will be wound up.

(j) The Manager will issue a press release forthwith after the Merger is completed announcing the completion of the Merger and the ratio by which Units of the Terminating Fund were exchanged for Series X Units.

29. Each Fund is a mutual fund trust under the Tax Act and, accordingly, Units of the Funds are "qualified investments" under the Tax Act for registered retirement savings plans, registered retirement income funds, deferred profit sharing plans, registered disability savings plans, registered education savings plans and tax-free savings accounts.

30. In the absence of this order, the Filer would be prohibited from purchasing and selling the securities of the Terminating Fund (and thereby transferring the investment portfolio of the Terminating Fund to the Continuing Fund) in connection with the Merger.

31. The Merger would comply with the exemption from section 13.5(2)(b) of NI 31-103 provided in subsection 6.1(4) of NI 81-107 but for subsection 6.1(2)(f). It is not possible to effect the transfer of assets from the Terminating Fund to the Continuing Fund in accordance with the "market integrity requirements", as such term is defined in Section 6.1(1) of NI 81-107, because the purchase and sale of such assets will be effected directly between the Terminating Fund and the Continuing Fund and accordingly will not be printed on the TSX.

32. In the opinion of the Filer and the Manager, the Merger will not adversely affect unitholders of the Terminating Fund or the Continuing Fund and will in fact be in the best interests of Unitholders of the Terminating Fund. The Filer believes that the Merger will be beneficial to Unitholders for the following reasons:

(a) The Continuing Fund has a larger portfolio and better opportunity for diversification than the Terminating Fund;

(b) Series X Units of the Continuing Fund will have greater liquidity through daily purchases and redemptions than Units of the Terminating Fund and the Merger will eliminate the discount to NAV for the Terminating Fund;

(c) The Terminating Fund pays a trailer fee directly rather than embedding it in its management fee. The management fee plus trailer fee for the Terminating Fund will be the same as the management fee for the Series X Units of the Continuing Fund; and

(d) The Continuing Fund allows greater unitholder flexibility with respect to switches, reclassifications and conversions.

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 is that the Exemption Sought is granted provided that:

(a) upon a request by a Unitholder for financial statements, the Filer will make best efforts to provide the unitholder with financial statements of the Continuing Fund; and

(b) the Terminating Fund and the Continuing Fund with respect to a Merger have an unqualified audit report in respect of their last completed financial period.

"Raymond Chan"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.3 Canadian Tire Corporation, Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer granted exemption from the prospectus requirement in connection with trades of commercial paper/short term debt instruments that may not meet the "approved credit rating" requirement for the purpose of the short-term debt exemption in section 2.35 of National Instrument 45-106 Prospectus and Registration Exemptions – Commercial paper/short-term debt instruments only required to obtain one prescribed credit rating from an approved credit rating organization – Relief granted subject to conditions.

Applicable Legislative Provisions

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

March 16, 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
CANADIAN TIRE CORPORATION, LIMITED
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that trades of negotiable promissory notes or commercial paper, maturing not more than one year from the date of issue, of the Filer (**Commercial Paper**) be exempt from the prospectus requirements of the Legislation (the **Exemption Sought**).

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

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

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

Interpretation

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

In this decision:

"Asset-backed Short-term Debt" means short-term debt that is backed, secured or serviced by or from a discrete pool of mortgages, receivables or other financial assets or interests designed to ensure the servicing or timely distribution of proceeds to holders of that short-term debt;

"NI 31-103" means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Relationships*;

"NI 45-106" means National Instrument 45-106 *Prospectus and Registration Exemptions*; and

"NI 81-102" means National Instrument 81-102 *Mutual Funds*.

Representations

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

1. The Filer is a corporation governed by the *Business Corporations Act* (Ontario) with its registered and principal offices located in Toronto, Ontario.

2. The Filer is a reporting issuer in the Jurisdiction and the Passport Jurisdictions. The Filer is not in default of its reporting issuer obligations under the Legislation or the securities legislation of the Jurisdiction and the Passport Jurisdictions.

3. Subsection 2.35(b) of NI 45-106 provides that the exemption from the prospectus requirement of the Legislation for short-term debt (the **Commercial Paper Exemption**) is available only where such short-term debt "has an approved credit rating from an approved credit rating organization". NI 45-106 incorporates by reference the definitions for "approved credit rating" and "approved credit rating organization" in NI 81-102.

4. The definition of "approved credit rating" in NI 81-102 requires, among other things, that (a) the rating assigned to particular debt must be "at or above" certain prescribed short-term ratings, and (b) such debt must not have been assigned a rating by any "approved credit rating organization" that is not an "approved credit rating".

5. The Commercial Paper has a rating of "A-1(Low)(Can)" rating from Standard & Poor's Rating Services, which qualifies as a rating of A-2 on Standard & Poor's global short term debt rating scale. The Commercial Paper also has a rating of "R-2(high)" from DBRS Limited. As a result, the Commercial Paper does not meet the "approved credit rating" definition in NI 81-102.

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 Decision Maker is that the Exemption Sought is granted provided that:

(a) the Commercial Paper:

i. matures not more than one year from the date of issue;

ii. is not convertible or exchangeable into or accompanied by a right to purchase another security other than Commercial Paper;

iii. is not Asset-backed Short-term Debt; and

iv. has a rating issued by one of the following rating organizations, or any of their successors, at or above one of the following rating categories or a rating category that replaces a category listed below:

Rating Organization	Rating
DBRS Limited	R-1 (low)
Fitch Ratings Ltd.	F2
Moody's Investors Service	P-2
Standard & Poor's	A-2

(b) each trade of Commercial Paper to a resident in a jurisdiction in Canada by the Filer in reliance on this exemption is made:

i. through an agent who is a registered dealer, registered in a category that permits the trade;

ii. through a bank listed in Schedule I, II or III to the *Bank Act* (Canada) trading in reliance on an exemption from registration available in the circumstances in the jurisdiction or jurisdictions in which the trade occurs; or

iii. through a dealer permitted to rely on the "international dealer exemption" under section 8.18 of NI 31-103; and

(c) for each jurisdiction of Canada, the Exemption Sought will terminate on the earlier of:

i. 90 days after the coming into force of any rule, other regulation or blanket order or ruling under the securities legislation of that jurisdiction of Canada that amends the conditions of the prospectus exemption under section 2.35 of NI 45-106 or provides an alternate exemption; and

ii. June 30, 2017.

"Edward P. Kerwin"

"Christopher Portner"

2.1.4 St. Eugene Mining Corporation Ltd.

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).

March 19, 2012

Gianfranco Matrangolo
Stikeman Elliott LLP
4300 Bankers Hall West
888 – 3rd St. S.W.,
Calgary, AB T2P 5C5

Dear Sirs/Mesdames:

Re: St. Eugene Mining Corporation Limited (the Applicant) – application for a decision under the securities legislation of Ontario and Alberta (collectively, 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

2.1.5 Dividend 15 Split Corp. II (DF) and Quadravest Capital Management Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Mutual fund corporation and its investment fund 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 mutual fund corporation – The limited trading activities involve: i) the forwarding of a rights offering circular, and the distribution of rights to acquire securities of the mutual fund corporation, to existing holders of securities of the mutual fund corporation, and ii) the subsequent distribution of securities to holders of these rights, upon the holders' 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 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.5.
National Instrument 45-106 Prospectus and Registration Exemptions, ss. 3.1, 3.42.

March 2, 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
DIVIDEND 15 SPLIT CORP. II (DF) AND
QUADRAVEST CAPITAL MANAGEMENT INC.
(the Manager, together with DF, 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 DF, in connection with a proposed distribution (the **Rights Offering**) of rights (the **Rights**) to acquire units, each consisting of one class A share of DF (collectively the **Class A Shares**) and one preferred share of DF (collectively the **Preferred Shares** and, together with the Class A Shares, the **Units**), to be made in the Jurisdiction and each of the Passport Jurisdictions (as defined below) pursuant to a rights offering circular (the **Rights Offering Circular**).

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 **Pass-port 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. DF is a mutual fund corporation incorporated under the laws of the Jurisdiction by articles of incorporation dated September 28, 2006, as amended November 3, 2006. DF is a reporting issuer in the Jurisdiction and in each of the Passport Jurisdictions. DF is not in default of the securities legislation of any jurisdiction.

2. The Manager acts as the investment fund manager for DF. 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 DF consists of an unlimited number of Preferred Shares and Class A Shares and 1,000 class B shares. The Preferred Shares and Class A Shares are listed for trading on the Toronto Stock Exchange (the **TSX**).

5. DF 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 DF are: (i) to provide holders of Preferred Shares with fixed cumulative preferential monthly cash dividends in the amount of $0.04375 per Preferred Share; (ii) to provide holders of Class A Shares with regular monthly

cash distributions targeted to be $0.10 per Class A Share; and (iii) to return the original issue price of $10.00 and $15.00 to holders of Preferred Shares and Class A Shares, respectively, at the time of the redemption of such shares on December 1, 2014 or such other date as DF may terminate.

7. On November 16, 2006 and December 7, 2006, DF completed its initial public offering of Preferred Shares and Class A Shares pursuant to a prospectus dated October 25, 2006. Preferred Shares and Class A Shares are issued only on the basis that an equal number of Preferred Shares and Class A Shares will be issued and outstanding at all times.

8. DF does not engage in a continuous distribution of its securities.

9. Under the Rights Offering, each holder of Class A Shares, as at a specified record date, will be entitled to receive, for no consideration, one Right for each Class A Share held by the holder. Four Rights entitle the holder to subscribe for one Unit upon payment to DF of a subscription price, to be specified in the Rights Offering Circular, 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. DF has applied to list on the TSX the Rights to be distributed under the Rights Offering and the Class A Shares and the Preferred Shares issuable upon the exercise thereof.

11. The Rights Offering Activities will consist of:

    (a) the distribution of the Rights Offering Circular and the issuance of Rights to holders of Class A Shares (as at the record date specified in the Rights Offering Circular), after the Rights Offering Circular has been sent and accepted 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. DF is in the business of trading by virtue of its portfolio investing and trading activities. As a result, the capital raising activities of DF, 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 DF, and the Manager acting on behalf of DF, are not subject to the dealer registration requirement in respect of the Rights Offering Activities.

"Margot C. Howard"
Commissioner
Ontario Securities Commission

"Mary Condon"
Vice-Chair
Ontario Securities Commission

2.1.6 NB Split Corp. – s. 1(10)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Fund deemed to have ceased to be a reporting issuer – Fund meets requirements set out in CSA Staff Notice 12-307.

Applicable Legislative Provisions

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

March 20, 2012

NB Split Corp.
c/o Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON
M5L 1A9

Dear Sirs/Mesdames:

Re: NB Split Corp. (the Applicant) – Application for a decision under the securities legislation of all the provinces and territories of Canada (other than British Columbia) (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.

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

2.1.7 Dividend 15 Split Corp. and Quadravest Capital Management Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Mutual fund corporation and its investment fund 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 mutual fund corporation – The limited trading activities involve: i) the forwarding of a rights offering circular, and the distribution of rights to acquire securities of the mutual fund corporation, to existing holders of securities of the mutual fund corporation, and ii) the subsequent distribution of securities to holders of these rights, upon the holders' 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 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.5.
National Instrument 45-106 Prospectus and Registration Exemptions, ss. 3.1, 3.42.

March 2, 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
DIVIDEND 15 SPLIT CORP. (DFN) AND
QUADRAVEST CAPITAL MANAGEMENT INC.
(the Manager, together with DFN, 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 DFN, in connection with a proposed distribution (the **Rights Offering**) of rights (the **Rights**) to acquire units, each consisting of one class A share of DFN (collectively the **Class A Share**s) and one preferred share of DFN (collectively the **Preferred Shares** and, together with the Class A Shares, the **Units**), to be made in the Jurisdiction and each of the Passport Jurisdictions (as defined below) pursuant to a rights offering circular (the **Rights Offering Circular**).

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. DFN is a mutual fund corporation incorporated under the laws of the Jurisdiction by articles of incorporation dated January 9, 2004, as amended February 25, 2004 and May 23, 2007. DFN is a reporting issuer in the Jurisdiction and in each of the Passport Jurisdictions. DFN is not in default of the securities legislation of any jurisdiction.

2. The Manager acts as the investment fund manager for DFN. 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 DFN consists of an unlimited number of Preferred Shares and Class A Shares and 1,000 class B shares. The Preferred Shares and Class A Shares are listed for trading on the Toronto Stock Exchange (the **TSX**).

5. DFN 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 DFN are: (i) to provide holders of Preferred Shares with fixed cumulative preferential monthly cash dividends in

the amount of $0.04375 per Preferred Share; (ii) to provide holders of Class A Shares with regular monthly cash distributions targeted to be $0.10 per Class A Share; and (iii) to return the original issue price of $10.00 and $15.00 to holders of Preferred Shares and Class A Shares, respectively, at the time of the redemption of such shares on December 1, 2014 or such other date as DFN may terminate.

7. On March 16, 2004 and April 6, 2004, DFN completed its initial public offering of Preferred Shares and Class A Shares pursuant to a prospectus dated February 25, 2004. Preferred Shares and Class A Shares are issued only on the basis that an equal number of Preferred Shares and Class A Shares will be issued and outstanding at all times.

8. DFN does not engage in a continuous distribution of its securities.

9. Under the Rights Offering, each holder of Class A Shares, as at a specified record date, will be entitled to receive, for no consideration, one Right for each Class A Share held by the holder. Four Rights entitle the holder to subscribe for one Unit upon payment to DFN of a subscription price, to be specified in the Rights Offering Circular, 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 between one month and two months.

10. DFN has applied to list on the TSX the Rights to be distributed under the Rights Offering and the Class A Shares and the Preferred Shares issuable upon the exercise thereof.

11. The Rights Offering Activities will consist of:

    (a) the distribution of the Rights Offering Circular and the issuance of Rights to holders of Class A Shares (as at the record date specified in the Rights Offering Circular), after the Rights Offering Circular has been sent and accepted 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. DFN is in the business of trading by virtue of its portfolio investing and trading activities. As a result, the capital raising activities of DFN, 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 DFN, and the Manager acting on behalf of DFN, are not subject to the dealer registration requirement in respect of the Rights Offering Activities.

"Margot C. Howard"
Commissioner
Ontario Securities Commission

"Mary Condon"
Vice-Chair
Ontario Securities Commission

2.1.8 Liquor Stores N.A. Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted to a successor issuer from the requirement to deliver personal information forms for individuals for whom its predecessor issuer previously delivered personal information forms.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions.

Citation: Liquor Stores N.A. Ltd., Re, 2012 ABASC 114

March 20, 2012

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

AND

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

AND

IN THE MATTER OF
LIQUOR STORES N.A. LTD.
(the Filer)

DECISION

Background

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

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

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

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

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

Interpretation

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

Representations

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

The Fund and the Arrangement

1. The Fund was a trust established under the laws of the Province of Alberta pursuant to an amended and restated declaration of trust.

2. A Plan of Arrangement completed on 31 December 2010 under Section 192 of the *Canada Business Corporations Act* resulted in the reorganization of the Fund (an income trust) into the Filer (a corporation) (the **Arrangement**).

3. The Fund was a reporting issuer or the equivalent under the securities legislation of each of the Provinces of Canada. In connection with the Arrangement the Fund ceased to be a reporting issuer in each of the Provinces of Canada.

4. The trust units and the convertible debentures of the Fund were listed on the Toronto Stock Exchange (the **TSX**) and were delisted from the TSX prior to the opening of markets on 7 January 2011.

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

The Filer

6. The Filer is a corporation incorporated under the laws of Canada. The head office of the Filer is located in Edmonton, Alberta.

7. The Filer is a reporting issuer or the equivalent under the securities legislation of each of the Provinces of Canada and is not in default of applicable securities legislation in any of the Provinces of Canada.

8. The Filer is a "successor issuer", as defined in NI 44-101, of the Fund as the Filer exists as a result of the Arrangement, which was a "restructuring transaction", as defined in NI 41-101, and such restructuring transaction did not involve a divestiture of a portion of the Fund's business.

9. The common shares and the convertible debentures of the Filer are listed and posted for trading on the TSX.

10. The Fund has previously delivered the documents described in clauses 4.1(b)(i)(E) through (G) of NI 44-101 (the **Fund PIFs**) for each individual acting in the capacity of director or executive officer of Liquor Stores GP Inc. (administrator of the Fund) on 7 December 2007, being the time of the last filing of a preliminary short form prospectus by the Fund.

Decision

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

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

(a) each individual:

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

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

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

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

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

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

"Blaine Young"
Associate Director, Corporate Finance

APPENDIX A

AUTHORIZATION OF INDIRECT COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

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

Liquor Stores N.A. Ltd. (the **Issuer**) hereby confirms that each individual listed on Schedule 1:

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

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

(c) has been notified by the Issuer:

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

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

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

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

Date: _____

Liquor Stores N.A. Ltd.

Per: _____
Name:
Official Capacity:

(Please print the name of the person signing on behalf of the Issuer)

Schedule 2

Regulators

Local Jurisdiction	Regulator
Alberta	Securities Review Officer Alberta Securities Commission Suite 600 250 – 5th Street S.W Calgary, Alberta T2P 0R4 Telephone: (403) 297-6454 E-mail: inquiries@seccom.ab.ca www.albertasecurities.com
British Columbia	Review Officer British Columbia Securities Commission P.O. Box 10142 Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2 Telephone: (604) 899-6854 Toll Free within British Columbia and Alberta: (800) 373-6393 E-mail: inquiries@bcsc.bc.ca www.bcsc.bc.ca
Manitoba	Director, Corporate Finance The Manitoba Securities Commission 500-400 St. Mary Avenue Winnipeg, Manitoba R3C 4K5 Telephone: (204) 945-2548 E-mail: securities@gov.mb.ca www.msc.gov.mb.ca
New Brunswick	Director Corporate Finance and Chief Financial Officer New Brunswick Securities Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Telephone: (506) 658-3060 Fax: (506) 658-3059 E-mail: information@nbsc-cvmnb.ca
Newfoundland and Labrador	Director of Securities Department of Government Services and Lands P.O. Box 8700 West Block, 2nd Floor, Confederation Building St. John's, Newfoundland A1B 4J6 Telephone: (709) 729-4189 www.gov.nf.ca/gsl/cca/s
Northwest Territories	Superintendent of Securities Department of Justice Government of the Northwest Territories P.O. Box 1320 Yellowknife, Northwest Territories X1A 2L9 Telephone: (867) 873-7490 www.justice.gov.nt.ca/SecuritiesRegistry
Nova Scotia	Deputy Director, Compliance and Enforcement Nova Scotia Securities Commission P.O. Box 458 Halifax, Nova Scotia B3J 2P8 Telephone: (902) 424-5354 www.gov.ns.ca/nssc

Nunavut	Superintendent of Securities Government of Nunavut Legal Registries Division P.O. Box 1000 – Station 570 Iqaluit, Nunavut X0A 0H0 Telephone: (867) 975-6590
Ontario	Administrative Assistant to the Director of Corporate Finance Ontario Securities Commission 19th Floor, 20 Queen Street West Toronto, Ontario M5H 2S8 Telephone: (416) 597-0681 E-mail: Inquiries@osc.gov.on.ca www.osc.gov.on.ca
Prince Edward Island	Superintendent of Securities Government of Prince Edward Island Shaw Building 95 Rochford Street, P.O. Box 2000, 4th Floor Charlottetown, Prince Edward Island C1A 7N8 Telephone: (902) 368-4550 www.gov.pe.ca/securities
Québec	Autorité des marchés financiers Stock Exchange Tower P.O. Box 246, 22nd Floor 800 Victoria Square Montréal, Québec H4Z 1G3 Attention: Responsable de l'accès à l'information Telephone: (514) 395-0337 Toll Free in Québec: (877) 525-0337 www.lautorite.qc.ca
Saskatchewan	Director Saskatchewan Financial Services Commission Suite 601, 1919 Saskatchewan Drive Regina, Saskatchewan S4P 4H2 Telephone: (306) 787-5842 www.sfsc.gov.sk.ca
Yukon	Superintendent of Securities Department of Justice Andrew A. Philipsen Law Centre 2130 – 2nd Avenue, 3rd Floor Whitehorse, Yukon Territory Y1A 5H6 Telephone: (867) 667-5225 www.community.gov.yk.ca/corp/secureinvest.html

2.1.9 CERF Incorporated

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted to the successor issuer from the requirement to file a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the filing of a preliminary short form prospectus – the filer became the successor issuer to a limited partnership reporting issuer in an internal reorganization pursuant to which business operations of the limited partnership would be conducted through a corporate entity on a go-forward basis, being the successor issuer – the arrangement did not involve the acquisition of any additional interest in any operating assets or the disposition of any of the limited partnership's existing interest in operating assets.

Exemption granted to a successor issuer from the requirement to deliver personal information forms for individuals for whom the limited partnership previously delivered personal information forms.

Applicable Legislative Provisions

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

Citation: CERF Incorporated, Re, 2012 ABASC 103

March 15, 2012

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

AND

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

AND

IN THE MATTER OF
CERF INCORPORATED
(the Filer or CERF Inc.)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting CERF Inc. (the corporate entity resulting from the plan of arrangement (the **Arrangement**) under the *Business Corporations Act* (Alberta) involving Canadian Equipment Rental Fund Limited Partnership (**CERF LP**), CERF GP Corp. (the **General Partner**), which was the general partner of CERF LP, and CERF Inc.), from:

(a) the requirement under 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 at least 10 business days prior to the filing of its first preliminary short form prospectus after the notice (the **Prospectus Relief**); and

(b) the requirement under subsection 4.1(b) of NI 44-101 for CERF Inc. to file a Personal Information Form and Authorization to Collect, Use and Disclose Personal Information in the form attached as Appendix A to National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) for each director and executive officers of CERF Inc. at the time of filing a preliminary short form prospectus for whom CERF LP has previously delivered any of the documents described in subsections 4.1(b)(i)(E) through (G) of NI 44-101 at the time of filing such preliminary short-form prospectus (the **PIF Relief**).

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

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

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

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

Interpretation

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

Representations

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

CERF LP, THE GENERAL PARTNER AND CERF INC.

CERF LP AND THE GENERAL PARTNER

1. Prior to the Arrangement, the General Partner was a corporation incorporated on January 11, 2005 pursuant to the provisions of the ABCA. The principal office of the General Partner were located in Calgary, Alberta. The General Partner was the general partner of CERF LP since CERF LP was formed in 2005 and did not carry on any business or conduct any operations since its incorporation other than as the general partner of CERF LP. The General Partner was not a "reporting issuer", as that term is defined in applicable securities legislation, in any province or territory of Canada.

2. Prior to the Arrangement, CERF LP was a limited partnership formed under the *Partnership Act*, R.S.A. 2000, c. P-3, as amended, by a limited partnership agreement dated January 21, 2005, as amended on November 29, 2007 and September 21, 2010, among the General Partner, Wayne S. Wadley, as initial limited partner, and the holders of the limited partnership units (**Unitholders**) of CERF LP (collectively, the **Partnership Agreement**). The principal office of CERF LP were located in Edmonton, Alberta.

3. Prior to the Arrangement, CERF LP was a "reporting issuer", as that term is defined in applicable securities legislation, in the provinces of Alberta, British Columbia, Saskatchewan, Manitoba and Ontario. Prior to the Arrangement, the CERF LP limited partnership units (**LP Units**) were listed and posted for trading on the TSXV under the symbol "CFL.UN". The LP Units have not been listed or posted for trading on any exchange or quotation and trade reporting systems since the Arrangement.

4. CERF LP filed an "AIF" and had "current annual financial statements" (as such terms are defined in NI 44-101) for the financial year ended December 31, 2010.

5. CERF LP and CERF GP were dissolved on October 1, 2011 pursuant to the Arrangement.

CERF INC.

6. CERF Inc. is a corporation incorporated under the laws of the Province of Alberta. The principal office of CERF Inc. is located in Calgary, Alberta.

7. CERF Inc. was incorporated solely to participate in the Arrangement, including to issue common shares in the capital of CERF Inc. (the **Shares**) to former Unitholders, as a result of which the former Unitholders now hold Shares.

8. CERF Inc. is a "successor issuer" to CERF LP, as that term is defined in NI 44-101.

9. The authorized capital of CERF Inc. includes an unlimited number of common shares in the capital of CERF Inc. As at January 31, 2012, there were 9,665,256 Shares outstanding.

10. CERF Inc. is a "reporting issuer", as that term is defined in applicable securities legislation, in the provinces of Alberta, British Columbia, Saskatchewan, Manitoba and Ontario. CERF Inc. is not in default of securities legislation in any jurisdiction of Canada.

11. The Shares are listed and posted for trading on the TSX Venture Exchange (**TSXV**) under the symbol "CFL".

ARRANGEMENT

12. Pursuant to the Arrangement: (i) Shares have been distributed to Unitholders on a one-for-one basis; (ii) CERF Inc. owns, directly or indirectly, all of the previously-existing assets and has assumed all of the previously-existing liabilities of CERF LP, effectively resulting in the internal reorganization of CERF LP's limited partnership structure into a corporate structure; (iii) the LP Units have been cancelled; and (iv) CERF LP has been dissolved.

13. The Arrangement was completed on October 1, 2011 and therefore currently: (i) the sole business of CERF Inc. is the previous business of CERF LP; (ii) CERF Inc. is a reporting issuer or the equivalent under the securities legislation in Alberta, British Columbia, Saskatchewan, Manitoba and Ontario; and (iii) the Shares are listed on the TSXV.

14. The Arrangement did not involve the acquisition of any additional operating assets or the disposition of any existing operating assets and did not result in a change in the ultimate beneficial ownership of the assets and liabilities of CERF LP. The Arrangement was an internal reorganization undertaken without dilution to the Unitholders or additional debt or interest expense.

15. Pursuant to CERF LP's constating documents and applicable securities laws, Unitholders were required to approve the Arrangement at a special meeting (the **CERF LP Meeting**) of Unitholders. The CERF LP Meeting was held on September 29, 2011 at 3:00pm (Calgary time) to consider the Arrangement. The Arrangement was approved by 99.86% of the votes cast by Unitholders at the CERF LP Meeting.

16. The Arrangement was a "restructuring transaction" under National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) in respect of CERF LP and therefore required compliance with section 14.2 of Form 51-102F5 *Information Circular* (the **Circular Form**).

17. The Arrangement was being undertaken to reorganize CERF LP following the enactment by the federal government of rules in respect of the tax treatment of specified investment flow-through partnerships. Pursuant to the Arrangement, CERF LP has been reorganized into a public growth oriented equipment rental and waste management corporation that will retain the name "CERF Incorporated" and owns, directly or indirectly, all of the existing assets and has assumed all of the existing liabilities of CERF LP.

18. The rights of Unitholders in respect of CERF Inc. following the Arrangement are substantively equivalent to the rights that the Unitholders had in respect of CERF LP, and their relative interest in and to the business carried on by CERF Inc. was not affected by the Arrangement.

19. The only securities that were distributed to Unitholders pursuant to the Arrangement were the Shares.

20. The financial statements of the Filer following completion of the Arrangement are substantially and materially the same as the consolidated financial statements of CERF LP filed in accordance with Part 4 of NI 51-102 prior to completion of the Arrangement because the financial position of the entity that exists both before and after the Arrangement is substantially the same.

EXEMPTIVE RELIEF SOUGHT

Prospectus Relief

21. Subsection 2.7(2) of NI 44-101 contains an exemption for successor issuers from the qualification criteria for short form prospectus eligibility contained in subsection 2.2(d) of NI 44-101 if an information circular relating to the restructuring transaction that resulted in the successor issuer was filed by the successor issuer or an issuer that was a party to the restructuring transaction, and such information circular (i) complied with applicable securities legislation and, (ii) included disclosure in accordance with item 14.2 or 14.5 of the Circular Form of the successor issuer.

22. CERF Inc. is a "successor issuer" (as such term is defined in NI 44-101) as a result of the Arrangement (which, as represented above, was a restructuring transaction). An information circular relating to the Arrangement (the **Circular**) was filed by CERF LP on September 2, 2011. The Circular complies with applicable securities legislation and the Circular includes the disclosure required by item 14.2 of the Circular Form.

23. CERF LP was previously qualified to file a prospectus in the form of a short form prospectus pursuant to section 2.2 of NI 44-101 and is deemed to have filed a notice of intention to be qualified to file a short form prospectus under section 2.8(4) of NI 44-101.

24. CERF Inc. anticipates that it may wish to file a preliminary short form prospectus, relating to the offering or potential offering of securities (including common shares, debt securities or subscription receipts) of CERF Inc.

25. Pursuant to the qualification criteria set forth in section 2.2 of NI 44-101 and the exemption provided in subsection 2.7(2) of NI 44-101, CERF Inc. is qualified to file a short form prospectus pursuant to NI 44-101.

26. Notwithstanding section 2.2 of NI 44-101, section 2.8(1) of NI 44-101 provides that an issuer is not qualified to file a short form prospectus unless it has filed a notice declaring its intention to be qualified to file a short form prospectus at least 10 business days prior to the issuer filing its first preliminary short form prospectus.

27. In anticipation of the filing of a preliminary short form prospectus, CERF Inc. intends to file a notice of intention to be qualified to file a short form prospectus (the **Notice of Intention**). In the absence of the Prospectus Relief, CERF Inc. will not be qualified to file a preliminary short form prospectus until 10 business days from the date upon which the Notice of Intention is filed.

28. The short form prospectus of CERF Inc. will incorporate by reference the documents that would be required to be incorporated by reference under item 11 of Form 44-101F1 in a short form prospectus of CERF LP.

PIF Relief

29. Prior to November 26, 2010, the date of the most recently filed preliminary short form prospectus by CERF LP, CERF LP had previously delivered the documents described in subsections 4.1(b)(i)(E) through (G) of NI 44-101 for each individual acting in the capacity of director or executive officer of the General Partner at such time (the **CERF LP PIFS**).

Decision

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

The decision of the Decision Makers under the Legislation is that:

(a) the Prospectus Relief is granted, provided that:

(i) at the time CERF Inc. files its Notice of Intention, CERF Inc. meets the requirements of section 2.2 of NI 44-101, as modified by subsection 2.7(2) of NI 44-101 if subparagraph (a)(ii) applies; and

(ii) if any short form prospectus is filed by CERF Inc. before the earlier of the following two dates, such prospectus incorporates by reference the unaudited comparative interim financial statements of CERF LP for the three and nine months ended September 30, 2011, together with the accompanying management's discussion and analysis of CERF LP:

A. the date of filing by CERF Inc. of its audited annual comparative financial statements and the accompanying management's discussion and analysis and for the year ended December 31, 2011, and its AIF for the year ended December 31, 2011; and

B. the date that is 90 days following December 31, 2011; and

(b) the PIF Relief is granted, provided that:

(i) each individual:

A. for whom the Filer has previously delivered a CERF LP PIF; and

B. who is a director or executive officer of CERF Inc. at the time of a prospectus filing by CERF Inc.:

authorizes the Decision Makers, in respect of a prospectus filing by CERF Inc., to collect, use and disclose the personal information that was previously provided in the CERF LP PIF;

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

(iii) CERF Inc., if requested by a Decision Maker, promptly delivers such further information from each individual referred to in clause (A) above as the Decision Maker may require; and

(iv) the PIF Relief will terminate in any jurisdiction in which the decision is in effect on the effective date of any change to subsection 4.1(b)(i) of NI 44-101.

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

APPENDIX A

AUTHORIZATION OF INDIRECT COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION

The Personal Information Forms in respect of the individuals listed in attached Schedule 1, which were filed by Canadian Equipment Rental Fund Limited Partnership (the **LP**) with provincial securities regulators in Canada on November 26, 2010 (the **LP Filings**), contain personal information concerning each individual acting in the capacity of director or executive officer of the LP (the **Personal Information**), as required by securities legislation in respect of a prospectus filing by the LP.

CERF Incorporated (the **Issuer**) hereby confirms that each individual listed on Schedule 1:

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

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

(c) has been notified by the Issuer:

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

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

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

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

SCHEDULE 1

LIST OF DIRECTORS AND OFFICERS OF CERF INCORPORATED
WHO FILED PERSONAL INFORMATION FORMS ON NOVEMBER 26, 2010

Mr. Wayne Wadley;

Mr. Ken Stephens;

Mr. William C. Guinan;

Mr. John Koop;

Mr. Gary Layden; and

Mr. Marc Mandin.

SCHEDULE 2

LIST OF REGULATORS

Local Jurisdiction	Regulator
Alberta	Securities Review Officer Alberta Securities Commission Suite 400 300 – 5th Avenue S.W Calgary, Alberta T2P 3C4 Telephone: (403) 297-6454 E-mail: inquiries@seccom.ab.ca www.albertasecurities.com
British Columbia	Review Officer British Columbia Securities Commission P.O. Box 10142 Pacific Centre 701 West Georgia Street Vancouver, British Columbia V7Y 1L2 Telephone: (604) 899-6854 Toll Free within British Columbia and Alberta: (800) 373- 6393 E-mail: inquiries@bcsc.bc.ca www.bcsc.bc.ca
Manitoba	Director, Corporate Finance The Manitoba Securities Commission 500 – 400 St. Mary Avenue Winnipeg, Manitoba R3C 4K5 Telephone: (204) 945-2548 E-mail: securities@gov.mb.ca www.msc.gov.mb.ca
New Brunswick	Director Corporate Finance and Chief Financial Officer New Brunswick Securities Commission 85 Charlotte Street, Suite 300 Saint John, New Brunswick E2L 2J2 Telephone: (506) 658-3060 Fax: (506) 658-3059 E-mail: information@nbsc-cvmnb.ca
Newfoundland and Labrador	Director of Securities Department of Government Services and Lands P.O. Box 8700 West Block, 2nd Floor, Confederation Building St. John's, Newfoundland A1B 4J6 Telephone: (709) 729-4189 www.gov.nf.ca/gsl/cca/s
Northwest Territories	Securities Registries Department of Justice Government of the Northwest Territories P.O. Box 1320, Yellowknife, Northwest Territories X1A 2L9 Telephone: (867) 873- 7490 www.justice.gov.nt.ca/SecuritiesRegistry/SecuritiesRegistry.html
Nova Scotia	Deputy Director, Compliance and Enforcement Nova Scotia Securities Commission P.O. Box 458 Halifax, Nova Scotia B3J 2P8 Telephone: (902) 424-5354 www.gov.ns.ca/nssc

Nunavut	Government of Nunavut Legal Registries Division P.O. Box 1000 – Station 570 Iqaluit, Nunavut X0A 0H0 Telephone: (867) 975-6590
Ontario	Administrative Assistant to the Director of Corporate Finance Ontario Securities Commission 19th Floor, 20 Queen Street West Toronto, Ontario M5H 2S8 Telephone: (416) 597-0681 E-mail: Inquiries@osc.gov.on.ca www.osc.gov.on.ca
Prince Edward Island	Deputy Registrar, Securities Division Shaw Building 95 Rochford Street, P.O. Box 2000, 4th Floor Charlottetown, Prince Edward Island C1A 7N8 Telephone: (902) 368-4550 www.gov.pe.ca/securities
Québec	Autorité des marchés financiers Stock Exchange Tower P.O. Box 246, 22nd Floor 800 Victoria Square Montréal, Québec H4Z 1G3 Attention: Responsable de l'accès à l'information Telephone: (514) 395-0337 Toll Free in Québec: (877) 525-0337 www.lautorite.qc.ca
Saskatchewan	Director Saskatchewan Financial Services Commission Suite 601, 1919 Saskatchewan Drive Regina, Saskatchewan S4P 4H2 Telephone: (306) 787-5842 www.sfsc.gov.sk.ca
Yukon	Registrar of Securities Department of Justice Andrew A. Philipsen Law Centre 2130 – 2nd Avenue, 3rd Floor Whitehorse, Yukon Territory Y1A 5H6 Telephone: (867) 667-5005

2.2 Orders

2.2.1 Tim Hortons Inc. – s. 104(2)(c)

Headnote

Clause 104(2)(c) – Issuer bid – relief from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act – Issuer proposes to purchase, at a discounted purchase price, up to 1,200,000 of its common shares from one of its shareholders and/or such shareholder's affiliates – due to discounted purchase price, proposed purchases cannot be made through TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in reliance upon the issuer bid exemption available under section 101.2 of the Securities Act and in accordance with the TSX rules governing normal course issuer bid purchases – no adverse economic impact on or prejudice to issuer or public shareholders - proposed purchases exempt from issuer bid requirements in sections 94 to 94.8 and 97 to 98.7 of the Act, subject to conditions, including that the issuer not purchase more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 94 to 94.8, 97 to 98.7 and 104(2)(c).

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

AND

IN THE MATTER OF
TIM HORTONS INC.

ORDER
(Clause 104(2)(c))

UPON the application (the "**Application**") of Tim Hortons Inc. (the "**Issuer**") to the Ontario Securities Commission (the "Commission") for an order pursuant to clause 104(2)(c) of the *Securities Act* (Ontario) (the "**Act**") exempting the Issuer from the requirements of sections 94 to 94.8, inclusive, and 97 to 98.7, inclusive, of the Act (the "**Issuer Bid Requirements**") in connection with the proposed purchases (the "Proposed Purchases") by the Issuer of up to 1,200,000 common shares of the Issuer (the "**Subject Shares**") in one or more tranches, from The Toronto-Dominion Bank and/or its affiliates (collectively, the "**Selling Shareholder**");

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

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 11, 22 and 23 as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Canada Business Corporations Act.*

2. The registered and principal business office of the Issuer is 874 Sinclair Road, Oakville, Ontario, L6K 2Y1.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada and its common shares are listed for trading on the Toronto Stock Exchange (the "**TSX**") and the New York Stock Exchange (the "**NYSE**") under the symbol "THI". The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The Issuer's authorized share capital consists of an unlimited number of common shares (each, a "**Common Share**") of which approximately 157,554,811 are issued and outstanding as of February 8, 2012.

5. The corporate headquarters of the Selling Shareholder are located in the Province of Ontario.

6. The Selling Shareholder has advised the Issuer that it does not directly or indirectly own more than 5% of the issued and outstanding Common Shares.

7. The Selling Shareholder has advised the Issuer that it is the beneficial owner of at least 1,200,000 Common Shares and that the Subject Shares were not acquired by the Selling Shareholder in anticipation of resale pursuant to private agreements under an issuer bid exemption order by a securities regulatory authority ("**Off-Exchange Block Purchase**").

8. The Selling Shareholder is at arm's length to the Issuer and is not an "insider" of the Issuer or "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the Act. The Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus and Registration Exemptions* ("**NI 45-106**").

9. Pursuant to a Notice of Intention to make a Normal Course Issuer Bid dated February 22, 2012 (the "**Notice**") filed with the TSX, the Issuer announced on February 23, 2012 a normal course issuer bid (its "**Normal Course Issuer Bid**") for up to $200 million in Common Shares, not to exceed a maximum of 10% of the public float as of the date specified in the Notice, in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX NCIB Rules**").

10. In accordance with the Notice, the Normal Course Issuer Bid will be conducted through the facilities of the TSX and purchases may also be made on the NYSE or alternative trading systems, if eligible, or by such other means as may be permitted by the TSX and/or the NYSE, including pre-arranged crosses, exempt offers, private agreements under an issuer bid exemption order issued by a securities regulatory authority and/or block purchases in accordance with section 629(1)7 of the TSX NCIB Rules.

11. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an "**Agreement**"), pursuant to which the Issuer will agree to acquire the Subject Shares from the Selling Shareholder by one or more purchases, each occurring prior to March 31, 2012 (each such purchase, a "**Proposed Purchase**") for a purchase price (each, a "**Purchase Price**") that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price will be at a discount to the prevailing market price on the TSX and below the prevailing bid-ask price for the Issuer's Common Shares at the time of each Proposed Purchase.

12. The Subject Shares acquired under each Proposed Purchase will constitute a "block", as that term is defined in section 628 of the TSX NCIB Rules.

13. The purchase of the Subject Shares by the Issuer pursuant to each Agreement will constitute an "issuer bid" for purposes of the Act, to which the Issuer Bid Requirements would apply.

14. Because the Purchase Price will be at a discount to the prevailing market price on the TSX and below the prevailing bid-ask price for the Issuer's Common Shares, at the time of each Proposed Purchase, each Proposed Purchase cannot be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to section 101.2(1) of the Act.

15. But for the fact that the Purchase Price will be at a discount to the prevailing market price on the TSX and below the prevailing bid-ask price for the Issuer's Common Shares, at the time of each Proposed Purchase, the Issuer could otherwise acquire the Subject Shares as a "block purchase" (a "Block Purchase") in accordance with the block purchase exception in section 629(1)(7) of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements available pursuant to section 101.2(1) of the Act.

16. The sale of any of the Subject Shares to the Issuer will not be a "distribution" (as defined in the Act).

17. For each Proposed Purchase, the Issuer will be able to acquire the Subject Shares from the Selling Shareholder in reliance upon the exemption from the dealer registration requirements of the Act that is available as a result of the combined effect of section 2.16 of NI 45-106 and section 4.1(a) of Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*.

18. Management of the Issuer is of the view that the Issuer will be able to purchase the Subject Shares at a lower price than the price at which it would be able to purchase the Subject Shares under the Normal Course Issuer Bid, through the facilities of the TSX, and management is of the view that this is an appropriate use of funds to increase shareholder value.

19. The purchase of the Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's security holders and it will not materially affect control of the Issuer. To the knowledge of the Issuer, the Proposed Purchases will not prejudice the ability of other securityholders of the Issuer to otherwise sell Common Shares in the open market at the prevailing market price. The Proposed Purchases will be carried out with a minimum of cost to the Issuer.

20. To the best of the Issuer's knowledge, as of February 8, 2012, the "public float" for the Issuer's Common Shares represented approximately 88% of all issued and outstanding Common Shares for purposes of the TSX NCIB Rules.

21. The market for the Common Shares is a "liquid market" within the meaning of section 1.2 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*.

22. Other than the Purchase Price, no additional fee or other consideration will be paid in connection with the Proposed Purchases.

23. At the time that each Agreement is entered into by the Issuer and the Selling Shareholder neither the Issuer nor the Selling Shareholder will be aware of any undisclosed "material change" or any undisclosed "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

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

IT IS ORDERED pursuant to clause 104(2)(c) of the Act that the Issuer be exempt from the Issuer Bid Requirements in connection with the Proposed Purchases, provided that:

(a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

(b) the Issuer will refrain from conducting a Block Purchase in accordance with the TSX NCIB Rules during the calendar week that it completes each Proposed Purchase and may not make any further purchases under its Normal Course Issuer Bid for the remainder of the calendar day on which it completes each Proposed Purchase;

(c) the Purchase Price for each Proposed Purchase is not higher than the last "independent trade" (as that term is used in paragraph 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of each Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Issuer's Normal Course Issuer Bid in accordance with the Notice and TSX NCIB Rules, as applicable;

(e) immediately following each Proposed Purchase of the Subject Shares from the Selling Shareholder, the Issuer will report the purchase of the Subject Shares to the TSX;

(f) the Issuer will issue a press release in connection with the Proposed Purchases;

(g) at the time that the Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer nor the Selling Shareholder will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed; and

(h) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, more than one-third of the maximum number of Common Shares that the Issuer can purchase under its Normal Course Issuer Bid.

DATED at Toronto this 2nd day of March, 2012.

"Margot C. Howard"
Commissioner

"Mary Condon"
Vice-Chair

2.2.2 HEIR Home Equity Investment Rewards Inc. et al. – ss. 127(1), 127.1

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

AND

IN THE MATTER OF
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.

ORDER
(Sections 127(1) and 127.1)

WHEREAS on March 29, 2011, 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 in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 29, 2011 in respect of HEIR Home Equity Investment Rewards Inc., FFI First Fruit Investments Inc., Wealth Building Mortgages Inc., Archibald Robertson, Eric Deschamps (collectively, the "HEIR Respondents") and 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. (collectively, the "Canyon Respondents");

AND WHEREAS the HEIR Respondents and the Canyon Respondents were served with the Notice of Hearing and Statement of Allegations on March 29 and 30, 2011 and April 5, 2011;

AND WHEREAS counsel for the Canyon Respondents wished to attend the hearing but was not available on April 27, 2011;

AND WHEREAS on consent of all the parties, on April 20, 2011, the Commission ordered that the hearing scheduled to commence on April 27, 2011 be rescheduled to commence on May 17, 2011 at 11:00 a.m. or as soon thereafter as the hearing could be held;

AND WHEREAS on May 17, 2011, a first appearance on this matter was held before the Commission, at which Staff attended, counsel from Borden Ladner Gervais LLP attended on behalf of all of the HEIR Respondents, and counsel from Cassels Brock & Blackwell LLP attended on behalf of all of the Canyon Respondents,

and at that first attendance, Staff submitted that the hearing on the merits should be scheduled at a future pre-hearing conference or at a subsequent attendance;

AND WHEREAS on May 17, 2011, the Commission ordered that the hearing be adjourned to June 28, 2011 at 10:00 a.m., or to such other date as may be agreed to by the parties and fixed by the Office of the Secretary, for the purpose of addressing scheduling and any other procedural matters or for such other purposes as may be requested;

AND WHEREAS on June 28, 2011, Staff and counsel for the HEIR Respondents attended, and Staff advised the Commission that counsel for the Canyon Respondents, while not in attendance, had recently indicated that the Canyon Respondents would likely retain new counsel in the near future to represent them before the Commission;

AND WHEREAS on June 28, 2011, the Commission ordered that the hearing be adjourned to July 19, 2011 at 2:30 p.m., for the purpose of addressing scheduling and any other procedural matters or for such other purposes as may be requested;

AND WHEREAS on July 19, 2011, McCarthy Tétrault LLP served notice that it had been engaged to represent the Canyon Respondents as of that date;

AND WHEREAS at the attendance before the Commission on July 19, 2011, counsel from McCarthy Tétrault LLP attended on behalf of the Canyon Respondents and confirmed the firm's engagement;

AND WHEREAS at the attendance before the Commission on July 19, 2011, counsel made submissions regarding the scheduling of a further status conference or a pre-hearing conference in light of McCarthy Tétrault LLP having been retained that day and the on-going investigation by the Commission;

AND WHEREAS on July 19, 2011, the Commission ordered that the hearing be adjourned to August 22, 2011 at 10:00 a.m. for the purpose of discussing scheduling and any other procedural matters or for such other purposes as may be appropriate;

AND WHEREAS on August 22, 2011, Staff and counsel for each of the HEIR Respondents and the Canyon Respondents appeared and made submissions regarding the scheduling of a pre-hearing conference, and the Commission ordered that a pre-hearing conference be held on Tuesday, October 11, 2011 at 3:30 p.m.;

AND WHEREAS on October 11, 2011, Staff and counsel for each of the HEIR Respondents and the Canyon Respondents appeared before the Commission for a confidential pre-hearing conference and the Commission ordered that a further pre-hearing conference be held on Tuesday, December 20, 2011 at 2:30 p.m.;

AND WHEREAS on December 2, 2011, Norton Rose LLP served notice that it had been retained on behalf of Eric Deschamps ("Deschamps"), and as of that date, Deschamps is no longer included in the defined term "HEIR Respondents" used herein;

AND WHEREAS on December 20, 2011 Staff and counsel for each of the HEIR Respondents, the Canyon Respondents and Deschamps appeared before the Commission for a confidential pre-hearing conference, and the Commission ordered that a further pre-hearing conference be held on February 1, 2012 at 9:00 a.m. for the purpose of confirming September 10, 2012 as the target date for the commencement of the hearing on the merits and the schedule for such hearing;

AND WHEREAS on February 1, 2012 Staff and counsel for each of the HEIR Respondents, the Canyon Respondents and Deschamps appeared before the Commission for a confidential pre-hearing conference, and made submissions regarding the scheduling of the hearing on the merits and further pre-hearing conferences, and the Commission ordered that:

(a) a further pre-hearing conference shall be held on Wednesday, March 14, 2012 at 9:30 a.m. for the purpose of confirming November 5, 2012 as the date for the commencement of the hearing on the merits, and the schedule for such hearing, currently expected to last approximately four weeks; and

(b) a further pre-hearing conference shall be held on Friday, September 14, 2012 at 10:00 a.m. to address any pre-hearing issues;

AND WHEREAS on February 14, 2012 Staff filed an Amended Statement of Allegations in respect of the HEIR Respondents and the Canyon Respondents;

AND WHEREAS the Commission ordered on March 1, 2012 that McCarthy Tétrault LLP is granted leave to withdraw as representative for the Canyon Respondents;

AND WHEREAS on March 14, 2012 Staff and counsel for the HEIR Respondents and Deschamps appeared before the Commission for a confidential pre-hearing conference, and Brett Borland on behalf of himself and the Canyon Respondents participated in the pre-hearing conference by telephone;

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

IT IS ORDERED that:

(a) the hearing on the merits in this matter shall commence on November 5, 2012, and continue for four weeks thereafter, or on such further or other dates as agreed

to by the parties and set by the Office of the Secretary; and

(b) a further pre-hearing conference is scheduled for April 20, 2012 at 10:00 a.m.

DATED at Toronto this 14th day of March, 2012.

"Christopher Portner"

2.2.3 Majestic Supply Co. Inc. et al. – ss. 127 of the Act and Rule 3 of the OSC Rules of Procedure

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

AND

IN THE MATTER OF
MAJESTIC SUPPLY CO. INC.,
SUNCASTLE DEVELOPMENTS CORPORATION,
HERBERT ADAMS, STEVE BISHOP,
MARY KRICFALUSI, KEVIN LOMAN AND
CBK ENTERPRISES INC.

ORDER
(Section 127 and Rule 3 of the
Ontario Securities Commission
Rules of Procedure (2010), 33 O.S.C.B. 8017)

WHEREAS on October 20, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 37, 127 and 127.1 of the *Securities Act*, R.S.O. c. S.5, as amended in connection with a Statement of Allegations dated October 20, 2010 filed by Staff of the Commission ("Staff") with respect to Majestic Supply Co. Inc. ("Majestic"), Suncastle Developments Corporation ("Suncastle"), Herbert Adams ("Adams"), Steve Bishop ("Bishop"), Mary Kricfalusi ("Kricfalusi"), Kevin Loman ("Loman") and CBK Enterprises Inc. ("CBK") (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing set a hearing in this matter for November 23, 2010;

AND WHEREAS on November 23, 2010, counsel for Adams and Suncastle, counsel for Kricfalusi and CBK, counsel for Loman, Rob Biegerl as former president of Majestic and Bishop on his own behalf and as the current president of Majestic, all attended the hearing;

AND WHEREAS on November 23, 2010, the Commission ordered: (i) the hearing adjourned to January 25, 2011; and (ii) limits on the use of Staff's electronic disclosure;

AND WHEREAS on January 25, 2011, on consent of Staff, counsel for Adams and Suncastle, counsel for Kricfalusi and CBK, counsel for Loman and Steve Bishop on behalf of Majestic and himself, the Commission adjourned the hearing to a pre-hearing conference on March 1, 2011 to permit the parties to discuss any preliminary issues;

AND WHEREAS on March 1, 2011, the Commission ordered that: (i) the hearing on the merits (the "Merits Hearing") will start on November 7, 2011 and continue on November 9 to 11, 14 to 18, 21, 23 to 25, 28 to 30, 2011 and December 1 and 2, 2011; and (ii) another pre-hearing conference will be held on April 26, 2011 at 2:30 p.m.;

AND WHEREAS on November 7, 2011, at the commencement of the Merits Hearing with Staff, Adams, Bishop, Kricfalusi, counsel for Loman and others in attendance, the Commission ordered that: (i) counsel of record for Adams and Suncastle was granted leave to withdraw; (ii) counsel of record for Kricfalusi and CBK was granted leave to withdraw; and (iii) new counsel for Adams was permitted for the limited purpose of cross-examining certain witnesses;

AND WHEREAS the Merits Hearing commenced on November 7, 2011 and continued on November 9 to 11, 14 to 17, 28 and 29, 2011;

AND WHEREAS Staff and the Respondents completed the evidence phase of the Merits Hearing on November 29, 2011 and closing oral submissions were scheduled for January 24, 2012;

AND WHEREAS with respect to the Merits Hearing, Staff filed its written submissions on December 22, 2011, counsel for Loman filed written submissions on behalf of Loman on January 13, 2012, Adams filed written submissions on January 13, 2012, Kricfalusi responded to Staff by fax on January 13, 2012 ("Kricfalusi's Response"), and Bishop served parties with written submissions on January 16, 2012;

AND WHEREAS on January 19, 2012, Staff filed and served its Notice of Motion and other materials seeking, among other things, orders permitting the filing of a copy of Kricfalusi's Response and fresh evidence, being the affidavit of Kricfalusi with e-mails and attachments, and if necessary, an order permitting the matter be reopened for the purpose of introducing the aforementioned fresh evidence;

AND WHEREAS on January 24, 2012, when Staff, Adams, Bishop, Kricfalusi and counsel for Loman appeared before the Commission, Staff submitted the motion (the "Motion") further to its Notice of Motion and counsel for Loman filed and served written submissions on the Motion;

AND WHEREAS the Commission conducted a hearing of the Motion on January 24, 2012 and continued on February 22, 2012;

AND WHEREAS at the conclusion of the hearing of the Motion on February 22, 2012, the Commission reserved its decision on the Motion and adjourned the Merits Hearing pending the issuance of a decision on the Motion;

AND WHEREAS the Commission has given careful consideration to the written and oral submissions of the parties on the Motion;

AND WHEREAS the Panel has taken into consideration its discretion under the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017, and the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 to admit evidence and determine its own procedures and practices;

AND WHEREAS the Commission has taken into consideration the need to balance procedural fairness, including the requirement to provide notice to a respondent of the case to respond to and the right to be heard, with the risk of substantial injustice in this matter;

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

IT IS ORDERED that the Motion is dismissed, with reasons for this order to be provided with the reasons and decision on the merits in this matter; and

IT IS FURTHER ORDERED that the parties contact the Office of the Secretary within 10 days to schedule a date for oral closing submissions in respect of the Merits Hearing.

DATED at Toronto, this 20th day of March, 2012.

"Edward P. Kerwin"

"Paulette L. Kennedy"

2.2.4 Eda Marie Agueci 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
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

ORDER
(Section 127)

WHEREAS the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Staff of the Commission ("Staff") filed a Statement of Allegations in this matter on February 7, 2012 against Eda Marie Agueci, Dennis Wing, Santo Iacono, Josephine Raponi, Kimberley Stephany, Henry Fiorillo, Giuseppe (Joseph) Fiorini, John Serpa, Ian Telfer, Jacob Gorntizki and Pollen Services Limited (collectively, the "Respondents");

AND WHEREAS on March 21, 2012, the Commission heard submissions from counsel for Staff and 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 ORDERED that this matter is adjourned to a confidential pre-hearing conference which shall take place on April 9, 2012 at 10:00 a.m..

DATED at Toronto this 21st day of March, 2012.

"James E.A. Turner"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Shane Suman and Monie Rahman

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

AND

IN THE MATTER OF
SHANE SUMAN
AND MONIE RAHMAN

REASONS AND DECISION

Hearing:	July 27, 30 and 31, 2009		
	August 4, 5, 6, 7, 10, 12, 13 and 21, 2009		
	March 29, 30 and 31, 2010		
	April 1, 6 and 7, 2010		
	July 8 and 9, 2010		
Decision:	March 19, 2012		
Panel:	James E. A. Turner	–	Vice-Chair and Chair of the Panel
	Paulette L. Kennedy	–	Commissioner
Appearances:	Cullen Price Carlo Rossi		
	Matthew Britton	–	For the Ontario Securities Commission
	Shane Suman	–	Representing himself
	Randy Bennett Sara Erskine Mario Thomaidis	–	For Monie Rahman

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REASONS AND DECISION

I. INTRODUCTION

[1] This matter arises out of a Notice of Hearing issued by the Ontario Securities Commission (the "**Commission**") on July 24, 2007 in connection with a Statement of Allegations issued by Staff of the Commission ("**Staff**") on the same day. An Amended Statement of Allegations was issued on October 7, 2008 and a Further Amended Statement of Allegations was issued on January 20, 2009.

[2] Staff alleges that Shane Suman ("**Suman**"), who was at the time an employee of MDS Sciex ("**MDS Sciex**"), a division of MDS Inc. ("**MDS**"), communicated an undisclosed material fact to his wife, Monie Rahman ("**Rahman**"). The material fact was that MDS was proposing to acquire Molecular Devices Corporation ("**Molecular**" or "**MDCC**"), a public company listed on NASDAQ in the United States (the "Proposed Acquisition" or the "Acquisition"). Staff alleges that between January 24, 2007 and January 26, 2007 (the "**Relevant Time**"), Suman and Rahman (together, the "**Respondents**") purchased securities of Molecular with knowledge of the Proposed Acquisition. The Proposed Acquisition was publicly announced on January 29, 2007 (the "**Announcement**").

[3] There is no dispute that the Respondents purchased 12,000 Molecular shares and 900 option contracts entitling the holder to purchase an aggregate of 90,000 Molecular shares (the Molecular shares and options purchased by the Respondents are referred to as the "**Molecular Securities**") between January 24, 2007 and January 26, 2007, and sold them all by March 16, 2007 for a profit of $954,938.07 (USD). Nor is there any dispute that Suman was a "person in a special relationship" with MDS, a reporting issuer, or that the Proposed Acquisition was a material fact with respect to both MDS and Molecular that had not been generally disclosed at the Relevant Time. The key issues in dispute are whether Suman learned of the Proposed Acquisition through his IT role at MDS Sciex, whether he informed Rahman of it, and whether Suman and Rahman purchased the Molecular Securities with knowledge of the Proposed Acquisition.

[4] Staff alleges that Suman contravened subsection 76(2) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "**Act**") by informing Rahman of the Proposed Acquisition. Staff acknowledges that subsection 76(1) of the Act does not apply to the Respondents' purchases of the Molecular Securities because Molecular was not a "reporting issuer" as defined in the Act. However, Staff alleges that the Respondents engaged in what would have been illegal insider trading within the meaning of subsection 76(1) of the Act if Molecular had been a reporting issuer. Accordingly, Staff alleges that trading was contrary to the public interest.

II. SUBMISSIONS OF THE PARTIES

A. Staff's Submissions

[5] Staff submits that Suman, who was at the time employed in the information technology ("**IT**") group at MDS Sciex, learned of the Proposed Acquisition, which was code-named "Project Monument", on or about January 23, 2007 through his IT role at MDS Sciex, and that he informed Rahman of it.

[6] Staff acknowledges that there is no direct evidence showing that Suman knew about the Proposed Acquisition at the Relevant Time or that Suman informed Rahman of it prior to the Respondents' purchases of the Molecular Securities. Accordingly, in these respects, Staff's case depends on circumstantial evidence.

[7] Staff submits that Suman had the ability and opportunity to learn of the Proposed Acquisition through his IT role at MDS Sciex. Staff also submits that the Respondents' "well-timed, highly uncharacteristic, risky, substantial and highly successful" purchases of the Molecular Securities marked a fundamental shift in their pattern of trading and give rise to the clear and overwhelming inferences that Suman learned of the Proposed Acquisition through his IT role at MDS Sciex, informed Rahman of it and that the Respondents purchased the Molecular Securities with knowledge of the Proposed Acquisition. Staff submits that the Respondents' explanation for the purchases of the Molecular Securities, that those purchases were based on financial research conducted by the Respondents, is not credible and is not the most probable conclusion based on the combined weight of the evidence.

B. The Respondents' Submissions

[8] The Respondents deny that they knew of the Proposed Acquisition when they purchased the Molecular Securities. They testified that they purchased the Molecular Securities based on financial research they had conducted. The Respondents note that Staff did not call a single witness who could directly confirm that Suman learned of the Proposed Acquisition from someone at MDS or through his role in the IT group at MDS Sciex; nor was Staff able to identify a single document showing that Suman had actual knowledge of the Proposed Acquisition at the Relevant Time. The Respondents submit that rather than drawing inferences that flow reasonably and logically from the established facts, Staff's case is based on pure conjecture and speculation that Suman "could have" or "must have" found out about the Proposed Acquisition. They submit that Staff failed to consider or investigate alternative explanations for the Respondents' purchases, and failed to make timely efforts to obtain backup data and

information that could prove or disprove Staff's speculation that Suman learned of the Proposed Acquisition through his IT role at MDS Sciex.

III. RELEVANT LAW

A. Insider Trading and Tipping

1. Insider Trading

[9] Subsection 76(1) of the Act provides as follows:

> No person or company in a special relationship with a reporting issuer shall purchase or sell securities of the reporting issuer with the knowledge of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.

[10] A "material fact" is defined in subsection 1(1) of the Act as follows:

> "material fact", where used in relation to securities issued or proposed to be issued, means a fact that significantly affects, or would reasonably be expected to have a significant effect on, the market price or value of such securities …

[11] There is no doubt that the Proposed Acquisition constituted a material fact with respect to Molecular. It was a proposal by MDS to acquire all of the Molecular shares at a significant premium to the market price of those shares. The market price of the Molecular shares was approximately $23 per share on January 23, 2007. The offer made by MDS for those shares was at $35.50 per share. Accordingly, MDS's intention to make the Proposed Acquisition was a fact that would reasonably be expected to have a significant effect on the market price or value of Molecular shares and options. It was, however, also a material fact with respect to MDS. MDS treated the Proposed Acquisition as a material change (as defined in the Act) and issued a news release and filed a material change report when it publicly announced the Proposed Acquisition. Counsel for Rahman acknowledged at the hearing that knowledge of an acquisition such as the Proposed Acquisition generally constitutes a material fact.

[12] There is no dispute that Molecular was a public company in the U.S. that was listed on NASDAQ. It was not, however, a "reporting issuer" as defined in subsection 1(1) of the Act.

[13] Accordingly, Staff does not allege that the Respondents breached subsection 76(1) of the Act because that section applies only to purchases and sales of securities of a "reporting issuer". Staff submits, however, that the purchases by the Respondents of the Molecular Securities would have constituted illegal insider trading prohibited under subsection 76(1) of the Act but for the fact that Molecular was not a reporting issuer.

[14] That submission rests on the allegation that Suman and Rahman were in a "special relationship" with Molecular. There is no question that if Molecular had been a reporting issuer under the Act, Suman would have been in a special relationship with Molecular within the meaning of subsection 76(5)(c) of the Act. Suman was an employee of a reporting issuer (he was an employee of MDS Sciex, a division of MDS) that was proposing to make a take-over bid for, or to become a party to a merger or other business combination with, Molecular (within the meaning of subsections 76(5)(a)(ii) or (iii) of the Act). Accordingly, Suman would have been in a special relationship with Molecular. Rahman would have been in a special relationship with Molecular within the meaning of subsection 76(5)(e) of the Act if she learned of the Proposed Acquisition from Suman (i.e., she was a "tippee"). In our view, Rahman knew or ought reasonably to have known that Suman was in a special relationship with Molecular if she learned of the Proposed Acquisition from him. Accordingly, Rahman would have been in a special relationship with Molecular within the meaning of subsection 76(5)(e) of the Act.

[15] Accordingly, Staff submits that while the Respondents' purchases of the Molecular Securities did not strictly breach subsection 76(1) of the Act, those purchases constituted conduct that was contrary to the public interest. Staff relies in this respect on *Re Danuke* (1981) OSCB 31c ("***Re Danuke***") at pp. 39c-40c and *Re Seto*, [2003] A.S.C.D. No. 270 ("***Re Seto***") at paras. 42 and 43. Staff submits that, in both those cases, the respondents had a technical defence to an allegation of insider trading but were found by their conduct to have acted contrary to the public interest.

2. Insider Tipping

[16] Staff also alleges that Suman breached subsection 76(2) of the Act by informing ("tipping") Rahman of a material fact with respect to MDS that had not been generally disclosed, namely MDS's intention to make the Proposed Acquisition.

[17] Subsection 76(2) of the Act provides as follows:

> No reporting issuer and no person or company in a special relationship with a reporting issuer shall inform, other than in the necessary cause of business, another person or company of a material fact or material change with respect to the reporting issuer that has not been generally disclosed.

[18] There is no dispute that MDS was a reporting issuer at the Relevant Time and that Suman, as an employee of MDS Sciex, a division of MDS, was a person in a special relationship with MDS within the meaning of subsection 76(5)(c) of the Act. Nor is there any dispute that MDS's intention to make the Proposed Acquisition was a material fact with respect to MDS that had not been generally disclosed (we will refer to such a fact as an "undisclosed material fact".).

[19] The principal factual issues in dispute in respect of this allegation are (i) whether Suman obtained knowledge of the Proposed Acquisition through his IT role at MDS Sciex, and (ii) whether Suman communicated that undisclosed material fact to Rahman.

3. Seriousness of Insider Tipping and Trading

[20] The purposes of the Act are set out in section 1.1. That section states that those purposes are:

(a) to provide protection to investors from unfair, improper or fraudulent practices; and

(b) to foster fair and efficient capital markets and confidence in capital markets.

[21] In *Re Rankin*, the Commission made the following comments about insider trading and tipping:

> In dismissing an appeal from an insider trading conviction in *R. v. Plastic Engine Technology Corp.,* [1994] 3 C.C.L.S. 1, Mr. Justice Farley held that insider trading undermines the capital markets even where the insider did not personally profit from the trades at issue, but sold shares for the benefit of a friend. The court recognized that section 76 is aimed at ensuring that investors have an equal opportunity to consider material information in reaching their investment decisions (at 24). Both the insider trading prohibition and the tipping prohibition protect equal opportunity by restricting people who have access to material information before it is generally disclosed from trading or assisting others in trading with knowledge of that information, to the disadvantage of investors generally.
>
> Subsection 76(2) of the Act in effect imposes an obligation on those persons with access to confidential material information to preserve the confidentiality of that information and not to illegally communicate it to third parties. Doing so not only constitutes a clear breach of the Act but also puts a tippee in a position to both illegally trade on the basis of that information and to illegally communicate it to others. Tipping is the likely cause of many run-ups in the price of a stock in advance of the public announcement of a merger or acquisition transaction. Such conduct and the resulting market impact significantly undermine confidence in our capital markets and are manifestly unfair to investors.
>
> (*Re Rankin* (2008), 31 OSCB 3303 ("***Re Rankin***"), at paras. 28-29)

[22] The Commission generally views insider tipping and insider trading as equally reprehensible. In *Pollitt (Re)*, the Commission made the following statement in approving a settlement agreement:

> Tipping is just as serious as illegal insider trading. It is conduct that undermines confidence in the marketplace. As a result, it is in the public interest to deal swiftly and firmly with violations that constitute tipping.
>
> (*Pollitt (Re)*, (2004), 27 OSCB 9643, at para. 33)

[23] Accordingly, insider tipping and insider trading are not only illegal under the Act but also significantly undermine confidence in our capital markets and are manifestly unfair to investors. Insider tipping of an undisclosed material fact is a fundamental misuse of non-public information that gives the tippee an informational advantage over other investors and may result in the tippee trading in securities of the relevant reporting issuer with knowledge of the undisclosed material fact, or tipping others. Further, trading in securities by a person with knowledge of an undisclosed material fact engages the purposes of the Act set out in section 1.1 of the Act and is conduct contrary to the public interest, even if the trading may not technically breach subsection 76(1) of the Act. Those participating in our capital markets are well aware of the seriousness with which Canadian securities regulators view illegal tipping and illegal insider trading.

B. Standard of Proof

[24] The standard of proof in an administrative proceeding before the Commission is the civil standard of the balance of probabilities.

[25] In *F. H. v. McDougall*, the Supreme Court of Canada held that there is only one standard of proof in civil proceedings, which is the balance of probabilities, and that the requirement for evidence that is "clear, convincing and cogent" does not elevate the civil standard of proof beyond the balance of probabilities. The Court stated that:

> ... I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.
>
> (*F. H. v. McDougall*, [2008] S.C.J. No. 54 ("***McDougall***"), at para. 40)

[26] The Court in *McDougall* went on to comment that:

> To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.
>
> (*McDougall, supra,* at para. 45)

[27] The Supreme Court of Canada reaffirmed in *McDougall* that "the evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test" (*supra*, at para. 46).

[28] The Commission has considered and adopted the analysis in *McDougall* in a number of decisions (including *Re Sunwide Finance Inc.* (2009), 32 OSCB 4671, at paras. 26 to 28 ("***Re Sunwide***"); and *Re White* (2010), 33 OSCB 1569, at paras. 22 to 25).

[29] The Respondents draw our attention to the following statement in *McDougall*:

> By contrast, in civil cases, there is no presumption of innocence. As explained by J. Sopinka, S. N. Lederman and A. W. Bryant, *The Law of Evidence in Canada* (2nd ed. 1999), at p. 154:
>
> > Since society is indifferent to whether the plaintiff or the defendant wins a particular civil suit, it is unnecessary to protect against an erroneous result by requiring a standard of proof higher than a balance of probabilities.
>
> It is true that there may be serious consequences to a finding of liability in a civil case that continue past the end of the case. However, the civil case does not involve the government's power to penalize or take away the liberty of the individual.
>
> (*McDougall, supra,* at para. 42)

[30] We recognise that society is not indifferent to the outcome of a Commission administrative proceeding and that there may be serious consequences to a finding of non-compliance with the Act or of conduct contrary to the public interest. However, it is well settled that our authority to impose sanctions under subsection 127(1) of the Act is not a criminal power. Our powers under that subsection are regulatory in nature, prospective in operation and preventative in effect (*Re Mithras Management Ltd. et al* (1990), 13 OSCB 1600).

[31] The civil standard of proof requires us to decide whether the alleged events are more likely than not to have occurred (*McDougall, supra,* at para. 44, *Re Sunwide, supra,* at para. 28 and *Re Al-Tar Energy Corp.* (2010), 33 OSCB 5535 at paras. 32 to 34). That determination must be based on clear, convincing and cogent evidence.

C. The Importance of Circumstantial Evidence In This Matter

[32] This case turns on circumstantial evidence. There is no direct evidence that Suman learned of the Proposed Acquisition from someone at MDS Sciex or through his IT role there. Similarly, there is no direct evidence that he communicated that fact to

Rahman. Accordingly, there is no direct evidence that Suman and Rahman purchased the Molecular Securities with knowledge of the Proposed Acquisition. The Respondents expressly deny having done so.

[33] The question we must answer is whether there is clear, convincing and cogent evidence that, more likely than not, Suman learned of the Proposed Acquisition through his IT role at MDS Sciex, informed Rahman of it and that the Respondents purchased the Molecular Securities with knowledge of the Proposed Acquisition.

[34] The parties agree that any inferences we make based on the evidence must arise reasonably and logically from the facts established by the evidence. They disagree, however, whether that test has been met with respect to the inferences Staff invites us to make.

[35] Staff submits that Suman's ability and opportunity to acquire knowledge of the Proposed Acquisition, together with the sequence of events culminating in the Respondents' well-timed, highly uncharacteristic, risky, substantial and highly successful purchases of the Molecular Securities, give rise to compelling inferences that Suman learned of the Proposed Acquisition through his IT role at MDS Sciex, informed Rahman of it and that the Respondents purchased the Molecular Securities with knowledge of the Proposed Acquisition.

[36] The Respondents submit that there is a complete absence of evidence from which the inferences referred to in paragraph 35 of these reasons can reasonably and logically be made. The Respondents submit that Staff's evidence in this respect is mere conjecture and speculation and that Staff has wholly failed to discharge its burden of proof.

[37] Later in these reasons, we address the law with respect to our reliance on circumstantial evidence and the making of inferences from the facts established by the evidence (see the discussion commencing at paragraph 279 of these reasons).

IV. OVERVIEW OF THE EVIDENCE

A. Purchases and Sales of the Molecular Securities

[38] Staff and the Respondents agreed to a Statement of Agreed Facts (attached as Schedule A to these reasons). The principal agreed facts are as follows:

(a) The value of the Respondents' assets on January 23, 2007 was $370,227.86 (USD).

(b) On January 24, 2007, from 9:34 a.m. to 2:42 p.m., Rahman purchased 12,000 Molecular shares for the Respondents' account in six transactions of 2,000 shares each at prices from $23.88 to $24.03. The total purchase price of those shares was approximately $287,700 (USD).

(c) On January 24, 25 and 26, 2007, the Respondents purchased 900 option contracts to purchase an aggregate of 90,000 Molecular shares, all exercisable at $25.00, with expiry dates of February 17, 2007, March 17, 2007 or April 21, 2007. The purchases were made in 26 transactions carried out from 9:40 a.m. on January 24, 2007 to 12:53 p.m. on January 26, 2007. Suman made 22 of the purchases from an internet address at MDS and two from his home computer, and Rahman made one of the purchases. The total purchase price of the options was approximately $103,600 (USD).

(d) The Respondents began selling the Molecular options at 11:14 a.m. on January 29, 2007.1 By 2:47 p.m. on January 30, 2007,[1] they had sold 350 options in ten transactions. The remaining 12,000 Molecular shares and 550 options were sold between February 1, 2007 and March 16, 2007 (or, in the case of certain options, exercised with the shares issued then being sold).

[39] The purchases of the Molecular Securities were made in Rahman's trading account over which Suman also had trading authority. Each of Suman and Rahman authorized the purchase and sale of some of the Molecular Securities in that account (see Schedule A).

[40] There is no dispute that the Respondents' purchased the Molecular Securities for approximately $391,300 (USD) in total and that the Respondents made a profit of $954,938.07 (USD) from selling the Molecular Securities.

B. Staff's Evidence

[41] Staff presented evidence on the following matters:

(a) Suman's IT skills and his responsibilities in the IT group at MDS Sciex;

[1] The Proposed Acquisition was publicly announced prior to 10:00 a.m. on January 29, 2007.

(b) a conversation in December 2006 or early January 2007 about the capacity of MDS Sciex's e-mail server to handle double the number of e-mail users; that conversation was between Suman and two MDS Sciex managers – Lucas Racine ("**Racine**"), Suman's immediate supervisor, who was Manager of Business Information Systems at MDS Sciex, and Paul Young ("**Young**"), who was Vice President of Business Information Systems and one of the MDS Sciex employees aware of and working on the Proposed Acquisition (those employees who were aware of the Proposed Acquisition are referred to as the "**Sciex Deal Team**");

(c) Suman's involvement in helping Dawn Penner ("**Penner**") resolve a problem with her BlackBerry on January 18 or 19, 2007; Penner was Director of Human Resources for MDS Sciex at the Relevant Time and was a member of the Sciex Deal Team;

(d) Suman's interaction on January 23, 2007 with Sylvia Halligan ("**Halligan**"), a communications consultant at MDS Sciex, who asked Suman to help her retrieve from her computer a lost document she was preparing for Andrew Boorn ("**Boorn**"), the President of MDS Sciex. That document was referred to as "Andy's Monument Message";

(e) Suman's internet browsing on January 23, 2007, which included searches for the terms "MDCC" and "monument inc.";

(f) Suman's ability to view or obtain Project Monument e-mails passing through the NT Filter (the server that ran SurfControl, the spam filter program at MDS Sciex);

(g) records of Suman's telephone calls with Rahman, which indicate that he had a 104 minute telephone conversation with Rahman, who was then living in Logan, Utah, as he left the office at about 7:00 p.m. on January 23, 2007 (that telephone call is referred to in these reasons as the January 23 Call);

(h) the timing of the purchases of the Molecular Securities, which began as soon as markets opened on January 24, 2007, the percentage of the market in Molecular shares and options represented by the Respondents' purchases on the relevant days, the nature of the purchases and the Respondents' previous trading history;

(i) Suman's internet browsing on January 24, 2007, which included searches related to possible insider trading charges against Martha Stewart and searches relating to the August 2006 take-over of Loudeye Corp. ("**Loudeye**"), a digital music company in which the Respondents had held shares;

(j) a large number of calendar fragments found on one of Suman's Computers relating to meetings and events related to "Project Monument";

(k) Suman's statements to Staff investigators during voluntary interviews on February 1 and 2, 2007; and

(l) Suman's installation and running of Window Washer, a software program to permanently wipe data and information, on three of his Computers on February 3, 2007, the day after Suman's second interview with Staff.

C. Witnesses Called by Staff

[42] Staff called nine witnesses. Five witnesses were employees of MDS Sciex – Boorn, Young, Racine, Halligan and Penner – who testified about MDS Sciex, the events leading up to the Proposed Acquisition, Suman's employment history with MDS Sciex and his responsibilities in the IT group, and the opportunities Suman had to obtain knowledge of the Proposed Acquisition.

[43] Jordan Materna ("**Materna**"), an official with the Chicago Board of Options Exchange (the "**CBOE**"), testified about the CBOE investigation of the Respondents' options purchases. Through Materna, Staff introduced reports prepared by Staff that were based on information provided by the CBOE relating to the Respondents' purchases, as well as a chart titled "Summary of Respondents' Molecular Options Volume" (see Schedule A and paragraph 200 of these reasons for information with respect to the Respondents' purchases of Molecular options).

[44] Two Staff investigators, George Gunn ("**Gunn**"), who was Manager of Surveillance with the Commission, and Colin McCann ("**McCann**"), who was a senior investigator with the Commission, testified about the investigation, including Staff's two voluntary interviews of Suman: an unrecorded and untranscribed telephone interview on February 1, 2007 (the "**First Staff Interview**") and a transcribed interview that took place in one of the investigators' cars in the MDS Sciex parking lot on February 2, 2007 (the "**Second Staff Interview**"). Through Gunn, Staff introduced the transcript of the Second Staff Interview.

[45] Through McCann, Staff introduced the Respondents' trading records obtained from E*Trade Canada, consisting of Rahman's account statements from March 2004 to June 2007 and Suman's account statements from September 1999 to March 2004 (the "**Trading Records**").

[46] Through McCann, Staff also introduced the record of phone calls made to and from Suman's MDS Sciex BlackBerry for the period from September 1, 2006 to February 1, 2007 (the "**BlackBerry Cell Phone Records**"). Staff also introduced, through McCann, a chart titled "Suman and Rahman Prior Options Experience", which was prepared by Staff based on the Trading Records.

[47] McCann also testified about his examination of the computers used by Suman. Those computers included the two drives of Suman's home computer (which we will refer to as "**Computer Home 1A**" and "**Computer Home 1B**"), Suman's workstation computer at MDS Sciex, which also had two drives (which we will refer to as "**Computer 201A**" and "**Computer 201B**"), Suman's laptop at MDS Sciex (which we will refer to as "**Computer 204**"), a computer at Suman's workstation that Suman used to perform account recoveries on behalf of other users (which we will refer to as "Computer 202"), and a computer used by Suman as NT Filter administrator (which we will refer to as "**Computer 206**"). (Those computers are referred to collectively as "**Suman's Computers**" or the "**Computers**"). McCann used NetAnalysis, a forensic software program, to generate the Internet History Reports for the Computers that Staff introduced as evidence (see paragraph 135 of these reasons).

[48] Finally, Staff called Steve Rogers ("**Rogers**"), President of Digital Evidence International, Inc. at the time of the investigation, who was qualified by us as an expert in computer forensics. Rogers testified about his analysis of the contents of Suman's Computers. Rogers prepared three reports which were admitted in evidence and were respectively dated September 3, 2007 ("**Rogers' First Report**"), January 15, 2009 ("**Rogers' Second Report**"), and March 29, 2009 ("**Rogers' Third Report**").

D. Respondents' Motions at the Completion of Staff's Case

[49] On August 13, 2009, immediately after Staff closed its case, Rahman brought two motions: a motion to exclude the NetAnalysis evidence relating to the examination of Suman's Computers and a non-suit motion. Suman joined in both motions. On October 9, 2009, we released our decision denying both motions (See *Reasons and Decision on a Motion to Exclude Evidence and a Non-Suit Motion* (2009), 32 OSCB 8375) (the "**Motions Decision**"). See paragraph 144 of these reasons for more information with respect to the Motions Decision.

E. Witnesses Appearing on Behalf of the Respondents

[50] The hearing on the merits resumed on March 29, 2010. Both Suman and Rahman testified.

[51] Suman testified that he and Rahman purchased the Molecular Securities based on their own investment research. Suman testified that the Respondents had established five criteria that they used to determine whether to invest in an issuer and that Molecular met all of those criteria (see the discussion commencing at paragraph 170 of these reasons). He identified in this respect two news releases about Molecular, dated January 10 and January 17, 2007, respectively, that he said he reviewed on or about January 23, 2007, and a print-out from Yahoo Finance reflecting a ratings upgrade of Molecular by Matrix Research on January 24, 2007. Suman testified that he reviewed the ratings upgrade that day.

[52] Through Rahman, the Respondents introduced a brief of documents relating to Molecular, including charts showing the closing prices of Molecular shares for the three months and one year periods to January 23, 2007 and Rahman's trading records for the two years following the purchase of the Molecular Securities. That brief also included the records of incoming telephone calls to MDS Sciex on its toll free telephone line for the period from November 16 to December 20, 2006 and December 28, 2006 to February 5, 2007 (the "**Toll Free Phone Records**").

[53] The Respondents called as an expert witness, Kevin Lo ("**Lo**"), who was a director in the electronic discovery practice at LECG Canada Ltd. at the time of the investigation. Lo was qualified by us as an expert in computer forensics and testified about his analysis of the contents of Suman's Computers. The Respondents introduced in evidence an affidavit by Lo dated July 25, 2008, his first report dated November 19, 2008 and a second report dated March 5, 2009 ("**Lo's Second Report**").

F. Disagreements Between the Experts

[54] A large portion of the hearing on the merits was a "battle of the experts". Rogers and Lo disagreed about a number of matters related to the data and information found on Suman's Computers. For instance, the experts disagreed about: the reliability of the Internet History Reports, especially the timing of certain searches; whether SurfControl, the spam filter software used by MDS Sciex, would allow Suman, as NT Filter administrator, to view or access other users' e-mails; whether Suman used Window Washer to manually wipe data and information from his Computers or whether Window Washer was set on an automatic function and was used simply to maintain computer efficiency; and whether the presence of a large number of calendar fragments on one of Suman's Computers reflected the normal use of Microsoft Outlook Calendar or was evidence that Suman had obtained surreptitious access to the calendars of other MDS Sciex employees.

[55] We discuss the evidence with respect to these matters in detail below.

V. THE EVIDENCE

A. Events leading up to the Announcement of the Acquisition

1. The Evidence

[56] Boorn testified that before MDS acquired Molecular, MDS's business was focused on the technology of mass spectrometry, but it "had been working for some time on ways to expand that footprint". On November 10, 2006, Molecular's financial advisors, UBS Securities LLC ("**UBS**"), contacted MDS to discuss a possible strategic transaction for an acquisition by MDS of Molecular. MDS entered into discussions with UBS and a non-disclosure agreement was signed on November 22, 2006. Initial bids from interested acquirors were made on December 8, 2006. MDS submitted a "final" bid to Molecular on January 17, 2007, priced at $31.25 per share, and was the successful bidder. After some further negotiations, an offer of $35.50 per share was accepted in principle on January 20, 2007, subject to the approval of both boards of directors and of Molecular's shareholders. The MDS board of directors gave final approval for the transaction on January 26, 2007 and the Molecular board of directors gave final approval the next day, January 27, 2007. The merger agreement was signed on January 28, 2007.

[57] A joint press release was issued by MDS and Molecular announcing the Proposed Acquisition on Monday, January 29, 2007 prior to 10:00 a.m. (the "**Joint News Release**"). The Joint News Release is titled "MDS Offers to Acquire Molecular Devices for US$615 Million in Major Expansion of MDS Sciex Business". The three bullet points immediately under the headline state:

- New MDS business unit offers broader array of customer solutions by combining leadership positions in Mass Spectrometry and Cellular Analysis
- Outstanding potential to exploit combined R&D expertise, a strengthened distribution channel and global manufacturing footprint
- Transaction expected to bring US$190 million in revenue and US$45-$50 million in EBITDA in the first year of ownership

[58] Boorn testified that the Molecular acquisition is the largest MDS has ever done, before or since. As a result of the transaction, MDS created a new unit combining the Molecular and MDS Sciex businesses, making the MDS Sciex unit the largest revenue contributor to MDS, whereas it had, in the past, been the smallest. MDS filed a material change report with respect to the Joint News Release and the Proposed Acquisition on January 29, 2007.

[59] Boorn also testified about the due diligence process related to the Proposed Acquisition. Confidential deal teams were formed, one at MDS and one at MDS Sciex. The Sciex Deal Team was comprised of fifteen members, including Boorn and Penner. Boorn testified that members of the Sciex Deal Team were reminded of the confidentiality agreement they signed when they joined the company and that the Proposed Acquisition was a confidential transaction between public companies. The MDS Global Business Practice Standards that employees of MDS were required to sign and reconfirm each year (the "**Standards**") included a statement that employees would maintain the confidentiality, privacy and security of information entrusted to them in strict accordance with legal and ethical obligations. The Standards contain an explanatory page that gives, as an example of "confidential information", "planned business acquisitions or divestitures". As part of the Standards there is an "**Insider Trading Standard**" that includes the following statement:

> **What are the Limitations on Trading?**
>
> As MDS employees, we may have information about MDS businesses that other investors do not have. This knowledge may create an unfair advantage if we buy or sell MDS shares. Therefore, if you are in possession of "material non-public information", you should not buy or sell MDS shares or otherwise use the information for personal gain. This "material non-public information" should be treated as confidential and should not be shared with anyone else. These insider trading restrictions also may apply to the shares of companies negotiating, competing, doing business or seeking to do business with MDS. These requirements apply to all MDS employees regardless of your position.

[60] The Insider Trading Standards also state that "'Material' information is any news or fact that a reasonable investor could consider important in deciding whether to buy, sell or hold the shares of a company", including "news of an acquisition or divestiture of a significant business division or subsidiary". And further: "'Non-Public' information is information that has not been previously disclosed to the general public and is otherwise not available to the general public."

[61] Boorn testified that a limited number of people at MDS Sciex had knowledge of the Proposed Acquisition, the information with respect to the Proposed Acquisition was maintained on a secure basis, and MDS took steps to preserve confidentiality and to

prevent the dissemination of information related to the Proposed Acquisition. The Proposed Acquisition was given the code name "Project Monument".

[62] The prices at which the bids were submitted by MDS for Molecular were discussed only among MDS, Boorn and the Chief Financial Officer of MDS Sciex, and were not known to everyone on the Sciex Deal Team.

2. Conclusion: Events Leading up to the Announcement of the Acquisition

[63] The Respondents did not dispute Boorn's evidence with respect to the events leading up to the Announcement. We accept that evidence.

B. Suman's Skills and Responsibilities

1. The Evidence

[64] Suman testified that he started working at MDS Sciex on contract in November 2003. He worked in IT support, including e-mail administration, collaborative software and network functionalities. On December 18, 2006, he was hired as a Global Solutions Architect. He acknowledged that on December 28, 2006, he signed the "MDS Personal Pledge" stating that he had received and read the Standards and understood that "MDS expects me to carry out my duties and responsibilities in accordance with such Standards".

[65] Suman's evidence about his employment history at MDS Sciex and his responsibilities in the IT group was corroborated by Racine and Young. Both Racine and Young attested to Suman's IT skills and qualifications, which are evident from his curriculum vitae.

[66] Racine described Suman as "very technically savvy". He testified that "help-desk" problems that others could not solve would escalate to Suman, and that MDS Sciex executives would sometimes go directly to Suman for help, bypassing the help-desk ticket system. Racine described Suman as "an infrastructure generalist" and stated that Suman had the highest level of privileges within the IT group.

[67] Young described Suman as "very well qualified and very effective in applying those qualifications to most of the problems that we gave him". According to Young, relative to his peers who performed a similar function, Suman "seemed to have more knowledge, more technical knowledge than the other players, he was more creative in finding solutions than they were, he tended to work faster than they did, and he was extremely curious and inquisitive about new technologies so he would learn about new technologies very quickly." Young testified that because of his skills and expertise, Suman dealt with the most difficult problems that came to the help-desk and was often asked to help executives, who "generally had a high sense of urgency, and … wanted the problem fixed the first time".

[68] Suman also had specific "administrator" responsibilities in the IT group with respect to the NT Filter, the BlackBerry Enterprise Server and handhelds, and the Connected Backup Application (backup data was outsourced to a third-party service provider). He shared responsibility for the collaboration software and remote access software.

[69] Suman was also the e-mail administrator when he started at MDS Sciex, but well before January 2007, this function had been outsourced to CapGemini, a third-party e-mail service provider. We heard somewhat conflicting evidence about the timing of the outsourcing and whether Suman had continuing responsibilities as e-mail administrator at the Relevant Time.

[70] Young testified in chief that the outsourcing had occurred in August or September of 2006. On cross-examination, Young was shown his statements given to Staff during his voluntary interview on April 20, 2007, that the change had occurred about a year and a half earlier. The latter time period is consistent with Suman's testimony that he was the e-mail administrator until October or November 2005, when a third-party service provider took over e-mail administration, a role that was later taken over by CapGemini.

[71] This is a relevant issue because Rogers testified that at the meeting he attended at MDS Sciex with Staff investigators on February 23, 2007, Young advised him that Suman was the e-mail administrator. This is reflected in Rogers' First Report, dated September 3, 2007, which states: "As a general comment, Suman would not have been required to undertake any type of surreptitious methods of monitoring e-mail content since he is the e-mail administrator. He would simply have to log onto the Exchange server under the normal capacity as the e-mail administrator and review whatever e-mail messages he wanted to review." This assumption carried through to Rogers' Third Report, dated March 29, 2009. When asked, in examination in chief, whether his conclusion would be affected by evidence that Suman's e-mail administrator responsibilities had been transferred to CapGemini about a year and a half prior to the Relevant Time, Rogers replied that it would. However, Rogers added that he had been told Suman was also the NT Filter administrator and the BlackBerry administrator, roles that also relate to the e-mail system (see paragraph 106 of these reasons for information with respect to the NT Filter). At the end of his examination in chief, Rogers stated that he would make no other changes to his First Report and Third Report.

[72] In cross-examination, Rogers reiterated that Young had told him on February 23, 2007 that Suman was the e-mail administrator and "subsequently told me that in March of this year [2009] when I had a discussion with him that Suman was the e-mail administrator". Rogers testified that Staff had not advised him of Young's statement that Suman was not the e-mail administrator.

[73] Lo's Second Report, dated March 5, 2009, stated: "Suman was the spam-filter administrator, not the e-mail administrator. He did not have administrative privileges on the MAIL server which hosted Microsoft Exchange, and therefore did not have the ability to read or manipulate any other employee's mailbox".

[74] In response, Rogers contacted Young. Rogers' Third Report states "CapGemini was the 'backend' administrator while Suman had administrative privileges on the Exchange server. Those privileges were not removed from Suman when CapGemini assumed their responsibilities". However, Rogers' report, dated April 10, 2009, which was prepared for purposes of a U.S. Securities and Exchange Commission ("**SEC**") proceeding, does not mention that the e-mail administrator function had been outsourced and states "[a]s the e-mail administrator for MDS Suman could review any e-mail or calendaring of events of any MDS employee at any time at his sole discretion and without concern for detection by others".

[75] The Respondents submit that Rogers' evidence on this matter shows that he lacked the impartiality required of an expert witness.

[76] We were not satisfied that Rogers' evidence showed he lacked impartiality or was biased. We stated in the Motions Decision that "[w]e are not satisfied that the Respondents have shown that Rogers is biased or that his evidence is inherently unreliable". Having said that, in coming to our conclusions, we have carefully considered the uncertainties and lack of clarity surrounding portions of the evidence of each of Rogers and Lo with respect, in particular, to Suman's internet searches, the operation of the NT Filter, the presence of calendar fragments on one of Suman's Computers, and Suman's use of Window Washer.

2. Conclusion: Suman's Skills and Responsibilities

[77] We conclude that Suman was not the MDS Sciex e-mail administrator at the time of the events that are the subject matter of this proceeding. Suman was, however, the NT Filter administrator and the BlackBerry administrator. Suman's responsibilities included walk-up enquiries and direct requests from executives with respect to computer or BlackBerry problems. Suman did not dispute that he was often approached to solve difficult computer or software problems because of his skills and his creativity in finding solutions. Suman was clearly an IT expert at MDS Sciex.

C. Suman's Conversation with Young about Expanding E-mail Capacity

1. The Evidence

[78] Young testified that in mid-December 2006, he asked Suman whether the Microsoft Exchange system could handle double the number of e-mail users. Suman's response was that the e-mail system could handle the expanded capacity. Young testified that he made no mention of Molecular, MDCC or Project Monument, but made no effort to hide the fact that the question was in the context of an acquisition because "we did that every six months for years, so it was an on-going thing. That's the only reason that I would ever need to know can we add 500 people to our e-mail system. It's hard to ask that question without implying it's an acquisition." He testified that Boorn had previously stated to employees that MDS Sciex was pursuing acquisitions. Young said that he had had similar conversations in the past with Suman and others in the IT group about scaling up e-mail capacity in the event of an acquisition.

[79] Racine was also present during this discussion. He initially testified that the conversation took place about two or three weeks before the Announcement (on January 29, 2007), but later said it happened earlier in December 2006. He testified that Young asked whether the e-mail capacity could be scaled up to accommodate double or triple the number of users. Racine recalled Suman saying yes, the system was built to grow. Racine testified that while he was unaware of the specific reason for the question, "I personally had a pretty good guess that it was related to potential acquisitions, because that was our business strategy at the time, but definitely nothing pertaining to anything, date, time, name of company, nothing like that."

2. Conclusion: Suman's Conversation with Young about Expanding E-mail Capacity

[80] We conclude that in or around mid-December 2006, Young asked Suman, in Racine's presence, whether the MDS Sciex e-mail system could handle double the number of users, and that Suman responded that it could.

[81] There is no evidence that this conversation included any reference to a specific acquisition or target company or any specific reason for expanding e-mail capacity. However, because MDS Sciex employees knew that acquisitions were part of MDS's business strategy, we find it likely that Suman would have concluded from this conversation that MDS was considering the possibility of a very significant acquisition.

D. Suman's Interactions with Penner

1. Synchronizing Penner's BlackBerry

(a) The Evidence

[82] Penner testified that on January 18 or 19, 2007, she approached Suman for help with her BlackBerry, which was not allowing her to accept meeting requests. She testified that Suman could not fix the problem immediately, so she left her BlackBerry with him for several hours while she attended a meeting. She also gave him her BlackBerry password. When Suman returned her BlackBerry, the problem had been resolved. However, within a couple of days Penner noticed that her BlackBerry e-mail was not synchronized with her computer, a problem she had not had before Suman worked on her earlier BlackBerry problem. She returned to Suman for assistance and he synchronized her BlackBerry with her computer in front of her.

[83] Suman testified that to resolve a BlackBerry problem, he would wipe the operating system on the BlackBerry, then re-install it and resynchronize it to the user's computer. He testified that, in these circumstances, the user is not concerned about past e-mails, which are already stored on the user's computer; the concern is that future e-mails be synchronized between the BlackBerry and the user's computer. However, he acknowledged that retained e-mails for some past period would also be synchronized. He testified that the default period for retaining e-mails is three days and the maximum is one or two weeks.

[84] The Respondents objected to Penner's proposed testimony as to whether specific e-mails related to Project Monument were on her BlackBerry when it was in Suman's possession. They submitted that, although Penner mentioned her BlackBerry problems in the Staff questionnaire she completed in March 2007, it was not until the Further Amended Statement of Allegations was issued on January 20, 2009 that Staff first alleged that Suman obtained access to material non-public information while resolving a BlackBerry problem for a member of the Sciex Deal Team. The Respondents then sought to obtain by summons backups and logs for Penner's BlackBerry and for the Microsoft Exchange server. However, backups and logs were no longer available at MDS or at the third-party BlackBerry service provider.

[85] The Respondents submitted that the destruction of evidence gives rise to a rebuttable presumption that the lost or destroyed evidence would not have favoured the party that destroyed it or that the evidence should be excluded. They argued that they would be unable to effectively cross-examine Penner without the backups and logs, and therefore that the presumption is not rebuttable. In the circumstances, the Respondents submitted that the evidence related to what e-mails were on Penner's BlackBerry should be excluded to prevent an abuse of process.

[86] Staff submitted that Penner's completed questionnaire was disclosed to the Respondents on August 28, 2007, and the transcript of Staff's November 24, 2008 interview of Penner was disclosed shortly after that interview took place. Rogers addressed the issue for the first time in his Second Report, dated January 15, 2009, and it was that development that led to the issue of the Further Amended Statement of Allegations on January 20, 2009, and an adjournment of the merits hearing to allow the Respondents to attempt to obtain further disclosure.

[87] Staff submitted that the law of spoliation does not apply because Staff did not have possession of Penner's BlackBerry or the backups and logs, and because there was no evidence that Staff destroyed evidence to affect the hearing. In any event, Staff submitted that spoliation gives rise to a rebuttable presumption of exclusion, and the presumption may be rebutted by the evidence.

(b) Conclusion: Synchronizing Penner's BlackBerry

[88] We made an oral ruling on the motion to exclude Penner's evidence with respect to what e-mails were on her BlackBerry. With respect to the law of spoliation, we stated that this case can be distinguished from circumstances where information sought by a respondent is destroyed while in Staff's possession. In this case, MDS and the third-party BlackBerry service provider had possession of the information and there was no suggestion that information had been intentionally destroyed at Staff's request so that it could not be used by the Respondents.

[89] However, we recognized that the destruction of the backup evidence with respect to what e-mails were on Penner's BlackBerry meant that the Respondents would be unable effectively to challenge Penner's testimony as to what specific e-mails were on her BlackBerry at the time. In the circumstances, we ruled that Penner could not testify about the specific e-mails that were on her BlackBerry. Absent that evidence, we cannot draw any conclusion as to what e-mails may have been on Penner's BlackBerry when Suman had access to it.

2. Restoring Penner's Laptop

(a) The Evidence

[90] In Rogers' Second Report, he concluded that Computer 202, one of Suman's workstation computers, contained evidence that Suman performed an account recovery of Penner's data from her laptop computer onto Computer 202. The notify.log file on Computer 202 indicates that Computer 202 received information on January 22, 2007 relating to "Project Monument", including "organizational charts", "list of key employees" and "list of key person insurance policies." Rogers testified that in his opinion, Computer 202 continued to use Penner's user account to communicate with the data centre on a continual basis after being used to recover data for her in September 2006. There was no evidence of any other user account on Computer 202.

[91] On cross-examination, Rogers acknowledged that while the notify.log file on Computer 202 contained four entries with "Project Monument" in the drive path, the files themselves were not found on the computer. He also acknowledged that this is consistent with how the MDS backup software works. Rogers acknowledged that the Application Event Log for Computer 202, which logs user activity, ends at December 17, 2006, and that he would have expected to see some activity if someone was using the computer after that date. For example, Rogers acknowledged that the Application Event Log for Computer 201A (one of the drives on Suman's workstation computer) confirmed that it was used more frequently than Computer 202.

[92] Suman testified that around September 15, 2006, Penner requested a restoration of a file that she had deleted and he restored the file for her, using Computer 202. Suman testified that it was not possible for Penner's laptop to back-up to any of his Computers; it would back-up to the backup server. He denied gaining access to documents on Penner's laptop, including Project Monument documents, as a result of having performed the account recovery for Penner using Computer 202.

[93] Lo's evidence about the operation of the backup software was consistent with Suman's. Lo testified that the four entries identified by Rogers, as well as over 20,000 other entries found on Computer 202's notify.log file, reflect the normal backup actions of Penner's account. He testified that the backup software backs-up data from a user's account to a backup server maintained by a third party service provider, and maintains logs that record its actions. Because Suman had used Computer 202 to restore Penner's computer, the backup software continued to send notify.log messages to Computer 202 as well as to Penner's computer. However, this would not have allowed Suman to read the backed up file.

[94] Penner could not recall Suman helping her do an account recovery for her laptop computer.

(b) Conclusion: Restoring Penner's Laptop

[95] We found Suman's explanation for the information on Computer 202, referred to in paragraph 92 of these reasons, to be credible. That explanation was confirmed by Lo and not disputed by Rogers. Accordingly, the evidence with respect to Suman helping Penner with her laptop does not assist Staff in proving its allegation that Suman learned of the Proposed Acquisition through his IT role at MDS Sciex.

E. Suman's Interaction with Halligan on January 23, 2007

1. Halligan's Evidence

[96] On Monday, January 22, 2007, Halligan was asked to prepare a letter from Boorn for distribution to MDS employees on the day the Proposed Acquisition was to be publicly announced, as well as a slide presentation to be given to managers and employees on and after the Announcement. Halligan was not a member of the Sciex Deal Team, but her manager had recently told her "to be prepared for a lot of work the following week because we [MDS Sciex] were looking at making an offer to acquire a company".

[97] Halligan testified that she started working on the employee letter at around 7:30 a.m. the next day, Tuesday, January 23, 2007. Her manager had e-mailed her some background materials, and she conducted some more research on-line. Halligan testified that the draft letter referred to "Project Monument" and did not include the name "Molecular Devices". However, the draft letter did include the information that the target company was located in Sunnyvale, California.

[98] Halligan's computer froze at about 9:00 a.m. on January 23, 2007. After trying to retrieve the document herself, she contacted a senior manager about getting IT assistance. She was asked to call Young who, as a member of the Sciex Deal Team, was aware of the Proposed Acquisition. At Young's suggestion, Halligan approached Racine and explained that she had lost a confidential document. Racine walked with her over to Suman's cubicle and asked Suman to help her find the document. Halligan returned to her desk with Suman.

[99] Halligan testified that she explained to Suman that she had lost a confidential document called "Andy's Monument Message" and that if he found it, he could not open it or read it. Halligan stood behind Suman the entire time he worked at her

desk. Suman asked Halligan whether she had backed-up the document, but she had not. Halligan testified that Suman was at her desk for about 20 minutes but he was unable to retrieve the document. He left her office at around 10:00 a.m.

2. Racine's Evidence

[100] Racine, who was not a member of the Sciex Deal Team, testified that he first heard the term "Monument" from Halligan, who came to his office in the morning on January 23, 2007. He testified that "she was relatively upset and said she had lost a document on her computer named 'Monument' and that it was very important and it was for Boorn." Racine recalls walking with Halligan back to her office and picking up Suman on the way. Racine could not remember what Halligan said about her problem in Suman's presence, other than that "[s]he was upset. She was definitely worried about getting this document back and she mentioned several times it was for Andy [Boorn], so she was trying to relay her sense of urgency to us". Racine testified that when he left Halligan's office, Suman was sitting in front of her computer looking for the document.

3. Suman's Evidence

[101] Suman's account of his interaction with Halligan on January 23, 2007 was consistent with the testimony of Halligan and Racine on the main points. He testified that as soon as he got to work that day, probably a little after 10:00 a.m., Racine and Halligan approached him. Halligan needed help to retrieve a document called "Andy's Monument Message". Suman testified that he did not find the document and that Halligan stayed with him while he searched for it on her computer. Asked whether he knew the document was sensitive, Suman testified that all human resources documents are sensitive. He testified that he did not know that "Monument" was related to "Project Monument" and that he was not aware of the term "Project Monument".

[102] Suman was unwilling to acknowledge that there was a sense of urgency and sensitivity about Halligan's request for his assistance. In his testimony in chief, Suman was willing to say only that all human resources documents were sensitive. However, in cross-examination, Suman acknowledged knowing that "Andy" referred to Boorn and that the document was confidential. He also acknowledged that Halligan had told him not to read the document if he found it (although he insisted this was usual for human resources documents), and that she had stood over his shoulder while he searched for it. He testified that she "may have" told him the document was for a meeting she was having with Boorn later that day but that he did not have a clear recollection of that. He acknowledged that Halligan seemed concerned about the document.

4. Conclusion: Suman's Interaction with Halligan on January 23, 2007

[103] There is no dispute that on the morning of January 23, 2007, Suman was asked to help Halligan find a document called "Andy's Monument Message". Suman's testimony was consistent with Halligan's: she stayed with him while he searched for the document on her computer, but he did not find it. There is no evidence that Suman continued to search for the document, or that he found it, after leaving Halligan's office.

[104] Suman was reluctant to acknowledge the urgency of Halligan's request and we found him evasive on this point. We accept the evidence of Halligan, which was corroborated by Racine and accords with common sense, that she would have appeared "stressed" when she approached Suman with an urgent request for help to find a document that she was preparing for the President of MDS Sciex and that was required later that day. If her manner alone was not sufficient to convey the sensitivity of the document she was looking for, her insistence on watching over his shoulder as he worked, and the presence of Racine, who was Suman's manager, for at least part of the time Suman was in Halligan's office, would have made it clear to Suman that Halligan's request for assistance in finding the lost document was not a routine request.

[105] We conclude that Suman would have understood from his interaction with Halligan that the President of MDS Sciex was about to deliver a message relating to something confidential that was referred to as "Monument". This is important evidence because it shows that Suman became aware of the term "monument" on the morning of January 23, 2007. That term relates to the Project Monument code name for the Proposed Acquisition.

F. Suman's Role as NT Filter Administrator

[106] The NT Filter was used by MDS Sciex to filter spam and other questionable e-mails entering its e-mail server. Suman was the NT Filter administrator and had access to the NT Filter. Staff alleges that as NT Filter administrator, Suman could have accessed Project Monument e-mails that were sent from the electronic data room established by Molecular to permit due diligence investigations by members of the Sciex Deal Team. Those e-mails passed through the NT Filter and Staff alleges that they included e-mails that linked "Project Monument" with "Molecular Devices" in the subject line. The evidence relied on by Staff includes certain Project Monument e-mails found on the NT Filter and an entry in the System Event Log showing that someone remotely accessed the NT Filter at 1:40 p.m. on January 23, 2007.

1. The Parties' Submissions

(a) Staff's Submissions

[107] Staff alleges that Suman, as NT Filter administrator, had access to the NT Filter and likely viewed e-mails passing through the filter that showed the name "Molecular Devices" and the project code name, "Project Monument". That would mean that Suman knew that "Project Monument" or "Monument" involved or related to Molecular.

[108] Staff submits that:

(a) Suman, as NT Filter administrator, could have set a rule to send any e-mails passing through the NT Filter that referred to "Molecular Devices" or "Project Monument" to another e-mail address (including, for example, his own e-mail address);

(b) Suman had the ability to create, modify or delete rules in order to isolate or delay specific e-mails passing through the NT Filter;

(c) the full content of any isolated or delayed e-mails, including attachments, could be viewed either through the preview pane in SurfControl or by navigating through Windows Explorer; the messages and any attachments could also be saved and/or forwarded;

(d) Suman, as NT Filter administrator, could have also deleted any rules he established and there would have been no record of the rule or what it did. Further, editing or changing an existing rule would not have been logged; and

(e) Suman, as NT Filter administrator, could also have viewed messages in any queues of delayed e-mail messages in the NT Filter.

[109] Staff alleges that Suman very likely accessed the NT Filter by remote access and viewed e-mails passing through the NT Filter on January 23, 2007 at 1:40 p.m. Staff alleges that five of those e-mails passing through the NT Filter had the subject line "Monument/Sunnyvale". Staff submits that the reference to "Sunnyvale" may have assisted Suman in determining that the Proposed Acquisition was an acquisition of Molecular. Staff notes that this remote accessing of the NT Filter occurred only a few hours after Suman attempted to assist Halligan to find "Andy's Monument Message" (see the discussion commencing at paragraph 96 of these reasons).

[110] Suman acknowledges that the System Event Log for the NT Filter shows that there was a log-on to the NT Filter by remote desktop protocol on January 23, 2007 at 1:40 p.m. Suman also acknowledges that he might have been the person who logged on at that time.

(b) The Respondents' Submissions

[111] Suman denied viewing or accessing any Project Monument e-mail passing through the NT Filter. He submits that Staff's allegation is based on pure speculation and that there is no evidence that he used his NT Filter administrator privileges to view or access Project Monument e-mails.

[112] Suman testified that he was not the e-mail administrator at MDS Sciex at the Relevant Time and that he did not have access through the NT Filter to view individual employees' e-mails and calendar events.

[113] Suman testified that the NT Filter screens external e-mails coming into MDS Sciex for spam. Suman testified that there is no evidence that he created, modified or deleted rules with respect to the treatment of e-mails passing through the NT Filter, only evidence related to whether the NT Filter administrator could have done so.

[114] Suman testified that the e-mails from the electronic data room which had "Molecular Devices" as the display name would not have been shown on the SurfControl screen for the NT Filter. He said that, in order to read an e-mail passing through the NT Filter, the e-mail had to be first isolated or delayed.

[115] Suman submits that there is no evidence that any e-mails passing through the NT Filter that contained reference to Project Monument were isolated or delayed. Suman says that, in fact, Rogers qualified his earlier evidence on this issue and confirmed that the evidence demonstrates that e-mails passed through the filter automatically. Suman testified that internal e-mails did not go through the NT Filter and that he would have referred any question about internal e-mails to CapGemini, the third party e-mail administrator. Further, he says that Staff did not establish that a particular e-mail queue included any e-mail referring to Project Monument.

[116] Suman testified that there were fragments of two e-mails relating to Project Monument on the Page File of the NT Filter. Both were dated at a time after the Respondents began purchasing the Molecular Securities. More important, however, he stated that this file cannot be viewed while the NT Filter is in operation and there is no evidence that it was powered down for this purpose. Therefore, Suman submits that he could not have seen the fragments of these e-mails.

[117] The Respondents submit, in any event, that no e-mails introduced into evidence relating to Project Monument disclosed that Project Monument was a proposed acquisition of Molecular.

[118] The Respondents submit that Staff's Further Amended Statement of Allegations did not include an allegation that Suman could have blind-copied an e-mail to himself. That allegation arose only in the cross-examination of Suman and Lo, after Rogers conceded in cross-examination that there was no evidence that e-mails had been isolated or delayed.

[119] The Respondents reiterate the submissions they made at the Motions Hearing challenging Rogers' expertise and the reliability of his evidence about the operation of the NT Filter. Suman added, in closing submissions, that Staff did not call any employee of MDS Sciex to testify who was knowledgeable about SurfControl or the NT Filter.

[120] Suman testified that the Remote Desktop Protocol, to which he had access, allows the NT Filter administrator to manage the NT Filter from a desktop workstation, rather than going to the main frame computer room. Suman acknowledges that he might have been the user who logged onto the NT Filter remotely on January 23, 2007 at 1:40 p.m., but he testified that there were two other employees who had access to the NT Filter and worked on it, even on days when Suman was at work.

[121] The Respondents submit that, by the standard of evidence Staff asks us to adopt, Staff's allegation could be that Suman hid in a closet while a confidential meeting was taking place and learned about the Proposed Acquisition that way. The Respondents also submit that Staff's allegations with respect to the NT Filter and Suman's possible access to e-mails passing through it imply an impermissible reverse onus. They submit that, based on Staff's submissions, Suman has to prove that he did not gain access to information with respect to the Proposed Acquisition.

2. Discussion

(a) E-mail Delays in January 2007

[122] During the lead-up to the Announcement, MDS Sciex was experiencing delays in e-mails passing through the NT Filter. Suman acknowledges that MDS Sciex had experienced several waves of spam resulting in poor performance of the system from mid-July 2006. He also acknowledges that as NT Filter administrator, it was his responsibility to investigate e-mail delays and he did so. Ultimately, MDS Sciex decided to upgrade the NT Filter. Suman testified that he performed the upgrade and that he went into the office on Saturday, February 3, 2007 to complete that task.

[123] Suman remembers that there were delays in the e-mail system in January 2007. He acknowledges that as NT Filter administrator it was his job to investigate the problems and he did so. However, he testified that he did not remember seeing a queue of backlogged e-mails that were not automatically being sent on to the recipients on January 23, 2007. When presented with the System Event Log for the NT Filter, which shows that there was a remote log-on to the NT Filter on January 23, 2007 at 1:40 p.m., Suman testified that it could have been him logging on or it could have been someone else.

[124] We conclude that it was likely Suman who logged on to the NT Filter on January 23, 2007 at 1:40 p.m. because he was the primary NT Filter administrator, he was present at MDS Sciex that day, and while other IT employees had responsibilities for the NT Filter, they usually logged on to the NT Filter when Suman was absent.

(b) Ability to Control the Rules in SurfControl

[125] Suman would not acknowledge that the NT Filter administrator could change the rules relating to the e-mails passing through the NT Filter. We find it highly implausible, and do not believe, that Suman was unaware that the rules could be changed by the NT Filter administrator. That is apparent on a plain reading of the SurfControl manual. Suman's evidence in this respect is inconsistent with the evidence about his IT expertise and his responsibilities as NT Filter administrator.

[126] We find that as NT Filter administrator, Suman could have created, modified or deleted rules in SurfControl. This is clear from the SurfControl manual which explains, among other things, how to change SurfControl's pre-defined rules, delete a rule, or create a forwarding or blind-copy rule. Rogers testified that SurfControl would allow a user to, for example, blind-copy any e-mail with "Project Monument" in the subject line to a particular e-mail address. Lo agreed that SurfControl allowed a user to create, modify or delete a rule or change a rule's priority. He also agreed a user could create a rule to blind copy e-mails to another e-mail address.

[127] Suman acknowledges that he could set the rules, but strongly denies setting or deleting any rules for the purpose of anything related to Molecular. He also testified that any such changes to rules would be logged. However, the SurfControl manual

indicates that if the real-time console logging option is enabled, a rule could be deleted without being logged. Lo agreed that an existing rule could be changed without leaving a trace. Lo also acknowledged that if the real time console were enabled, as it was, new rules would not be logged into the system log.

[128] We conclude based on this evidence that, as NT Filter administrator, Suman could have created a rule that would, for example, blind-copy Project Monument e-mails passing through the NT Filter to any designated e-mail address, including his own, without leaving evidence of any such rule. That means that Suman had the ability, as NT Filter administrator, to obtain copies of "Monument" e-mails without leaving evidence that he had created or changed a rule in order to do so.

(c) Ability to View E-mails Passing Through the NT Filter

[129] Through Rogers, Staff introduced several NT Filter screenshots to illustrate the operation of the NT Filter. The screenshots included a list of e-mails that had been logged in the Stem Log, including information as to the sender, recipient, subject, time received and status (isolated or delivered, for example). At the bottom of the page, a preview pane would show the contents of an e-mail. Rogers testified that the contents of the e-mails are not stored in the Stem Log, but can be retrieved from the hard drive. He said that, as a result, the full content of e-mails that are isolated or delayed, including attachments, could be viewed either through the preview pane in SurfControl or by navigating to the e-mail through Windows Explorer. The messages and any attachments could also be saved and/or forwarded.

[130] Suman testified that unless an e-mail is isolated or delayed by action of a rule, it passes through the NT Filter and is delivered directly to the addressees at electronic speed and cannot be viewed by anyone. He said that none of the Project Monument e-mails are shown as having been isolated or delayed. Because he was no longer the e-mail administrator, Suman said that he did not have access to the Microsoft Exchange server where e-mails were stored. He also testified that he was not aware of the Molecular electronic data room and did not have access to it. He testified that he did not see any "Monument", "Project Monument" or Molecular related e-mails that were isolated or delayed. He testified that he believes that they all passed through the NT Filter without being isolated or delayed, and he did not make any kind of intervention to obtain any of them.

[131] Lo testified that it is not possible to view the contents of an e-mail using the SurfControl software without the e-mail being first isolated by a rule, and that there is no evidence that any Project Monument e-mail was isolated. However, in cross-examination, Lo acknowledged that SurfControl allows the NT Filter administrator to set an e-mail queue to delay e-mails for a set period of time to allow for auditing – for example, if there is a suspicion of unauthorized use – and allows the e-mails to be read to determine appropriate action, including, for example, forwarding an e-mail to a manager. He also acknowledged that the NT Filter administrator would be able to see the sender, recipient and subject line of e-mails that were logged in the "received log" or the "connection log" as a result of an e-mail backup. Lo testified that he did not know whether such an e-mail message could be viewed by double-clicking on it. Further, he acknowledged that the NT Filter administrator would also be able to review an e-mail even if it had not been isolated. For example, the administrator could review an e-mail if it had been copied to another e-mail address or delayed.

3. Conclusion: Suman's Role as NT Filter Administrator

[132] There is no direct evidence that (i) Suman actually viewed any Project Monument e-mails passing through the NT Filter or otherwise obtained Project Monument e-mails using his privileges as NT Filter administrator; (ii) any e-mails passing through the NT Filter were isolated or delayed or that Suman created any rule to do so; or (iii) any e-mail passing through the NT Filter disclosed that Project Monument was a proposed acquisition by MDS of Molecular (although there were e-mails showing information that potentially linked Project Monument to Molecular). Further, neither of the experts were experienced with the SurfControl software. Both acknowledged relying on the user manual, and both were forced to retract some of their evidence on certain matters in cross-examination.

[133] We find that Staff has established that (i) Suman as NT Filter administrator was the principal person at MDS Sciex responsible for resolving problems with the spam filter and that there were e-mail delays in January 2007 that ultimately led MDS Sciex to upgrade the NT Filter; (ii) Suman, as NT Filter administrator, could have created a rule to isolate or delay an e-mail passing through the NT Filter or to forward it to any other e-mail address, including his own, without leaving evidence that he had done so; and (iii) the content of isolated or delayed e-mails could be viewed in the preview pane of SurfControl or by using Windows Explorer.

[134] Accordingly, we find that Suman had the ability and opportunity as NT Filter administrator to view or obtain Project Monument e-mails passing through the NT Filter. He had the skills to do that as an IT expert, the SurfControl software allows an administrator to control the spam filter function and to create and modify rules to isolate, delay or forward e-mails passing through the NT Filter, and investigating e-mail delays relating to the spam filter was one of Suman's responsibilities as NT Filter administrator.

G. Suman's Internet Searches on January 23, 2007

1. The Evidence

(a) Staff's Submissions

[135] McCann testified that forensic images of Suman's Computers were mounted as virtual drives on a forensic workstation and that Staff used NetAnalysis, a forensic software program, to generate reports of the complete history of internet usage on the drive, including active internet folders and deleted "slack space" (the "Internet History Reports"). NetAnalysis can also conduct keyword searches. Staff searched for, among other terms, "Molecular", "Monument", "MDCC", and "MDDC". Staff submits that the Internet History Reports indicate that on January 23, 2007, Suman conducted the following searches on Computer 204, Suman's laptop computer at MDS Sciex:

(a) at 18:57:05, he searched "mddc" on the Yahoo finance webpage;

(b) at 18:57:08, he accessed the "headline" page for MDCC on the Yahoo finance webpage;

(c) at 18:59:24, he searched "monument inc." using the Yahoo search engine;

(d) at 18:59:42, he searched "monument inc." using the Google search engine;

(e) at 19:00:17, he searched "mdcc", using the Google search engine;

(f) at 19:03:25, he accessed the six-month and one-year stock charts for MDCC on the Yahoo finance webpage;

(g) from 19:05:25 to 19:06:47, he accessed the Molecular website (www. moleculardevices.com);

(h) at 19:27:36, he accessed a discussion board on Yahoo relating to rumours of a take-over of Molecular; and

(i) at 19:29:13, he accessed a three-month stock chart for MDCC.

[136] Staff submits, and it was not disputed, that the search for "mddc" referred to in paragraph 135(a) of these reasons was a misspelled stock symbol intended to be a search for "MDCC".

(b) The Respondents' Submissions

[137] The Respondents challenge the reliability of the Internet History Reports as discussed commencing at paragraph 142 of these reasons. However, Suman did not deny making the searches referred to in paragraph 135 of these reasons, subject to his testimony below beginning at paragraph 138 and at paragraph 153 of these reasons.

[138] Suman acknowledges searching "MDCC" on January 23, 2007, towards the end of the day. He testified that Rahman had given him quite a few stock symbols that she wanted him to research, including MDCC, Exxon Mobil and Southern Copper, and that she had reminded him to do so the day before and again in the morning or around noon on January 23, 2007. He says that he finally had time to do the research that afternoon, and that he searched MDCC after searching Southern Copper and Exxon Mobil. He testified that he did not clearly remember the search for "monument inc." and that he had no independent recollection of making that search, but acknowledges, based on the Internet History Reports, that it was a "possibility" (see paragraph 155 of these reasons). He acknowledges that the Internet History Reports show that there was a search for "monument inc." on each of Yahoo and Google on January 23, 2007 (see paragraph 135 of these reasons).

[139] Suman testified that, when he commenced the searches referred to in paragraph 135 of these reasons, MDCC was already known to him because of Rahman's request that he do research on Molecular. He testified that on January 23, 2007, as a result of his searches, he read two press releases concerning MDCC, dated January 10 and January 17, 2007, and they showed that positive news was driving up the MDCC share price, which was one of the criteria the Respondents had established for investing (see paragraph 169 and following of these reasons).

[140] Rahman testified that she had asked Suman to look into certain stocks, including MDCC, in mid-January 2007, but he had procrastinated until January 23, 2007. On that day, Rahman "called him a lot, pushing him" to look into the stocks she had identified. Suman called Rahman that evening and reported on the results of his research (see paragraph 160 and following of these reasons with respect to the January 23 Call).

2. Discussion

[141] The Respondents challenge Staff's evidence about Suman's internet searches on January 23, 2007 on a number of grounds.

(a) Reliability of the Internet History Reports

[142] Staff used NetAnalysis to reconstruct the internet browser history of Suman's Computers, and the resulting Internet History Reports were entered into evidence. Rogers gave lengthy opinion evidence about the conclusions he drew based on the Internet History Reports.

[143] After the close of Staff's case, the Respondents moved for exclusion of the Internet History Reports on the basis that NetAnalysis, the software used to generate them, is inherently flawed. The Respondents submitted that the Internet History Reports should be excluded as hearsay evidence that does not possess sufficient threshold reliability to be admissible under the "principled exception" to the hearsay rule, because of an allegedly erroneous January 14, 2007 entry shown on the Internet History Reports and because of numerous duplicate entries for internet searches included on those reports (see paragraphs 146 and 149 of these reasons).

[144] We dismissed the exclusion of evidence motion and made the following comments in the Motions Decision with respect to the NetAnalysis evidence:

> We note that if the NetAnalysis evidence is hearsay evidence, it is hearsay that can be assessed and challenged by the Respondents through their own analysis of the information on Suman's computers and by themselves running NetAnalysis on those computers. The Respondents have been able to do that and have made a number of important points in cross-examination as a result. In our view, the Respondents' vigorous testing of the NetAnalysis Evidence through cross-examination of McCann and Rogers shows that the NetAnalysis Evidence possesses sufficient threshold reliability to be admitted under the principled exception to the hearsay rule. We also find that the NetAnalysis evidence is necessary because analysis of the raw data presented on the forensic copies of Suman's computers is outside our experience and knowledge.
>
> The Commission has stated that: "Although hearsay evidence is admissible under [subsection 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22], the weight to be accorded to such evidence must be determined by the panel. Care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability" (*Re Sunwide Finance Inc.* (2009), 32 OSCB 4671, at para. 22). It is for us to decide the relevance and weight to be given to the NetAnalysis Evidence and, in doing so, we will take into account the matters that the Respondents have successfully challenged through cross-examination.
>
> We are not satisfied that the Respondents have shown that Rogers is biased or that his evidence is inherently unreliable. He has modified his evidence and conclusions where the Respondents' cross-examination has raised questions. While he was admitted by us as an expert, he has also acknowledged those areas where he does not have expertise. The Panel will carefully consider the relevance and weight to be given to Rogers' expert evidence and, in doing so, we will take into consideration the submissions made to us by the Respondents with respect to the weaknesses of that evidence demonstrated by cross-examination.
>
> (Motions Decision, paras.11-12)

[145] The Respondents identified two significant issues with the Internet History Reports during McCann's cross-examination.

(b) The January 14, 2007 Entry

[146] The Internet History Reports show searches on Computer 204 (Suman's laptop computer at MDS Sciex) for "MDCC" on the Yahoo finance website at 18:24:40 on January 14, 2007, producing 286 hits. McCann testified that the January 14, 2007 entry was "anomalous" and "erroneous" and did not reflect a search that had occurred on January 14, 2007. Rogers testified that the January 14, 2007 entry was a fragment of a later search conducted on January 25, 2007. In his opinion, Suman first searched "mddc", "MDCC" and "monument inc." on January 23, 2007 (see paragraph 135 of these reasons). Staff's evidence on this point is consistent with the evidence of the Respondents, who testified that it was on January 23, 2007 that Suman finally conducted research with respect to Molecular, along with other stocks, at Rahman's request.

[147] Rogers testified that there is no evidence on the Computers of any search for "MDCC", "monument" or related terms before January 14, 2007.

[148] We conclude, on balance, that the January 14, 2007 entry on Computer 204 is likely a fragment of a later search conducted by Suman after January 23, 2007 for "MDCC". We do not accept, however, that the existence of that fragment undermines the other evidence of Suman's January 23, 2007 searches identified in the Internet History Reports.

(c) Duplicate Entries

[149] The second issue with the NetAnalysis evidence is that the Internet History Reports include numerous duplicate entries that indicate exactly the same search being made exactly five hours apart. Time-stamped entries on the Internet History Reports show Suman making trades through his trading account from his IP address at work at a time when the MDS Sciex building access records indicate that he was not yet in the office and exactly five hours before the time-stamped entries on the Trading Records, which indicate that he made the trades from home. The entries relating to Suman's searches for "mddc", "MDCC" and "monument inc." show the same duplicate entries exactly five hours apart. So, for example, the first search for "mddc" is recorded at 13:57:05 and at 18:57:05 on January 23, 2007 (see paragraph 135(a) of these reasons).

[150] This issue first arose during cross-examination of McCann, who initially had no explanation for the duplicate entries. When the hearing resumed the next day, McCann testified on re-examination that he had verified that the duplicate entries appeared in the Internet History Reports because he had set NetAnalysis to local (Toronto) time, but he believed NetAnalysis had added a duplicate entry, exactly 5 hours earlier, in Greenwich Mean Time ("GMT"). McCann testified that he believed that the first of each duplicate entry was incorrect and that the second entry was correct.

[151] Rogers offered an explanation for the time discrepancy in the Internet History Reports. He testified that internet history is stored in the index.dat file of a computer in three types of records – the main internet history file, a daily internet history and a weekly internet history. The main internet history file uses GMT, the daily internet history file uses local time but uses GMT for the last-visited time, and the weekly internet history file uses local time. When NetAnalysis analyzes the files, it has to decode these various times based on other information associated with each record, including the time-stamp on source data. In this case, most of the files had been deleted and the temporary internet files were erased, making the analysis more complicated. Rogers stated that all of the anomalies related to the weekly entries, which should have been set to GMT, not local time.

[152] Staff submits that the later of any two duplicate entries in the Internet History Reports is the correct one, and it is the later entries that are referred to in the parties' submissions and in these reasons. There is no evidence to suggest that the time-stamps on the Internet History Reports are inaccurate, apart from the matter of the duplicate entries and the anomaly with respect to the January 14, 2007 entry (referred to in paragraph 146 of these reasons). We have concluded, on balance, that notwithstanding the duplicate entries exactly five hours apart, the later entries on the Internet History Reports reflect the actual times at which the internet searches were conducted.

(d) Analysis

[153] Subject to his testimony below related to his searches on January 23, 2007, Suman does not deny making the internet searches on Computer 204 shown by the Internet History Reports. He submits, however, that Staff's allegations are inconsistent with the fact that his first relevant internet search was for "mddc", not "monument". What the Internet History Reports show, he says, is that the stock symbol "MDCC" (initially entered erroneously as "mddc") was already known to him before he searched "monument inc.". Suman also notes that the Internet History Reports indicate that MDCC was not the only stock he searched on January 23, 2007. His searches that day also included searches for Exxon Mobil and Southern Copper. The Internet History Reports show those searches.

[154] Suman also submits that even if the Internet History Reports are accurate and show what Staff submits that they show, the internet is "public knowledge space" and could not be the source of material non-public information. We agree that there is nothing improper in his internet searches and that they would not have been the source of any material non-public information.

[155] Suman testified that he does not remember searching for "monument inc.", although he conceded that is possible. A portion of his evidence about his searches on January 23, 2007 is as follows:

> And my searches would be related to – I believe on that day, I got a chance to look for Exxon Mobil's performance, Southern Copper under stock symbol PCU. So I did research on that as well. Then I got to Molecular Devices, MDCC.
>
> Q. What time was that?
>
> A. So it would be – my independent recollection is after I did Exxon Mobil and PCU. So it couldn't be – it would be later, much later in the day, towards the end of the day, after I'm done with Southern Copper and Exxon Mobil.
>
> Q. Okay. Paragraph –

> CHAIR: Just before you go, I just want to make sure I understood what you said. So you are saying you did search Molecular?
>
> THE WITNESS: I did look into the Molecular Devices performance, the stock symbol that Monie gave me earlier. I looked for that. I looked for PCU, which is a symbol for Southern Copper. I looked into that. I looked into Exxon Mobil. I looked into that.
>
> CHAIR: What about Monument Inc.?
>
> THE WITNESS: Now, my independent recollection, I do not clearly remember my search on Monument Inc. If that search happened -- I have looked through the net analysis report and other testimony, and it looks like there was a search on Monument Inc. So that's a possibility, but I don't have an independent recollection of it directly.
>
> (Hearing Transcript, March 29, 2010, pp. 102-103)

[156] The Internet History Reports show that on January 23, 2007, Suman searched "monument inc." on Computer 204 using the Yahoo search engine at 18:59:24 and using the Google search engine at 18:59:42 (see paragraph 135 of these reasons).

[157] "Monument inc." was not the first search term Suman tried on January 23, 2007; it was the third, after "mddc" and "MDCC". Staff's explanation is that Suman had already learned that "monument" and "MDCC" were linked. Suman's explanation is that Rahman had already asked him to research MDCC and he learned about that company from public sources. However, that does not explain the search for "monument inc.".

3. Conclusion: Suman's Internet Searches on January 23, 2007

[158] Suman testified that he did "not clearly remember" the search for "monument inc." but it was "a possibility" that he made it. We find that Suman made the "monument inc." searches referred to in paragraph 135 of these reasons at the times submitted by Staff. Those searches are significant. If Suman had learned of MDCC from Rahman or their research, why would he search "monument inc.", a term related to the confidential code name for the Proposed Acquisition? Suman provided no explanation for making that search.

[159] We know that Suman was aware of the term "monument" at the time of his searches on January 23, 2007 (see paragraph 105 of these reasons). What the Internet History Reports show is that Suman searched the terms "monument inc." and MDCC within minutes of each other in the late afternoon on January 23, 2007. We find that the most likely conclusion is that Suman had learned that the term "monument" or "monument inc." related to MDCC and he was searching the internet to find more information and to confirm his understanding. That is an important finding in the circumstances.

H. The Respondents' January 23, 2007 Phone Call

1. The Evidence

(a) Staff's Evidence

[160] Through Young, Staff introduced MDS Sciex's record of Suman's entries to and exits from its building for the period January 1 to February 7, 2007. Those records show that Suman left work at 19:44 on January 23, 2007, about 15 minutes after viewing the three-month stock chart for MDCC (see paragraph 135(i) of these reasons). The BlackBerry Cell Phone Records indicate that Suman called Rahman at 19:41:42, just before he left work, and that conversation continued for one hour and 40 minutes (we refer to that telephone conversation as the "January 23 Call"). Staff alleges that was an unusually long telephone call in which the Respondents were primarily discussing the possibility of purchasing Molecular securities based on knowledge of the Proposed Acquisition.

(b) The Respondents' Evidence

[161] Suman testified that the January 23 Call "was not an unusual length of time" for the Respondents to spend on the telephone. He testified that along with his calls to Rahman from his BlackBerry, they also communicated using Skype, and Rahman would also use the toll-free telephone line at MDS Sciex to call him at work. Suman says it would be very unusual if they spoke for less than two hours in total on any given day.

[162] Rahman confirmed Suman's testimony that while she lived in Utah they talked "all the time, every day" by phone and using Skype, and that she phoned Suman frequently at MDS Sciex using the MDS Sciex toll free telephone line and sometimes his BlackBerry number. In addition to the BlackBerry Cell Phone Records, which show outgoing calls from Suman's BlackBerry to

Rahman's Utah phone number, the MDS Sciex Toll Free Phone Records corroborate the Respondents' testimony that they talked many times a day every day.

[163] The Respondents also testified that they discussed the Five Criteria on the January 23 Call in considering whether to purchase Molecular securities (see paragraph 170 of these reasons).

2. Conclusion: The Respondents' January 23, 2007 Phone Call

[164] The Respondents' testimony about the January 23 Call seemed rehearsed and implausible in some respects. Asked if he could recall their conversation, Suman began his testimony as follows:

> There were quite a few things that we had discussed in that 100-minute phone call. In any of our phone calls, usually multiple things would be discussed. They would involve discussion about her day.
>
> They would involve discussion about what was new on that day, what she has done, what she has eaten, where did she go, come back, those things. We would have lots of talk about stocks and their performance and trades. We would have talks about her neighbourhood.
>
> Q. Do you remember anything specific about this call?
>
> A. So what I remember on that call is she went out. And that call was – I believe I left my work, and I was driving towards home, and I called her from the car. And usually, around that time, she is not home.
>
> She usually – trade – trading day finishes, and she goes out for a walk. And then several hours, she walks around and then comes back. So usually, at that time, she is not home. So when I called her on that day, I didn't expect her home. But sometimes I do just to see if she is home.
>
> So I was driving from my work to my home, and I called her. And when she picked up, I was surprised. So found out that she went to the bank to deposit a cheque. And then she had to use the washroom. So she came back home quickly, and then she was about to go out.
>
> So I was insisting that I'm driving home, and I'm bored, why don't you stay on the phone and talk to me. And she said, no, I have to go use the washroom. So I said, okay, I'll hold. It's sometimes harder to redial again from the BlackBerry when you are driving. So I said, I will just hold. You go use the washroom and come back to the phone. And that's what I remember.
>
> So after she came back, initial conversations were basically around – she had – there were neighbours, and they had cats. And both of us are cat lovers. So we talked about their cats. We talked about how her day was, those type of things. And then, I believe –
>
> MR. PRICE: Could you speak up?
>
> THE WITNESS: Sure. And then I got a chance to tell her about the stocks and my search.
>
> (Hearing Transcript, March 29, 2010, pp. 108-109)

[165] Rahman described the beginning of their conversation as follows:

> When I came to the phone [after using the washroom], I remember – he was asking me, like, you know, Did I go out for a walk already? I'm like, "No, I tried, but it's so cold that I had to come back home, but I'm going to go out again." So he says, "Since you're on the phone, talk to me." Because he's driving. He always does, when he drives, he calls me so that I can talk to him. So as I'm talking to him he asks me, like, How was my walk and if I had seen any cats or birds, as usual. Then he asked me how my day was, what I have eaten, how the market was. And then he told me that – now he got a chance to – because the whole day I had been calling him about the stocks. I didn't actually look into the stocks right at that moment. But he told me he got a chance to look into the stocks.
>
> (Hearing Transcript, March 31, 2010, p. 137)

[166] The Respondents' evidence about the January 23 Call appeared to us to be contrived to suggest that their conversation about the possibility of purchasing Molecular securities was nothing out of the ordinary and that Molecular was not the main topic of the conversation. We do not accept that characterization.

[167] The Respondents acknowledge that they discussed buying Molecular shares and options during the January 23 Call. The question is whether that topic arose as a result of their own research or as a result of Suman's knowledge of the Proposed Acquisition that he had obtained through his IT role at MDS Sciex. The evidence related to the January 23 Call provides no assistance to us in answering that question.

[168] We conclude only that (i) Suman had the opportunity to communicate knowledge of the Proposed Acquisition to Rahman on the January 23 Call; (ii) the call was a long one that occurred after Suman's internet searches that day; and (iii) the Respondents decided on that call to purchase Molecular shares the next day and to think overnight about whether to buy options.

I. The Five Criteria

[169] The Respondents testified that they purchased the Molecular Securities as a result of their own research and, in particular, because the Molecular Securities satisfied the Five Criteria discussed below. The Respondents testified that the Five Criteria were discussed by them on the January 23 Call.

1. The Respondents' Testimony

[170] Suman testified that Rahman had developed five criteria for investing in stocks. Those criteria were that (i) the stock cannot be at its 52-week high or 52-week low; (ii) the stock should be about 20% to 40% higher than the 52 week low; (iii) the increase from the 52-week low to the current price should be a steady rise rather than a sudden jump; (iv) the increase should be explained by positive news about the company; and (v) the sector should be a particular sector they favoured (these criteria are referred to as the "Five Criteria").

[171] Suman testified that in the middle of January 2007, Rahman had asked him to do some investment research on Exxon Mobil, Southern Copper and Molecular. When they spoke by phone on the January 23 Call (see paragraph 160 of these reasons), Suman told her about his research after they talked about the details of her day. He told her that Exxon Mobil and Southern Copper were trading at close to their 52-week highs, but Molecular was a good fit because it met all of the Five Criteria. Suman testified that:

> We were discussing the stock. And she was looking at the three-month chart, six-month chart, looking at the news reports, and looking at the performance.
>
> So our conversation around Molecular Devices on that call was she agreed with me that it matches all of those five rules, and she agreed that this is a good stock to put some more of our money in there. We tried to determine, at that point, what would be our price target on that stock.
>
> And on that day, I believe the price was around $23 for Molecular Devices. And that three-month chart, performance chart, it looks like in the three or four months prior to that, the stock went from $17 to $23. So it looked like it was a steady rise, very gradual, steady rise.
>
> So we tried to determine what would be our price target if we actually buy Molecular Devices. And she proposed – she suggested that $27 sounds like a good price target. And to me also, that seems like – seemed like a very reasonable price target. So we both had agreement that $27 would be our price target. The stock price on that day was $23, around $23, I believe. So that was the conversation.
>
> The other thing that happened on that day was – I should also mention that for a long time, ever since Monie started trading and even before that, from time to time, I would push her or try to convince her to invest in options or trade options. And I would tell her we should go into options, and we should look into that.
>
> And Monie had reservations about options. She would usually turn it down, and she would say, no, I don't really understand it completely, or it seems more risky to me. I think I will stick with stocks and avoid options.
>
> And usually, I would try to come up with arguments and try to convince her to go into options. So I try to push options on Exxon Mobil and other stocks that she should go into. But usually, she would turn it down.

> So same way on that day, once we agreed on the $27 price target, I looked at the options, and it looked like there were $25 strike price options available. So I tried to push that to her. And I said, we should also look into options. If you think it's going to go to $27, there are $25 options available that we can get. And if it goes to $27, you can also make money on the options of this stock.
>
> So that was the other conversation related to options. We did not agree on options on that day. Monie said she's going to think about it but didn't really agree that we should buy options. However, we did agree that we are going to buy stocks of this company, Molecular Devices, and we agreed on a price target of $27.
>
> (Hearing Transcript, March 29, pp. 113 to 114)

[172] Rahman confirmed Suman's testimony and said that, in January 2007, she asked Suman to look into certain stocks, including Molecular, but he procrastinated in doing so. She testified that on January 23, 2007, she called him a lot (at least seven times), yelled at him, and pushed him to look into the stocks she had identified. He called her back that evening (on the January 23 Call).

[173] According to Rahman, Suman told her that of the three stocks she had asked him to look at, only Molecular satisfied the Five Criteria. She then did a search for "MDCC" on Yahoo Finance and found a January 17, 2007 news release about a patent ruling and a January 10, 2007 news release about a new technology. She says that she also looked at Molecular's 3-month, 6-month and 1-year stock trading charts. Those charts are no longer available because Molecular is no longer a public company, but the Respondents introduced in evidence a chart showing MDCC's closing prices from January 3, 2006 to January 23, 2007. Rahman testified that the chart shows that MDCC satisfied the Five Criteria: the price on January 23, 2007 (about $23 per share) was approximately 20% to 40% higher than the 52 week low ($18.03 on September 27, 2006), it was not near the 52 week high ($35.92 on April 6, 2006), the increase from the 52-week low was a gradual one, and it was based on good news about the company reflected in the two news releases. Further, the biotechnology sector was a business sector the Respondents favoured.

[174] Rahman testified that Suman asked her "where do you think it [the Molecular share price] will go in the near future?" and she answered "definitely $27"; she added "that was my exact line". According to Rahman, they made the decision to invest in Molecular. She testified that she was willing to buy MDCC shares, but Suman had been encouraging her to buy options. He asked her in what time period she thought the shares would go up, and she answered that she couldn't tell when, only that it would go to at least $27. She testified that she had never bought options before, although Suman had, and she was unsure whether to do so. So they decided to buy Molecular shares and she would think overnight about the possibility of purchasing Molecular options. They ultimately purchased Molecular options as well.

2. Staff's Submissions

[175] Staff submits that the Five Criteria are not the reason for and do not explain or justify the Respondents' purchases of the Molecular Securities. Staff submits that the Five Criteria are an after-the-fact attempt by the Respondents to provide any innocent explanation for their purchases of the Molecular Securities.

3. Discussion

[176] Although Rahman was an experienced day trader, she acknowledged in her testimony that the purchases of the Molecular Securities marked the first time she had applied the Five Criteria. As discussed below, those purchases reflected a significant shift in the nature of the Respondents' trading. Further, we note that the Five Criteria do not reflect any substantive analysis of Molecular's financial performance or status. They are little more than rules of thumb and there seems to be little rationale for why Rahman set a share price target of $27.00 for the Molecular shares. In our view, the Five Criteria provide little justification for the Respondents to risk an amount equal to the value of their total assets in an investment in a single issuer in which they had never before invested. Although Rahman's trading history demonstrates that she was not adverse to risk and to the use of leverage when she was day trading, we find that the purchases of the Molecular Securities represented a much higher order of risk and a significant change in the nature of their trading (see the discussion below commencing at paragraph 180 of these reasons).

[177] Based on the Trading Records, the purchases of the Molecular Securities were the largest purchases the Respondents had ever made in one issuer and the first time they had purchased such a large number of options of any issuer. Further, the purchase of the options, which expired over a relatively short period of time, constituted a very significant increase in the risk that the Respondents were prepared to take. In our view, the Five Criteria do not explain or justify this sudden shift into options trading.

[178] We note that, while Suman stated in the Second Staff Interview that the purchases of the Molecular Securities were based on the Respondents' research, he made no specific reference to the Five Criteria in that interview.

4. Conclusion: The Five Criteria

[179] We do not find the Respondents' testimony about the Five Criteria credible and we reject that explanation for the purchases of the Molecular Securities. We find that the Five Criteria were most likely developed after the fact in an attempt to provide an innocent explanation for the Respondents' purchases of the Molecular Securities. Accordingly, in our view, the Respondents have not provided an innocent explanation for their well-timed, highly uncharacteristic, risky and highly profitable purchases of the Molecular Securities. These are important findings in the circumstances.

J. The Nature and Timing of the Purchases

1. Staff's Submissions

[180] Staff submits that the Respondents' purchases of the Molecular Securities marked a fundamental shift in the nature and pattern of their trading. Staff submits that those purchases were fundamentally different from the Respondents previous trading of securities in the following respects:

(a) the Respondents had never purchased Molecular shares or options before;

(b) the Respondents had purchased options only once before, in 2004; at that time, the Respondents purchased a total of 93 options contracts for Nortel at a total cost of $7,986.23; the options expired worthless;

(c) until the purchase of the Molecular Securities, Rahman had engaged primarily in day-trading;

(d) Rahman had never before purchased 12,000 shares of any issuer in a single day;

(e) the total cost of the Molecular Securities purchased by the Respondents was approximately $391,300 (USD), which was more than the value of the Respondents' total assets on January 23, 2007 of $370,227.86 (USD); that total cost was more than three times Suman's yearly salary;

(f) on January 23, 2007, the day before the Respondents began purchasing the Molecular Securities, Rahman deposited $48,000 to her trading account; on January 24, 2007, she sold her holdings in shares of five other companies for a total credit to her account of approximately $366,000 (USD);

(g) the purchases of the Molecular Securities were all made on margin;

(h) the Respondents' purchases on January 24, 2007 represented approximately 7.8% of the total market volume for Molecular shares traded that day (12,000 of 153,900 shares traded); the 900 options that were purchased represented the right to purchase an additional 90,000 Molecular shares;

(i) the Respondents' purchases of Molecular options represented a very large proportion of the total market volume on the CBOE for Molecular options on the days the Respondents purchased options; the Respondents purchased 77.2% of all series of Molecular options traded on January 24, 2007, 69.3% of all series of Molecular options traded on January 25, 2007 and 58.8% of all series of Molecular options traded on January 26, 2007;

(j) Rahman's purchases were inconsistent with her stated investment objectives; the investor profile for her account, which was updated on June 25, 2006, was for 30% short term, 30% medium term, 30% low risk and 30% medium risk; and

(k) the total profit from the sale of the Molecular Securities was $954,938.07 (USD).

[181] Accordingly, Staff submits that the Respondents' "well-timed, highly uncharacteristic, risky, substantial, and highly successful" purchases of the Molecular Securities marked a fundamental shift in their pattern of trading and that fundamental shift strongly supports the inference that the purchases were made by the Respondents with knowledge of the Proposed Acquisition.

2. The Respondents' Submissions

[182] The Respondents testified that they purchased the Molecular Securities based on their research and the Five Criteria (see paragraph 170 of these reasons).

(a) Rahman's Submissions

[183] Rahman also submits that her purchases of the Molecular Securities were consistent with her trading history. She testified that she began day trading in July 2006 when she took over trading for the Respondents. She said that she took large

positions in stocks – for example, buying $740,000 (USD) worth of Titanium Metals on June 26, 2006, $360,000 (USD) worth of Southern Copper in two transactions in September 2006 and $352,000 (USD) worth of Boeing stock on December 5, 2006. (We note, however, that those numbers ignore contemporaneous sales of those securities.) All of those shares were purchased on margin. She was successful: between July 1, 2006 and January 1, 2007, she increased the value of the securities in her portfolio from approximately $257,000 to $510,000. Rahman had also increased her margin during this period to approximately $310,718, leaving the equity value of her portfolio on January 1, 2007 as $199,476. She submits that her prior trading shows her lack of aversion to risk.

[184] Rahman also testified that options trading was a natural progression for her trading. In response to Materna's evidence that the Respondents' options purchases were "very unusual", Rahman notes that while the Molecular stock was relatively illiquid, there was a bid and ask for each series of options the Respondents purchased and the bid prices fluctuated but were approximately 20% to 30% below the ask prices. In addition, Rahman bought stock and options at limit prices (meaning she would specify a limit to the purchase price she would pay) and she testified that she disagreed with Suman's approach of buying securities at whatever the market prices might be. Rahman submits that this trading practice is inconsistent with the allegation that the Respondents were purchasing the Molecular Securities with knowledge of the Proposed Acquisition.

[185] Rahman also notes that she continued to use options and margin to leverage her stock purchases after January 2007. She purchased large positions in Exxon Mobil and Freeport-McMoran on margin. By the end of July 2008, the value of her account was approximately $2.5 million, with an equity value of approximately $2 million. The value of her portfolio fell to $84,138.85 in October 2008 when the market crashed and her securities were sold in response to a margin call. Rahman continued to trade, however, and her account had an equity position of $260,000 by March 2010.

[186] Rahman's counsel described Rahman as "a speculator. She is an aggressive trader, she takes big risks, and she looks for big rewards if she can get them. None of that is prohibited activity or activity contrary to the public interest. As a matter of fact, those are the people we need to create liquidity in the market." Counsel for Rahman submits that Rahman's purchases were "entirely inconsistent ... with the acts of a rapacious insider trader or rapacious tippee trading on non-public information".

(b) Suman's Submissions

[187] Suman testified that on the January 23 Call, he and Rahman discussed the performance of the MDCC shares and were impressed with that performance in the months leading up to January, 2007, including the steady and gradual rise in the Molecular share price and the positive news articles that were appearing about it. He says that he and Rahman had discussed buying options in the past, although they had not reached a definite decision about it until the purchases of the Molecular options.

[188] Suman testified that on the morning of January 24, 2007, there was a ratings upgrade for Molecular shares by Matrix Research. (In reply, Staff notes that the ratings upgrade was only from "sell" to "hold".) The price was a little more than a dollar higher than at closing the day before, and the volume was three times higher. (In reply, Staff submits that the volume was approximately twice the volume of the day before, not three times, as Suman testified. It appears that the volume was approximately 2.4 times higher than the previous day.)

[189] Suman submits that the upgraded rating for Molecular shows that there was increased market interest in the Molecular shares. Suman also testified that he ultimately convinced Rahman to purchase Molecular options. Initially, he purchased options pursuant to "market" orders, as was his practice, but he switched to "limit" orders at Rahman's request.

[190] In response to Staff's submission that Rahman deposited $48,000 into her trading account on January 23, 2007 in order to allow her to purchase the Molecular Securities, Suman notes that the money was deposited into the Canadian dollar account, not the USD account that was used for the purchase of the Molecular Securities.

3. Discussion

[191] We have considered the following facts and circumstances in assessing the nature, timing and implications of the Respondents' purchases of the Molecular Securities.

(a) Nature of the Purchases

[192] In the six months between July 2006, when Rahman took over trading for the Respondents, and the first of her purchases of Molecular shares on January 24, 2007, Rahman was day trading. That meant that she was actively buying and selling the shares of various issuers on the same day and she testified that a position would be held overnight only when it could not be turned over quickly. (That trading pattern includes the purchases referred to in paragraph 183 of these reasons.) For example, the Trading Records for December 2006 show almost all of her trades were in the amount of 1,000 shares. Of the 121 trades during the month, 64 were purchases of shares and 57 were sales. On December 5, 2006, the records show that, in alternating purchases and sales of 1,000 shares each, she purchased 4,000 shares of Boeing in four trades for $352,489.91 (USD) and sold 3,000 of those shares for $264,438.91 (USD). An additional 1,000 Boeing shares were sold the next day.

Thereafter, on December 15, 2006, she sold and then bought 1,000 shares of Boeing. At the end of the month, she held in her account 500 Boeing shares with a market value of $44,420 (USD). She also held significant positions in the shares of seven other issuers that she had been day trading ranging in value from approximately $54,000 to approximately $91,000. The month end total portfolio value was $171,297.59 (USD) after a cash debit balance of $266,825.15 (USD).

[193] The Trading Records show that until mid-January 2007, Rahman continued to day trade, buying and selling blocks of 1,000 shares in 12 different issuers. Then, on January 24, 2007, in six transactions effected between 9:34 a.m. and 2:42 p.m., Rahman purchased 12,000 shares of Molecular at a total cost of approximately $287,700 (USD). The Trading Records show starkly the change in her trading pattern from day trading to purchasing and holding Molecular shares.

[194] We find that Rahman's purchase of 12,000 shares of Molecular, in a single day, at a total cost of approximately $287,700 (USD), and the holding of those shares until January 29, 2007, was highly uncharacteristic of Rahman's previous day trading. In our view, the Respondents, in effect, acknowledge that by testifying that the purchases of the Molecular Securities were based on the Five Criteria.

[195] Rahman testified that she increased the value of the shares in her account from approximately $257,000 to $510,000 between July 1, 2006 and January 1, 2007, and she increased her margin from approximately $86,000 to approximately $310,000 during the same period. Given Rahman's prior use of margin in her purchases, we place little weight on the fact that the purchases of the Molecular Securities were made on margin. We also place little weight on the fact that the Respondents' trading had departed from the stated investment objectives for Rahman's account.

[196] The Respondents submit that the research Suman conducted on Molecular, Southern Copper and Exxon Mobil on January 23, 2007 is inconsistent with Staff's allegation that Suman had learned of the Proposed Acquisition by that time and that the Respondents had purchased the Molecular Securities with knowledge of that acquisition. The Respondents also submit that placing "limit" rather than "market" orders for the Molecular Securities was also inconsistent with those allegations. We do not find those submissions convincing in all the circumstances.

(b) Purchases of Options

[197] The Respondents' purchases of 900 Molecular options at a cost of approximately $103,600 (USD), reflected an even more significant shift in their trading pattern. Their only previous experience with options trading was the purchase of Nortel options. The Trading Records show that from March through May 2004, the Respondents purchased 93 Nortel 100 call options, all at a strike price of $7.50, with expiry dates of January 2005 and January 2006. All 93 options expired worthless, resulting in a total loss of $7,986.23.

[198] In contrast to their previous trading pattern, between 9:40 a.m. on January 24, 2007 and 12:53 p.m. on January 26, 2007, the Respondents purchased, in 26 transactions, 900 Molecular options representing the right to purchase 90,000 Molecular shares. Despite the Respondents' attempt to characterize these purchases as a natural progression for a speculative day trader, we find that the Respondents' purchases of Molecular options marked a dramatic shift in their trading pattern. Except for the purchases of Nortel options almost three years previously, the Respondents had never before purchased options, let alone such a large number. Further, the Molecular options expired on February 17, March 17 or April 21, 2007. That was a very large investment that was particularly high risk given the short expiry dates of the options purchased (those expiry dates were approximately three weeks, seven weeks and twelve weeks after the date of the relevant purchases).

(c) Market Volume Represented by the Respondents' Purchases

[199] Rahman's purchases of 12,000 Molecular shares on January 24, 2007 represented approximately 7.8% of the total number of shares traded that day. Rahman had rarely purchased such a large number of shares in a single day.

[200] The 900 Molecular options purchased by the Respondents represented the right to purchase an additional 90,000 Molecular shares. The Respondents' purchases of options represented 77.2%, 69.3% and 58.8% of all series of Molecular options traded on the CBOE on January 24, 25 and 26, 2007, respectively. Those percentages were even higher for some of the specific series of options purchased:

Purchase Date	Series of Molecular Options (by expiry date)	Percentage of Market Volume Per Series of Options Purchased by the Respondents
January 24, 2007	February 2007	92.3%
January 24, 2007	March 2007	79.6%

Purchase Date	Series of Molecular Options (by expiry date)	Percentage of Market Volume Per Series of Options Purchased by the Respondents
January 24, 2007	April 2007	None Purchased
January 25, 2007	February 2007	85.7%
January 25, 2007	March 2007	44.4%
January 25, 2007	April 2007	100%
January 26, 2007	February 2007	86%
January 26, 2007	March 2007	77.4%
January 26, 2007	April 2007	74.1%

That level of purchases attracted the attention of the CBOE. Materna testified that these purchases were "aberrant" and that "this account effected an extremely large number of option contracts relative to all other option contracts traded. And we deemed that very unusual."

[201] The Respondents had never before purchased options for a price of more than approximately $8,000. Not only did they purchase options for more than $100,000 but the size of the Respondents' purchases of Molecular options dominated the market on January 24, 25 and 26, 2007. Accordingly, that level of trading is highly uncharacteristic of the Respondents' previous trading.

(d) Freeing up Funds before Making the Purchases of the Molecular Securities

[202] On January 23, 2007, Rahman deposited $48,000 into her trading account. The next day, January 24, 2007, Rahman liquidated her holdings in five stocks – Allegheny Technologies, Boeing, Genyzme, Nucor and Southern Copper – for a total credit to her account of $366,048.78 (USD). She acknowledges that she did this "partly" to free up funds to buy the Molecular Securities, but she disagrees with Staff about her reasons for selling those securities.

[203] As a day trader, Rahman typically bought and sold securities in multiple offsetting trades. Rahman's sales of securities on January 24, 2007 referred to in paragraph 202 of these reasons represented a high dollar value and the sale of all the shares of five different issuers. Further, those sales were the only sales of securities that day or for the next three days: all the other transactions were purchases of the Molecular Securities. We find that the deposit to Rahman's trading account on January 23, 2007, and the sales of securities on January 24, 2007, were primarily motivated by the need to free up funds for the purchase of the Molecular Securities and was not consistent with day-trading.

4. Conclusion: The Nature and Timing of the Purchases

[204] As discussed above, we find that the Respondents' purchases of the Molecular Securities represented a fundamental shift in the nature of their trading. The Respondents, in effect, acknowledge that by testifying that the Five Criteria were the reason for their purchases of the Molecular Securities. The Respondents did not suggest that the Five Criteria had ever been applied by them prior to the purchases of the Molecular Securities. Applying the Five Criteria in purchasing the Molecular Securities is clearly a trading strategy inconsistent with and quite different from day trading.

[205] We also find the timing of the purchases to be significant. The purchases began one day after the interaction with Halligan (see paragraph 103 of these reasons) and the internet searches for MDCC and "monument inc." referred to in paragraph 135 of these reasons. The purchases were made over the period between January 24 and January 26, 2007, beginning only five days prior to the public announcement of the Proposed Acquisition on January 29, 2007.

[206] We note that the Respondents made a profit of $954,938.07 (USD) from their purchases of the Molecular Securities. The size of that profit was unprecedented for an investment by the Respondents in a single issuer in their trading history. That is a consideration in assessing the totality of the evidence related to the purchases of the Molecular Securities.

[207] We find that the Respondents' purchases of the Molecular Securities represented a fundamental shift in the nature of their trading and that their well-timed, highly uncharacteristic, risky and highly profitable purchases strongly support the inference that the Respondents purchased the Molecular Securities with knowledge of the Proposed Acquisition.

K. Suman's Internet Searches on January 24, 2007

[208] Staff submits that Suman's internet browsing on January 24, 2007 discloses an interest in (i) the insider trading allegations made against Martha Stewart in 2003, and (ii) the effects of a take-over bid on the share price of a target in the case of a search of "Loudeye". Staff submits that this internet browsing supports the inference that the Respondents purchased the Molecular Securities with knowledge of the Proposed Acquisition.

[209] Apart from challenging the reliability of the Internet History Reports, Suman testified that he could not remember conducting any searches relating to Martha Stewart or Loudeye on January 24, 2007, and suggested that he might have come across the Martha Stewart pages from another website, and might have come across the Loudeye page while searching for information about Nokia.

1. The Evidence

(a) The "Martha Stewart" Searches

[210] The Internet History Reports show that at 12:39:43 on January 24, 2007, the day the Respondents began purchasing the Molecular Securities, Suman used Computer 204 (his laptop at MDS Sciex) to access a news story, dated December 4, 2003, titled "Martha Stewart under criminal investigation", which related to the possible insider trading charges against Martha Stewart. Suman also accessed information about Martha Stewart's possible insider trading charges on the SEC website (at 12:35:34), on Wikipedia (at 12:51:40), and by conducting a Google-search (at 12:42:09) which took him to a blog called "whitecollarcrime_blog/ Martha_Stewart".

[211] The Internet History Reports include duplicate entries for these searches exactly five hours apart (consistent with the duplicate entries in the NetAnalysis evidence discussed at paragraph 149 of these reasons). Staff relies on the later entries as the accurate time of the searches. Suman testified that these entries may have in fact occurred ten days earlier, consistent with the evidence related to the January 14, 2007 "MDCC" entry in the Internet History Reports (see paragraph 146 of these reasons). We have concluded, on balance, that the earlier entry was likely a fragment of a later search (see paragraph 148 of these reasons). We find that the January 24, 2007 searches on Computer 204 were made on the dates indicated in the Internet History Reports.

[212] Suman denied that he had insider trading on his mind on January 24, 2007, and testified that "I do not have an independent recollection of this sort on that specific day. What I do have recollection of, that is after Colin McCann and George Gunn contacted me in February. That is when I had quite a few searches on insider trading, OSC and so on". In this respect, the Internet History Reports indicate that at 10:04:22 on Saturday, February 3, 2007, the morning after the Second Staff Interview, Suman googled "Ontario insider trading". We do not accept this explanation for the searches on January 24, 2007 referred to in paragraphs 210 and 214 of these reasons.

[213] Suman further submits that the Internet History Reports for January 24, 2007 suggest that he came across the "Stewart pages" on a newspaper or movie site without doing an independent search. That seems unlikely, and we do not accept that Suman had any interest in the media articles tendered by his counsel concerning Stewart's attempt to trademark the name of the town where she lives.

(b) The "Loudeye" Searches

[214] Suman appears also to have been interested in the effects of a previous take-over on the target's share price. The Internet History Reports for Computer 204 indicate that starting at 15:36 on January 24, 2007, Suman did a series of Google searches relating to Loudeye, a digital music company that was sold to Nokia on August 9, 2006. Suman accessed an August 9, 2006 article from the Seattle Times, headlined "Loudeye being sold to Nokia". The Trading Records indicate that as of July 31, 2006, Rahman held 600 shares of Loudeye which were then trading at $1.79 per share. A month later, after the take-over, the same 600 shares were trading at $4.38 per share, an increase of 144%. Rahman sold the shares in October 2006 for approximately $2,700. On cross-examination, when asked by Staff counsel whether he had ever had an experience holding stock in a company that was the subject of a take-over, Suman testified that he did not remember Loudeye.

[215] Suman testified that he could not remember what articles he looked at on January 24, 2007, questioned the time-stamps for the entries in the Internet History Reports, and suggested that he might have been searching for information about Nokia.

2. Conclusion: Suman's Internet Searches on January 24, 2007

[216] We do not accept Suman's testimony with respect to the searches referred to in paragraphs 210 and 214 of these reasons. We find that those searches show that Suman had an interest in the topic of insider trading on the same day the Respondents began purchasing the Molecular Securities and a week before Suman was first contacted by Staff in connection with their investigation. Suman was also interested that day in the effect of a take-over on a target's share price.

L. Project Monument Calendar Fragments

1. The Parties' Submissions

(a) Staff's Submissions

[217] In Rogers' Second Report, Rogers stated that a search for the term "Monument" on Computer 201A (Suman's workstation computer at MDS Sciex) identified a large number of fragments of Microsoft Outlook Calendar entries relating to meetings and events concerning Project Monument to which Suman was not invited and for which there is no explanation.

[218] The calendar entries included (i) an appointment from the calendar of Diane Yee, who was in-house counsel to MDS Sciex; (ii) several entries titled "Updated: Monument" with respect to disclosure schedules and the timing of the Announcement; (iii) an appointment for a conference call, as well as meetings at the premises of MDS Sciex and travel to San Francisco; and (iv) reference to "MDC Road to Close (MDS Internal Call)". The entries pre-date the Announcement and Staff submits they show that Suman had accessed them before the Announcement.

[219] One of the fragments, an appointment called "Updated Monument – **Agenda Changed: Review of Disclosure Schedule**", corresponds to an appointment in Boorn's calendar sent on January 24, 2007 at 10:23 a.m.; a corresponding entry is found in the e-mails passing through the NT Filter on January 24, 2007.

[220] In Rogers' opinion, Suman likely used Computer 201A to access the calendar entries, including the subject lines, from which the fragments came, either by using his e-mail access or the access of a member of the Sciex Deal Team who was a participant in the Monument meetings.

(b) The Respondents' Submissions

[221] The Respondents submit that Rogers could not say how or when the calendar fragments were written to Suman's Computer because Microsoft Outlook Calendar was a shared resource at MDS Sciex. They say that Staff did not rule out alternative explanations for the presence of the fragments on Computer 201A because no testing was ever undertaken to determine whether similar fragments could be found on other users' computers.

[222] When asked by Rahman's counsel whether he recalled accessing the relevant calendars, Suman gave the following answer:

> A. February 5th – I believe it was a Monday. And it was after I was contacted about the OSC investigation. I had my interview. At that point, I was meeting Colin McCann in the parking lot of MDS Sciex, giving him [my] computer, picking up [my] computer from him, and all that.
>
> So at that point, it just seemed appropriate for me that I notify MDS directly about this investigation. And it was in the evening of, I believe, Monday, February 5th, as far as I remember, when I decided that I should set up an appointment with somebody appropriate at MDS Sciex and notify them of this investigation.
>
> So I had – initially, I had – the people I had in my mind was Andy Boorn, Diane Yee, and Paul Young. And I tried to set up an appointment with either one of them. So I had accessed Andy Boorn's calendar. I had accessed Diane Yee's and Paul Young's calendars.
>
> And I remember finally not finding anything – an appropriate gap on the immediate following day. So what I decided was then – on Monday evening, I ended up calling Paul Young directly and spoke with him about this investigation and asked him what I should do, if I should set up an appointment with Andy Boorn or Diane Yee or with himself to talk about it more.
>
> (Hearing Transcript, March 29, 2009, p. 96)

[223] The Respondents also submit that the entry referred to in paragraph 219 of these reasons was entered into Boorn's calendar on January 24, 2007 at 10:23 a.m. – almost an hour after the Respondents' first purchases of the Molecular Securities. The Respondents submit that this is inconsistent with Staff's theory that Suman obtained knowledge of the Proposed Acquisition from the calendar fragments. By the time of the Boorn calendar entry, the Respondents' had already begun purchasing the Molecular Securities.

[224] The Respondents also question whether the "MDC Road to Close" entry (referred to in paragraph 218 of these reasons) came from Boorn's calendar. Boorn testified that, although he had checked his calendar, he was unable to find that entry.

Rahman's counsel suggested that these fragments might not have come from Boorn's calendar at all, but from the calendar of another MDS employee scheduled to participate in the meetings.

[225] The Respondents also noted that none of the entries identified by Rogers refer to "Molecular Devices", but only to "Monument" or "MDDC".

2. Discussion

[226] There is no dispute that a large number of Project Monument calendar fragments were found on Suman's Computer 201A. That is one of the two drives on Suman's workstation computer at MDS Sciex. The two principal factual issues with respect to the calendar fragments are (i) whether the calendar fragments were written to Computer 201A on the evening of February 5, 2007, as Suman contends, or prior to the Announcement, as alleged by Staff; and (ii) whether the calendar fragments were written to Computer 201A in the normal course because Microsoft Outlook Calendar is a shared resource at MDS Sciex, as Suman suggests, or because Suman manually accessed and viewed the calendars of certain members of the Sciex Deal Team prior to the Announcement, as alleged by Staff.

(a) When were the Calendar Fragments Written to Computer 201A?

[227] Rogers acknowledged that he could not tell when the calendar fragments were written to Computer 201A. Lo agreed. As a result, the only evidence on this point was Suman's testimony, set out at paragraph 222 of these reasons, that he accessed the calendars of Boorn, Young and Yee on the evening of February 5, 2007.

(b) Why were the Calendar Fragments Written to Computer 201A?

[228] We heard evidence about whether calendars were an open resource at MDS Sciex and about the operation of Microsoft Outlook.

[229] Suman testified that MDS Sciex "had a policy of open calendars" and that "by default, the calendars were all shared".

[230] Young testified that some MDS Sciex employees, especially executives, would turn on the "calendar sharing" function to allow their administrative assistants – or other MDS Sciex employees – to look at their calendars to check their availability for meetings. What the person viewing the calendar would see is "free" and "busy" time, but they could also look at the details of scheduled meetings unless the person whose calendar it was had marked the entry "private". In addition, when a meeting was scheduled, it appeared on the "boardroom" calendar, which can also be viewed by others. Young believes he was sharing his calendar in January 2007 because he generally did. Young also testified that Suman had helped source software to "scrub" confidential information from meeting invitations so that such information would not appear on the boardroom page. Suman had worked with CapGemini, MDS Sciex's third-party e-mail administrator, to resolve recurrent problems with the software.

[231] Boorn agreed that if a meeting room was required, the same calendar entry would appear in the calendars of all the participants in the meeting and on the boardroom calendar. However, Boorn testified that it would be unusual for a member of the Sciex Deal Team to put an entry relating to the Proposed Acquisition into Microsoft Outlook because of the concern about confidentiality. As noted in paragraph 224 of these reasons, he checked his calendar and did not find the "MDC Road to Close" entry. Rahman's counsel suggested that the calendar fragments may have come from the calendar of someone who sought Suman's help with an IT problem.

[232] Rogers acknowledged in cross-examination that (i) he did not make any attempt to determine whose calendar the fragments came from and did not speak to anyone at MDS Sciex about it; (ii) he did not know whether fragments of calendar entries not marked private can be found on a user's hard drive if the calendar is a shared resource at MDS Sciex; (iii) he did not know that Suman was occasionally called upon to make sure the software was appropriately scrubbing private calendar entries from the Exchange Server so that they could not be accessed by other users; (iv) he could not tell from the calendar fragments when they were stored on the hard drive; and (v) he did not make any attempt to find out whether similar calendar fragments might have been found on the computers of other MDS Sciex users.

3. Conclusion: Project Monument Calendar Fragments

[233] It is not possible, based on the evidence, to determine when the calendar fragments referred to in paragraphs 217 and 218 of these reasons were written to Computer 201A. Suman presented two innocent explanations for the presence of the calendar fragments on Computer 201A (i) that similar fragments might appear on the computers of other MDS Sciex employees as a result of Microsoft Outlook Calendar being a shared resource; and (ii) that the calendar fragments were on Suman's computer because of his involvement in sourcing and troubleshooting the "scrubbing" software. The expert evidence about the operation of Microsoft Outlook Calendar was not sufficient to allow us to draw any conclusions as to why the calendar fragments appear on Computer 201A. Staff did not submit any direct evidence that Suman accessed anyone's Microsoft Outlook Calendar showing references to Project Monument.

[234] We would add, however, that we are sceptical of Suman's evidence referred to in paragraph 222 of these reasons. It does not make sense to us that Suman would access the calendar of the President of MDS Sciex for the purpose of setting up a meeting with him to discuss Staff's investigation of Suman's trading. It makes much more sense that he would contact Racine, his immediate supervisor, or Young, who was Vice-President of Business Information Systems. Suman testified that he ultimately contacted Young to discuss Staff's investigation. Suman's testimony that he accessed Boorn's calendar for that purpose does not have the ring of truth.

[235] All we can conclude, however, is that Suman's Computer 201A contained a large number of calendar fragments that referred to Project Monument.

M. Suman's Statements during the First Staff Interview

1. The Evidence

[236] Staff alleges that when Suman was first contacted by telephone by Staff on Thursday, February 1, 2007 (the First Staff Interview), Suman denied purchasing the Molecular Securities the previous week.

[237] Staff relies on the affidavit of Stephen Carpenter ("Carpenter"), a Staff investigator, which describes the First Staff Interview as follows:

> On February 1, 2007, I, along with George Gunn, Manager of Surveillance in the Enforcement Branch of our office, along with representatives of the United States Securities and Exchange Commission, contacted Shane Suman by telephone. The number used was that known to E*Trade Canada Securities Corporation in respect of an account in the name of Monie Rahman, No. [redacted].
>
> During the course of the approximately 45-minute interview, Suman declined to provide information in response to the majority of the questions asked, stating that he did not wish to respond. However, he did state that:
>
> a. his date of birth is August 19, 1972; and
>
> b. he did not purchase any securities of Molecular Devices Corporation in the week of January 22 to 26, 2007, nor did he tell anyone else to acquire the securities.

[238] Carpenter's handwritten notes of the conversation are appended to his affidavit. The relevant excerpt from the notes states:

> Have not conducted trades in MDCC?
>
> --> No have not

[239] The following two questions and answers are noted at the bottom of the page:

> Did you purchase? "No"
>
> Tell anyone to purchase? "No"

[240] Apart from the three questions and answers on which Staff relies, the other five questions were: "is there is [*sic*] reason for not answering?", "did you need to speak with a lawyer?", "anyone use your cell phone?", "are you willing to cooperate with us?" and "do they know about the freeze?". No answers are noted for these questions.

[241] Carpenter did not testify.

[242] Gunn, who was also a participant in the First Staff Interview, testified about the investigation and that interview. He testified that the Commission's Surveillance Unit opened its investigation after receiving a request for assistance from the SEC, on or about January 30, 2007, with respect to trading in Molecular shares and options. Staff obtained account documents that indicated that Rahman was the accountholder and that Suman was her husband. The account documents included a telephone number, which Staff determined to be Suman's cell phone.

[243] Gunn testified that, on Thursday, February 1, 2007, Staff called Suman on his cell phone. On the call were Gunn and Carpenter, as well as four SEC investigators. According to Gunn, Suman answered and, after identifying himself and others on the call, Carpenter began asking him questions. Gunn testified that Suman, after identifying himself and giving his date of birth,

chose not to answer any further questions. According to Gunn, when asked if he purchased Molecular shares or options the previous week, Suman "said plainly no", and Suman also answered "no" to the question whether he had told anyone else to buy Molecular shares or options. Gunn stated that the conversation lasted approximately 45 minutes.

[244] On cross-examination, Gunn acknowledged that the conversation was not recorded or transcribed and that the only notes of the conversation, to his knowledge, are the notes made by Carpenter.

[245] Suman testified that he was in the middle of something when Staff first called him at work on the afternoon of February 1, 2007. He said there were a number of people from the Commission and the SEC on the call, but he did not know how many. After answering basic questions – his name, date of birth, address and employment – he did not feel comfortable answering additional questions. He denied saying that he did not make the purchases of the Molecular Securities; he testified that he did not answer that question, although the Staff investigators continued to ask questions after he said he did not feel comfortable answering anything further. Suman also testified that when he was interviewed by Staff in the MDS Sciex parking lot the next day (in the Second Staff Interview), he stated truthfully that he and Rahman purchased the Molecular Securities, that the relevant trading account was in Rahman's name and that he placed some of the orders and that Rahman placed other orders.

2. Discussion and Conclusion

[246] The Respondents submit that Suman's evidence with respect to the First Staff Interview should be preferred in the absence of a transcript of that interview.

[247] Staff says that, because Carpenter was not available to testify at the hearing of this matter, the Respondents were given the opportunity to cross-examine him on his affidavit but they did not do so. Staff also submits that we should accept Carpenter's affidavit evidence, which was confirmed by Gunn's testimony.

[248] We are not persuaded that the lack of a transcript of the First Staff Interview prevents us from considering the evidence we received related to that interview and from making a finding whether Suman denied making the purchases of the Molecular Securities. As we stated in the Motions Decision (see paragraph 144 of these reasons), hearsay evidence is admissible in Commission proceedings although care must be taken to avoid placing undue reliance on uncorroborated evidence that lacks sufficient indicia of reliability. In this case, Carpenter's affidavit was supported by his handwritten note. While the handwritten note is very brief, it is clear on the main point: that Suman denied purchasing the Molecular Securities or telling anyone else to purchase the Molecular Securities. Carpenter's affidavit evidence is consistent with the testimony of Gunn, who also participated in the First Staff Interview. We find the evidence of Carpenter and Gunn to be consistent and credible and we conclude that, in the First Staff Interview, Suman denied making the purchases of the Molecular Securities.

[249] That leaves the question why Suman denied making those purchases. Rahman's counsel described the February 1, 2007 call as "an ambush" that involved as many as six people, all of whom could ask questions. Suman had no advance warning of the call and he was at work when the call came in. Moreover, while Suman had made some of the purchases of the Molecular Securities, other purchases were made by Rahman. In any event, the Respondents submit that Suman clarified his answers during the Second Staff Interview the next day by confirming the facts related to the Respondents' purchases of the Molecular Securities.

[250] It seems to us unlikely that Suman would have denied during the First Staff Interview making the purchases of the Molecular Securities if there was an innocent explanation for making them (such as that the purchases were made as a result of the Respondents' research and the application of the Five Criteria). Further, it is likely that Suman had reconsidered his denial by the time of the Second Staff Interview the next day because he knew that Staff would be able to prove that he and Rahman had made the purchases of the Molecular Securities.

[251] In our view, Suman's denial in the First Staff Interview that he made the purchases of the Molecular Securities shows a consciousness of guilt and supports the inference that the Respondents purchased the Molecular Securities with knowledge of the Proposed Acquisition.

N. Suman's Use of Window Washer

1. The Parties' Submissions

[252] Staff alleges that on February 3, 2007, Suman installed Window Washer, a software program used to erase data and information from a computer on his work computers – Computers 201A, 201B and 204 – and on his home computers – Computer Home 1A and 1B. Window Washer is a software program used to "sanitize" or permanently erase data and information from a computer without leaving any evidence of what the computer was used for or what data and information the computer contained (we refer to that as "**wiping**" a computer" or "**wiping**" data and information from a computer). Staff alleges that Suman ran Window Washer to wipe data and information from his Computers that would have assisted Staff in their investigation and this

proceeding. Staff submits that February 3, 2007 was the day after Suman's Second Staff Interview, at which he had been expressly warned by Staff not to delete data or information from his office computer or tamper with it.

[253] Suman testified that he used Window Washer only as a performance optimizing program and not a data wiping program. He said that he made no deliberate manual wiping of data and information from his Computers and that Window Washer was operating automatically on February 3 and 4, 2007. Suman also said that he believes that he updated Window Washer on his Computers on those dates and did not install it for the first time.

2. The Evidence

[254] Near the end of the Second Staff Interview, which lasted about an hour, Staff asked Suman whether Staff could get access to his computer, which led to the following exchange:

> Q. Would you be willing to turn your computer over to us for a couple of hours to allow us to have a look at it?
>
> A. Yes.
>
> Q. Okay. Can we go get it now?
>
> A. I wanted to go back to work now, but at a later time, I don't have a problem to do that.
>
> Q. Well, that won't do us very much good because you could go home and delete everything that we would want to see.
>
> A. I wouldn't do that.
>
> Q. Well, you may be the most honest person in the world, but I don't know that right yet Shane.
>
> A. Okay.
>
> Q. Can you get out of work?
>
> A. No, I would have to – I'd have to wait until the 4 o'clock meeting –
>
> Q. Okay. Do you know that – I mean, you're probably pretty good at computers, but we're pretty good at computers as well.
>
> A. Understood.
>
> Q. You know that we would be able to tell if anything had been tampered with the computer, correct?
>
> A. Correct.
>
> Q. Okay. You know what? You know that probably as well as I do.
>
> A. Yes.
>
> Q. So if we get the computer at a later time, and we find that it's been played with or altered –
>
> A. M'hmm.
>
> Q. How do you think that would look?
>
> A. That would look bad.
>
> (Second Staff Interview, p. 27 to 28)

[255] McCann testified that at 18:32:17 on Friday, February 2, 2007, about three hours after the Second Staff Interview, Suman used Computer 201A to search the "Computers & Internet" page at answers.yahoo.com. When McCann accessed the same URL, he found an entry titled "How do I permanently delete porn files from my computer?" The answers posted by users

included: reformat the hard drive a few times, run a disc defragmenter, and "Download Window Washer from Limewire.com – any remaining bit will be eliminated. This will also get rid of all the rubbish on your system and help to ensure your programs run faster". In cross-examination, Lo acknowledged that the "How do I permanently delete porn files from my computer?" discussion board was likely accessed on February 2, 2007, although because of the duplicate time-stamp issue, he could not confirm whether it was viewed at 18:32:17 that day.

[256] Young testified that Window Washer is one of a number of software programs that are used to "sanitize" a computer; that is, to wipe it of data and information, as much as possible, without leaving any evidence of what the computer was used for or contained. He testified that Window Washer was not an approved program at MDS Sciex and that Suman would have had no legitimate business purpose for using it on his Computers.

[257] Rogers testified that Window Washer was used to wipe files from three of the drives on Suman's Computers – Computers 201A and 201B, Suman's workstation computer at MDS Sciex, and Computer 204, Suman's laptop computer at MDS Sciex.

[258] Rogers testified that on February 3, 2007, the day after the Second Staff Interview, Window Washer was installed on Computer 201A at 11:55 a.m., that it was used to wipe files from that drive and then again some time after 3:39 p.m. that afternoon, and that it was last accessed at 11:14 a.m. on February 6, 2007. In his Second Report, he stated that there is evidence that files contained in the "sumansb" profile were wiped on February 3, 2007 at approximately 12:18 p.m. using Window Washer. The erased files included files in the Outlook temporary files folder, a personal Outlook e-mail database and an Outlook Express e-mail file. An appendix to the report included examples of 10 files in one folder and 12 files in another folder with unreadable names that had been wiped.

[259] It was also Rogers' opinion that Window Washer was installed on Computer 204 at approximately 12:05 p.m. on February 3, 2007, about 10 minutes after it was installed on Computer 201A, and that it was used to wipe files from that drive. However, the Internet History Reports for Computer 204 indicate that the drive was not completely wiped. Rogers explained that if an internet history file had previously been wiped manually or in the normal course of the operation of Internet Explorer, or wiped by automatic operation of Window Washer, the file would no longer be available to the user and could not be manually selected for wiping by Window Washer.

[260] Rogers testified that Computer 201B was once a bootable drive that was used to browse the internet and review trading account balances, although only fragments of data remained. He believes that at 1:06 p.m. on February 3, 2007, about an hour after Window Washer was used on Computer 204, an attempt was made to wipe the drive of Computer 201B using Window Washer or other similar software.

[261] McCann testified that there was a limited internet history for the period from January 13 to February 5, 2007 on Computer Home 1A, and no internet history at all for the period from January 16 to February 3, 2007 on Computer Home 1B. Suman testified that internet history files are typically stored on a computer's C drive, which is Computer Home 1A in this case. When presented with the limited internet history on Computer Home 1A, Suman testified that he had no memory of erasing any internet history from his home computer.

[262] Suman testified that he used Window Washer only as a performance optimizing program, not as a data wiping program. He testified that on Saturday, February 3, 2007, he was in the office to do a scheduled upgrade to the NT Filter. While that process was underway, he filled his time by talking with Rahman, browsing the internet and running maintenance work, including Window Washer, on his computer. Suman testified that any wiping of his computer resulted from the automatic operation of Window Washer and that there had been no selective wiping.

[263] On cross-examination, Suman insisted that he made no deliberate attempt to erase data or information from his Computers. He said he believes that he updated Window Washer on his Computers, rather than installing it for the first time, on the weekend of February 3 and 4, 2007. When questioned about Staff's warning to him during the Second Staff Interview about destroying evidence, Suman stated that he was not told to seize up his computers, but to carry on business as usual. He testified that he had no independent recollection of viewing the page, "How do I permanently delete porn files from my computer", or of erasing internet history files from January 16 to February 3, 2001 on Computer Home 1A.

3. Discussion

[264] Suman did not deny running Window Washer on his Computers on February 3, 2007 but stated that he did so as a performance optimizing program. Neither Suman nor Lo disputed that Window Washer had been used to wipe files on Suman's Computers. The question is whether Suman, after the Second Staff Interview, installed and ran Window Washer in an attempt to cover his tracks, as Staff alleges, or in the normal course of maintaining computer efficiency. If he did run Window Washer other than in the normal course, the question is what, if any, inference we should draw from that.

[265] Rogers and Lo disagreed on two factual issues that bear on this question: (i) whether the February 3, 2007 installation of Window Washer on Computer 201A was the first time Window Washer was installed on that drive or was an update of previously installed software; and (ii) whether Window Washer was used manually to wipe files or was functioning on an automatic setting.

(a) When was Window Washer first installed on Computer 201A?

[266] The Respondents provided little evidence disputing Rogers' testimony that Window Washer was installed on Computer 201B and Computer 204 for the first time on February 3, 2007. The dispute between the experts over Window Washer was focused on Computer 201A. In response to Rogers' conclusion that Window Washer (version 6) was installed on Computer 201A on February 3, 2007 at approximately 11:55 a.m., Lo testified that he found evidence in the registry of Computer 201A that an earlier version of Window Washer (version 5.5), was installed on that computer in May 2006. He testified that one possibility was that version 6 was installed on top of version 5.5 as part of an update on February 3, 2007. He did not think it likely that both versions were installed on February 3, 2007 because a regular user downloading the software for the first time will go to the website and download the latest version, ignoring earlier versions.

[267] On cross-examination, Lo acknowledged that a possible explanation for the May 2006 entry for Window Washer on Computer 201A was that Window Washer version 5.5 was installed for the first time on February 3, 2007 together with an update to version 6; he did not check whether there was a software update notification in Window Washer version 5.5. Lo later acknowledged that he believed the May 2006 date was a "created" date, not a "modified" date, and that it was possible May 2006 was the date the Window Washer software was created or modified, not the date it was installed on Computer 201A. On further cross-examination, when presented with a list of files relating to Window Washer found on Computer 201A, Lo acknowledged that it was likely that the "file created" date given for all 19 entries on February 3, 2007 at approximately 11:55 a.m. was the date Window Washer was installed on Computer 201A, and that the earlier "last written" dates relate to the dates the software was written or modified, not the dates it was installed on Computer 201A. Moreover, given Rogers' evidence, Lo acknowledged that it is likely that earlier "last written" dates on Window Washer files, going back to May 17, 2004, relate to the software, not its installation on Computer 201A. Finally, when presented with a list of "prefetch" files for Computer 201A, which are typically loaded before the first time an application is run, and which appear to indicate that Window Washer was first run on Computer 201A shortly before noon on February 3, 2007, Lo testified that he did not review prefetch files and was not comfortable in drawing that conclusion.

[268] In our view, there is no question that on February 3, 2007 Suman installed Window Washer for the first time on Computer 201B and Computer 204. We have also concluded based on the evidence that it is likely that Window Washer was also installed by Suman for the first time on Computer 201A on that date. Accordingly, we find that Window Washer was installed on all three computers for the first time on February 3, 2007.

(b) Was Window Washer used manually to wipe files?

[269] Rogers' conclusion was that files contained in the "sumansb" profile on Computer 201A were selectively wiped on February 3, 2007 at about 12:18 p.m. using Window Washer. Lo's opinion in his Second Report was that because Window Washer makes wiped files unrecoverable, it is not possible to retrieve the relevant files to determine whether they had anything to do with the allegations in this matter, or to determine whether Window Washer was used as part of a regular maintenance routine. Lo also testified that had Suman used Window Washer to erase evidence relating to the allegations in this matter, there should have been no internet "cookies" or temporary internet files relating to searches for "MDCC" and "Monument" on Suman's workstation computer.

[270] Lo challenged Rogers' opinion that Window Washer had been used manually to wipe internet files. Lo testified that by right-clicking on a file name, a user can manually erase that file using Window Washer. However, only one file or folder at a time can be manually wiped; there is no way to select a number of files or folders in a list to establish a batch to be erased. On cross-examination, Lo acknowledged that manual wiping and automatic wiping are the only two options and he testified that he could not tell which had occurred.

[271] The Respondents do not challenge Staff's allegation that certain temporary internet files were wiped from Computer 201A using Window Washer on February 3, 2007. Rogers and Lo ultimately agreed that the evidence is inconsistent with automatic operation of Window Washer, and Lo was led to acknowledge that the best explanation of the evidence is that multiple files were manually wiped in quick succession.

[272] We do not accept the submission that Window Washer was operating automatically when it wiped files on Suman's Computers on February 3, 2007. We find that it is more likely that Window Washer was used manually to wipe specific files.

[273] It would certainly have been preferable for Staff to have obtained backups of the data and information on Suman's Computers so that one could attempt to determine what information was permanently wiped as a result of his use of Window Washer. We do not know whether obtaining that backup would have shown the specific data and information that was erased by Window Washer. We are not prepared, however, to disregard the fact that Suman installed and ran Window Washer on three of

his Computers on February 3, 2007 to wipe data and information after being expressly warned by Staff against deleting data or information from his office computer or tampering with it.

4. Conclusion: Suman's Use of Window Washer

[274] We recognize that Window Washer can be used to improve computer efficiency as well as to ensure privacy. We note, however, that improving computer efficiency means permanently wiping data and information from a computer. We recognize, as well, that we have no way of determining whether the files that were wiped from Suman's Computers using Window Washer had anything to do with the allegations in this matter. We are also mindful of the Respondents' submission that Staff has not presented evidence of backup files from MDS Sciex that might have resolved that question.

[275] We note, however, that there is evidence that Suman installed Window Washer following an internet search on Computer 201A on February 2, 2007 that accessed an entry "How do I permanently delete porn files from my computer?" That search supports the inference that Suman's use of Window Washer was not in the normal course.

[276] Window Washer was not an approved program at MDS Sciex and Suman would have had no work related reason for using it on his Computers. The key facts are that, the day after the Second Staff Interview, an interview in which he was expressly warned by Staff not to erase data or information from his office computer or to tamper with it, Suman likely installed and ran Window Washer on Computers 201A, 201B and 204, and by doing so permanently wiped data and information from those Computers, rendering that data and information unrecoverable. Suman did not deny that Window Washer operated that day. He disputed only when Window Washer was first installed on Computer 201A, the purpose for which it was used and whether the wiping was made manually or automatically.

[277] Suman could not have believed that using Window Washer for any reason to permanently wipe data and information from any of his Computers was consistent with Staff's warning not to tamper with his office computer. To the contrary, he would have been very conscious of that warning. He knew that he should not be doing anything to wipe information from his Computers, yet he did so. We do not accept his evidence that he used Window Washer solely as a performance optimizing program.

[278] We find that Suman likely installed Window Washer on Computer 201A on February 3, 2007 as he had unquestionably also done on Computers 201B and 204. We also find that it is likely that Suman used Window Washer to manually wipe data and information from Computers 201A, 201B and 204 on February 3, 2007 after having been expressly warned by Staff not to delete data and information from his office computer or to tamper with it. We find that Suman's use of Window Washer on February 3, 2007 shows consciousness of guilt and supports the inference that the Respondents purchased the Molecular Securities with knowledge of the Proposed Acquisition.

VI. DRAWING INFERENCES BASED ON CIRCUMSTANTIAL EVIDENCE

A. Circumstantial Evidence

[279] This case turns on circumstantial evidence. There is no direct evidence that Suman learned of the Proposed Acquisition from someone at MDS Sciex or through his role in the IT group at MDS Sciex. Similarly, there is no direct evidence that he informed Rahman of it. It follows that there is no direct evidence that Suman and Rahman purchased the Molecular Securities with knowledge of the Proposed Acquisition. The Respondents deny having done so. Accordingly, the question is whether we can properly make inferences from the evidence that Suman learned of the Proposed Acquisition through his IT role at MDS Sciex, that he informed Rahman of it and that Suman and Rahman purchased the Molecular Securities with knowledge of the Proposed Acquisition.

1. Staff's Submissions

[280] Staff submits that absent an admission, allegations of insider tipping or insider trading may be inferred from circumstantial evidence. Staff submits that courts and securities regulators in Canada, the U.S. and the U.K. have identified the types of circumstantial evidence that may properly support an inference of knowledge of a material fact in issue.

[281] In particular, Staff submits that a respondent's conduct can provide evidence that he or she was in possession of an undisclosed material fact. For example, in *Re Danuke*, the Commission rejected the respondents' submission that the information they obtained was mere rumour because "their subsequent [trading] conduct refutes this suggestion." Similarly, the Cour du Quebec has held that the conduct of an accused following a particular telephone conversation "must be considered in determining the significance of the information" conveyed (*R. v. Smith*, [1994] Q.J. 2732 (Q.C.), at paras. 49-50).

[282] In this case, Staff led a great deal of evidence about the opportunities Suman had to learn of the Proposed Acquisition through his role as an IT expert at MDS Sciex. Staff concedes that opportunity alone does not prove possession of the relevant undisclosed material fact. Staff submits, however, that in this case proof of opportunity, combined with evidence of well-timed, highly uncharacteristic, risky, substantial and highly successful purchases, creates a compelling inference that Suman learned of

the Proposed Acquisition through his IT role at MDS Sciex, informed Rahman of it and that the Respondents purchased the Molecular Securities with knowledge of the Proposed Acquisition.

[283] Staff submits that it is not required to directly prove that Suman viewed the information that he had access to at MDS Sciex; the inference of viewing and thus possession of that information can be based on the strength of the combined circumstances. Staff relies, in particular, on three U.S. cases: *U.S. v. Larrabee*, 240 F.3d 18 (1st Cir. 2001) ("***Larrabee***"), at p. 24; *S.E.C. v. Warde*, 151 F.3d 42, 46-49 (2nd Cir. 1998) ("***Warde***"), at p. 48; and *S.E.C. v. Musella*, 578 F. Supp. 425, 440-41 (S.D.N.Y. 1984) ("***Musella***"), at p. 441. Staff also relies on the decision of the Regulatory Decisions Committee of the U.K. Financial Services Authority (the "**FSA**") in FSA Final Notice to Mr. John Shevlin (July 1, 2008) ("***Shevlin***").

2. The Respondents' Submissions

[284] The Respondents submit that Staff's allegations in this case are pure speculation. They submit that Staff has failed to call a single witness who could directly confirm that Suman knew about the Proposed Acquisition. Further, they submit that there is a complete absence of evidence from which it could reasonably and logically be inferred that the Respondents knew about the Proposed Acquisition when they purchased the Molecular Securities. The Respondents submit that Staff's evidence in this respect is mere conjecture and speculation and that Staff has failed to discharge its burden of proof.

[285] The Respondents do not dispute that circumstantial evidence can support appropriate inferences. They rely on *R. v. Morrissey*, [1995] O.J. No. 639 (Ont. C.A.) ("***Morrissey***"), *R. v. Munoz*, [2006] O.J. No. 446 (S.C.J.) ("***Munoz***") and *R. v. Khan*, [2009] O.J. No. 2902 (S.C.J.) ("***Khan***") for the proposition that where a case rests on circumstantial evidence, the inferences drawn by the trier of fact must arise reasonably and logically from the facts otherwise established.

[286] The Respondents submit that in *Larrabee, Warde, Musella* and *Shevlin*, the court or adjudicator was able to establish the source of the material non-public information in drawing the inference that the respondents made the trades while in possession of that information. The Respondents submit that, in this case, Staff has not satisfied its burden of proving that Suman learned of the Proposed Acquisition from a specific source.

[287] The Respondents also submit that Staff is asking us to engage in the kind of impermissible inference drawing criticized in *R. v. Portillo*, [2003] O.J. No. 3030 (Ont. C.A.) ("***Portillo***"). The Respondents submit that the one objective fact that Staff can prove is the "seductive fact" that the Respondents purchased the Molecular Securities just before the Announcement. But to make its case, Staff must prove that the purchases were made with actual knowledge of the Proposed Acquisition. The Respondents submit that we are being asked to infer actual knowledge based on events that "could have" or "might have" occurred, and that is speculation, not the proper drawing of an inference.

B. Discussion of the Law

1. Circumstantial Evidence

[288] *The Law of Evidence in Canada* makes the following statement with respect to circumstantial evidence:

> In cases where there is a civil standard of proof, circumstantial evidence is treated just as any other kind of evidence. The weight accorded to it depends on the strength of the inference that can be drawn from it.
>
> (*The Law of Evidence in Canada*, 2nd ed., J. Sopinka, S.N. Lederman, and A.W. Bryant (Toronto: Butterworths, 1999 ("***The Law of Evidence***"), at p. 41)

[289] In *Khan*, a decision of the Ontario Superior Court of Justice, the Crown's case, which relied "almost entirely" on circumstantial evidence, was dismissed. The reasons include the following excerpt from *Watt's Manual of Criminal Evidence*, 2006 ("***Watt***"), section 9.01, at p. 42:

> Circumstantial evidence is any item of evidence, testimonial or real, other than the testimony of an eyewitness to the material fact. It is any fact from the existence of which the trier of fact may infer the existence of a fact in issue. It is for the trial judge to determine whether circumstantial evidence is relevant.
>
> (*Khan, supra*, at para. 47)

[290] In *Re Podorieszach*, a market manipulation case, the Alberta Securities Commission (the "**ASC**") made the following comment:

> A consideration of allegations of improper trading activity more often than not turns on circumstantial evidence, requiring us to draw inferences from facts. Often, simply because there has been no admission, we are asked to infer motive, intent or knowledge. In those cases we may begin by considering factual evidence as to actions and consequences, such as an unusual trading pattern or an unusual change in a reported price. We then consider whether it is reasonable to infer from those facts the requisite … knowledge.
>
> Knowledge … can therefore, be inferred from circumstantial evidence.
>
> (*Re Podorieszach*, [2004] A.S.C.D. No. 360 ("***Re Podorieszach***"), at paras. 76- 77)

[291] The ASC reiterated this view in *Re Kusumoto*:

> There was no dispute that the evidence before us was largely circumstantial. Kusumoto seemed to suggest that circumstantial evidence alone cannot amount to clear and cogent evidence. We disagree … In many cases involving securities laws, circumstantial evidence will be the only sort of evidence available. It is not to be excluded or disregarded by reason of being circumstantial. If it is relevant it will be received and considered. In some cases, relevant circumstantial evidence will be decisive.
>
> (*Re Kusumoto*, 2007 ABASC 49 ("***Re Kusumoto***"), at paras. 73-74)

[292] Most recently, in *R. v. Landen*, [2008] O.J. No. 4416 (O.C.J.) ("***Landen***"), a quasi-criminal insider trading and tipping case, the Ontario Court of Justice relied upon circumstantial evidence to draw the inference that the relevant individual possessed and traded with knowledge of material undisclosed information, and convicted him of insider trading.

2. Drawing Inferences

[293] In *Morrissey*, the Ontario Court of Appeal said:

> A trier of fact may draw factual inferences from the evidence. The inferences must, however, be ones which can be reasonably and logically drawn from a fact or group of facts established by the evidence. An inference which does not flow logically and reasonably from established facts cannot be made and is condemned as conjecture and speculation.
>
> (*Morrissey, supra*, at para. 52)

[294] *Watt* states in section 9.01, at p. 42:

> Where evidence is circumstantial, it is critical to distinguish between inference and speculation. Inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the proceedings. There can be no inference without objective facts from which to infer the facts that a party seeks to establish. If there are no positive proven facts from which an inference may be drawn, there can be no inference, only impermissible speculation and conjecture ... .

This statement is referred to with approval in *Khan, supra,* at para. 47.

[295] Accordingly, it is clear that we may properly make inferences that are reasonably and logically drawn from the facts established by the evidence. Staff and the Respondents agree that is the applicable legal test. Any such inferences must be based on clear, convincing and cogent evidence. The question is whether the inferences that Staff invites us to draw from the evidence in this matter are reasonable and supportable inferences or impermissible speculation.

3. Improper Inferences

[296] In *Munoz*, an order committing the accused to stand trial on charges of conspiracy to commit murder and counselling to commit an indictable offence was quashed on the basis that the preliminary inquiry judge had drawn inferences that could not reasonably be drawn from the evidence before him. After quoting from *Watt* and *Morrissey*, the Court stated that "there are two ways in which inference drawing can become impermissible speculation" (*Munoz, supra,* at para. 26).

[297] The first requires facts to be assumed that are not proven. In *Portillo*, the Crown led evidence consisting of "two primary facts: two partial shoeprints found at the scene were similar to impressions from two shoes found by the police in the course of their investigation, and the shoes were found in the vicinity of the accused's apartment" (*Portillo, supra,* at para. 31). The Crown asked the jury to infer that the two accused had been at the scene of the homicide on the night the deceased was killed. The

defence challenged the admissibility of that evidence, but the trial judge admitted it on the basis that it had some probative value and no potential prejudicial effect. The two accused were convicted.

[298] On appeal, the convictions were overturned. The Court concluded that the evidence related to the shoeprints and shoes "could not, absent assumption of facts not proved, or speculation, support either the inference that the shoes made the prints found at the scene or that the shoes belonged to [the accused]." The Crown's reasoning, although "seductive", was circular (*Portillo, supra,* at paras. 29 and 37).

[299] The second kind of impermissible inference drawing occurs when the established primary facts are not sufficiently linked to the inferences sought to be drawn. The Court in *Munoz* referred to and approved the following statement:

> [W]ith circumstantial evidence, there is, by definition, an inferential gap between the evidence and the matter to be established – that is, an inferential gap beyond the question of whether the evidence should be believed … The judge must therefore weigh the evidence, in the sense of assessing whether it is reasonably capable of supporting the inferences that the Crown asks the jury to draw.
>
> (*Munoz, supra*, at para. 28)

The Court in *Munoz* also stated that: "… it is not enough simply to create a hypothetical narrative that, however speculative, could possibly link the primary fact or facts to the inference or inferences sought to be drawn" (*Munoz, supra*, at para. 31).

[300] Accordingly, in drawing inferences, we must ensure that we are not assuming facts that have not been proven, and that the facts that have been proven are reasonably capable of supporting the inferences we draw.

4. Relevant U.S. and U.K. Cases

[301] As noted above, there are three U.S. cases Staff referred us to that are relevant in the circumstances: *Larrabee*, *Warde*, and *Musella*. While those cases are not binding on us, they are helpful in discussing the circumstances in which knowledge by a person of material non-public information may properly be inferred.

[302] In *Larrabee*, a case applying the criminal standard of proof, the U.S. Court of Appeal looked at the circumstances surrounding the alleged insider tip, which the accused denied receiving. The Court held that while "opportunity alone does not constitute proof of possession, opportunity in combination with circumstantial evidence of a well-timed and well-orchestrated sequence of events, culminating with successful stock trades, creates a compelling inference of possession by the [tippee]." The Court considered the following factors: (i) the tippee's access to the information; (ii) the relationship between the tipper and the tippee; (iii) the timing of the contact between the tipper and the tippee; (iv) the timing of the trades; (v) the pattern of the trades, including their uncharacteristic size; and (vi) the attempts to conceal the trades or the relationship between the tipper and the tippee. The Court concluded:

> When assembled, the pieces of the puzzle create a picture that supports the inference that Larrabee did possess material, non-public information about the bank merger [and misappropriated it].
>
> (*Larrabee, supra,* at p. 24)

[303] Similarly, in *Musella,* the Court relied on the most likely inference drawn from the evidence:

> The evidence offered, like pieces to a puzzle, takes on significance only when one attempts to arrange the individual proof into some coherent, larger picture. Although gaps remain to be sure, I can suggest no more credible explanation for the picture that emerges than the fact that Alan Ihne was tipping to James Covello non-public material information gathered during the course of his employment at Sullivan & Cromwell and that the disclosures prompted the Covellos to purchase the securities they did at the times that they did… Any innocent explanation incorporating the proof offered is less plausible than an inference of wrongdoing.
>
> (*Musella, supra,* at p. 441)

[304] In *Shevlin*, the FSA alleged that the respondent had obtained material non-public information about his employer, Body Shop plc, through his job as an IT technician. One day before a surprise public announcement of poor operating results, the respondent traded short on a contract for differences ("**CFD**"), netting a total profit of £38,472. The FSA alleged that the respondent had been given passwords that allowed him access to e-mail accounts of certain senior executives that contained material non-public information. The FSA alleged that by accessing those e-mails, the respondent had learned about poor operating results over the Christmas season. The FSA acknowledged, however, that there was no proof as to when the respondent accessed the e-mails. The respondent denied the allegation, and claimed that he traded based on his own research,

not based on non-public information. He argued that the FSA improperly relied exclusively on circumstantial evidence. The Regulatory Decisions Committee of the FSA found that there was cogent and compelling circumstantial evidence against the respondent, including evidence that:

(a) the respondent had the opportunity and ability to log into the e-mail accounts of certain senior executives at the Body Shop plc during the course of his employment, although such access was unlikely to be traceable to him;

(b) he arranged substantial finance on an urgent basis to enable him to effect the CFD trade before the surprise announcement;

(c) he placed the CFD trade on the day before the announcement and was keen that his trade take place on that day;

(d) his CFD trade was of a considerable size; one which accounted for approximately 26.7% of the trading volume in the stock that day;

(e) his CFD trade was significantly larger than any CFD he had previously traded; the underlying value of the trade was £213,536, which represented more than double the respondents' net assets; and

(f) the level of financial risk undertaken by the respondent was much higher than he had undertaken on previous trades and was such that it could have resulted in serious financial hardship if the trade had gone against him.

(*Shevlin, supra,* at paras. 11.1-11.2)

C. Conclusion: Drawing Inferences Based on Circumstantial Evidence

[305] In an insider trading or tipping case, a respondent may deny knowledge or tipping of the relevant undisclosed material information. Accordingly, key determinations may have to be made based on inferences from circumstantial evidence. In this case, the Respondents deny that Suman had knowledge of the Proposed Acquisition at the Relevant Time and that he informed Rahman of it.

[306] We accept that the inferences we draw from the evidence must arise reasonably and logically from the facts established by the evidence. We agree that Staff cannot discharge its burden of proof by creating "a hypothetical narrative" that is not grounded in the facts. To prove that Suman learned of the Proposed Acquisition, we cannot assume that he did and that therefore he must have used his abilities and the opportunities that came with his IT role in order to obtain that information. That would be circular reasoning and impermissible speculation.

[307] At the same time, Staff does not have to bring direct evidence to prove that Suman viewed any particular document or e-mail or otherwise obtained knowledge of the Proposed Acquisition by any specific means through his IT role at MDS Sciex. Knowledge of an undisclosed material fact may be properly inferred based on circumstantial evidence that includes proof of the ability and opportunity to acquire the information combined with evidence of well-timed, highly uncharacteristic, risky and highly profitable trades. Clearly, the more facts and evidence supporting an inference, the stronger and more compelling that inference will be. At the same time, however, even when an inference is properly drawn, there will always be a gap between the direct evidence and the inference made. The existence of that inferential gap does not mean that an inference is simply conjecture or speculation. Further, the fact that inferences as to knowledge of an undisclosed material fact can be properly made based on the evidence does not mean that a reverse onus is being imposed on a respondent to disprove possession of the particular knowledge.

[308] Staff is not required to prove that the inferences they invite us to draw are the only inferences that can be drawn from the evidence. We agree with the Court's statement in Munoz that "... this requirement of 'logical probability' or 'reasonable probability' does not mean that the only 'reasonable' inferences that can be drawn are the most obvious or the most easily drawn" (*Munoz, supra,* at para. 31).

[309] What Staff must prove based on clear, convincing and cogent evidence is that it is more likely than not that Suman learned of the Proposed Acquisition through his IT role at MDS Sciex, that he informed Rahman of it, and that the Respondents purchased the Molecular Securities with knowledge of the Proposed Acquisition. We can infer these conclusions from the evidence submitted to us provided the inferences arise reasonably and logically from the facts established by the evidence. We base our conclusions in this matter on the combined weight of the evidence and the findings we have made.

VII. FINDINGS ON CREDIBILITY AND INFERENCES MADE

A. Credibility

1. Staff's Submissions

[310] Staff submits that the credibility of the Respondents is a critical issue in this case because the Respondents testified that they purchased the Molecular Securities based on their own research and not with knowledge of the Proposed Acquisition. Staff asks us to reject that evidence.

[311] Staff submits that in a civil case, where the standard of proof is the balance of probabilities, finding the evidence of one party credible may well be conclusive of the result (*McDougall, supra,* at para. 86). Further, Staff submits that disbelieving the Respondents' testimony may be determinative in an insider trading case based on circumstantial evidence. Staff relies in this respect on *Re Bennett*, [1996] 34 B.C.S.C.W.S. 55, an insider trading and tipping case before the B.C. Securities Commission ("***Bennett***"). That Commission stated in connection with the respondents' purchases of the relevant shares that:

> … We do not believe the testimony of Doman and R.J. Bennett that they never discussed Doman Industries. We do not believe R.J. Bennett's testimony that he bought because his brother bought. We do not believe W.R. Bennett's testimony that he bought because of his research and analysis. We find that the purchases of Doman shares made by each of the Bennetts must have been made on information received from Doman about his decision to sell Doman Industries that had not been generally disclosed. Further, we find that the purchases of Doman shares made by Mills must have been made on information received from the Bennetts about the sale of Doman Industries that had not been generally disclosed.
>
> (*Bennett, supra,* at p. 93)

[312] Staff submits that the test of a witness's evidence is its harmony with the preponderance of probabilities disclosed by the evidence (*Springer v. Aird & Berlis LLP* (2009), 96 O.R. (3d) 325 ("***Springer***")). Staff submits that in this case the Respondents' testimony was inherently implausible and reflected "selective memory".

2. The Respondents' Submissions

[313] The Respondents submit that Staff's submissions about the Respondents' credibility are not sufficient to prove Staff's allegations on a balance of probabilities. Staff has to prove its allegations based on clear, convincing and cogent evidence. They submit that Staff has failed to do so. Further, the Respondents submit that the *Bennett* case is distinguishable because, in that case, the insider source of the information (Doman) was established and the issue was whether there had been communication of the information and trades by the tippees. The Respondents submit that, in this case, Staff has not proven the source of the material undisclosed information upon which Suman and Rahman are alleged to have traded.

3. Discussion

[314] The main factual issues in dispute in this matter are whether Suman learned of the Proposed Acquisition through his IT role at MDS Sciex, whether he informed Rahman of it and whether Suman and Rahman purchased the Molecular Securities with knowledge of the Proposed Acquisition. Because the Respondents deny having that knowledge at the Relevant Time, their credibility is a crucial issue.

[315] The Court stated in *Springer, supra,* that:

> The judge is not given a divine insight into the hearts and minds of the witnesses appearing before him. Justice does not descend automatically upon the best actor in the witness box. The most satisfactory judicial test of truth lies in its harmony or lack of harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case.
>
> (*Springer, supra,* at para. 14).

[316] In assessing the Respondents' credibility, we have carefully considered whether their evidence is "in harmony with the preponderance of probabilities disclosed by the facts and circumstances" of this case. We have concluded that it is not. There were a number of instances in which we rejected the Respondents' testimony or evidence or found it evasive, not consistent with the weight of the evidence or not believable. That evidence includes the following:

(a) We do not believe Suman's evidence that he could only speculate about whether SurfControl allowed the NT Filter administrator to create, modify or delete a rule. As an IT expert, he would have known that (see paragraphs 125 and 126 of these reasons).

(b) We do not believe Suman's evidence that there is just a "possibility" that he searched "monument inc." on January 23, 2007 (see paragraphs 155 and 156 of these reasons). We have found that Suman made that search. He had no explanation for why he would conduct that search within seconds of searching "mddc" and "MDCC". In our view, the most likely conclusion is that he had learned that the term "monument" or "monument inc." was related to MDCC and he was searching the internet to find more information and to confirm his understanding (see paragraph 159 of these reasons).

(c) We do not find the Respondents' evidence that their purchases of the Molecular Securities were based on the Five Criteria credible. We have rejected that explanation and have found that the Respondents' evidence about the Five Criteria was most likely an after-the-fact attempt to provide an innocent explanation for the Respondents' purchases of the Molecular Securities (see paragraph 179 of these reasons).

(d) We do not accept Suman's evidence that he does not recall his internet searches on January 24, 2007 relating to the alleged insider trading charges against Martha Stewart and the searches relating to the Loudeye take-over (see paragraph 216 of these reasons).

(e) We do not believe Suman's testimony that he did not deny, in the First Staff Interview, making the purchases of the Molecular Securities (see paragraph 248 of these reasons).

(f) We do not believe Suman's evidence that he installed and ran Window Washer only to enhance the performance of his Computers and that he did not manually wipe data and information from three of his Computers. We have found that he likely installed and ran Window Washer to manually wipe data and information from his Computers after being expressly warned by Staff not to delete data and information from his office computer or to tamper with it (see paragraph 278 of these reasons).

[317] The Court stated in *McDougall* that:

> … in civil cases in which there is conflicting testimony, the judge is deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence is inconsistent with that of the other party. In such cases, believing one party will mean explicitly or implicitly that the other party was not believed on the important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant..."
>
> (*McDougall, supra*, at para. 86)

[318] The Court in *McDougall* also approved the following statement:

> Disbelief of a witness's evidence on one issue may well taint the witness's evidence on other issues but an unfavourable credibility finding against a witness does not, of itself, constitute evidence that can be used to prove a fact in issue.
>
> (*McDougall, supra,* at para. 95)

The Court went on to find that the trial judge had not relied solely on her unfavourable assessment of the defendant's credibility, but had concluded that the plaintiff's evidence satisfied the burden of proof.

[319] Further, under section 22 of the Ontario *Evidence Act*, a witness may be questioned as to whether that witness has been convicted of any crime. The purpose of cross-examining a witness on his or her prior convictions was explained by the Supreme Court of Canada in *R. v. Morris*:

> Cross-examination as to prior convictions is not directly aimed at establishing the falsity of the witness's evidence; it is rather designed to lay down a factual basis – prior convictions – from which the inference may subsequently be drawn that the witness's credibility is suspect and that his evidence ought not to be believed because of his misconduct in circumstances totally unrelated to those of the case in which he is giving evidence. The evidentiary value of such cross-examination is therefore purely inferential.

(*R. v. Morris* [1979] 1 S.C.R. 405, at p. 432)

[320] Suman, in cross-examination, admitted that he was convicted in the United States of forgery, issuing a bad cheque and theft of a service on December 15, 1993. He was also convicted of mail fraud on June 24, 1994. These matters are only relevant in assessing Suman's credibility as a witness.

4. Conclusion: Credibility

[321] We recognize that we cannot make our decisions in this matter based only on credibility. Staff bears the burden of proving the allegations on a balance of probabilities based on clear, convincing and cogent evidence. However, at the end of the day, we did not find the evidence of the Respondents on key points to be credible. In particular, based on the combined weight of the evidence, we do not believe the Respondents' testimony that Suman did not learn of the Proposed Acquisition through his IT role at MDS Sciex, that he did not inform Rahman of it and that the Respondents did not purchase the Molecular Securities with knowledge of the Proposed Acquisition. These are key findings in the circumstances.

B. Inferences Made Based on the Evidence

[322] The question we must address is what inferences we can properly make based on the totality of the evidence submitted to us.

1. Evidence of Opportunity

[323] There is evidence that Suman was aware that MDS was considering a very significant acquisition and of the term "Monument" (see paragraphs 81 and 105 of these reasons). As stated at paragraph 134 of these reasons, we are satisfied that Suman had the ability and opportunity to view or obtain Project Monument e-mails passing through the NT Filter. He had the skills to do that as an IT expert, the SurfControl software allows an administrator to control the spam filter function and to create and modify rules to isolate, delay or forward e-mails passing through the NT Filter, and investigating e-mail delays was one of Suman's responsibilities as NT Filter administrator.

[324] We recognize that this case is unlike tipping cases where the actual source of the material non-public information, and knowledge by an alleged tipper of that information, are known with certainty because, for instance, the alleged tipper is a senior executive who clearly had knowledge of the particular undisclosed material information (see, for instance, *Bennett, supra; Donnini v. Ontario Securities Commission* [2003] O.J. No. 3541, [2005] O.J. No. 240 (Ont. C.A.); and *Landen, supra*). In this case, Suman was not a member of the Sciex Deal Team and there is no direct evidence that Suman learned of the Proposed Acquisition from a member of the Sciex Deal Team or by viewing a specific e-mail or calendar entry.

[325] In this respect, the circumstances resemble those in Shevlin, supra, where a member of the IT group at the head office of Body Shop plc provided IT support services to a wide range of staff, including senior executives (*Shevlin*, *supra*, at para. 4.2). That is similar to Suman's role at MDS Sciex. In *Shevlin*, the FSA acknowledged that they were "unable to confirm with any precision when Mr. Shevlin is alleged to have logged into the e-mail accounts of certain senior executives and accessed the relevant information" (*Shevlin*, *supra*, at para. 10.4). Shevlin denied any wrongdoing and argued that in the absence of clear evidence that he had access to material non-public information and did access it, and based his decision to trade on it, the FSA had failed to prove its case (*Shevlin*, *supra*, at paras. 10.1 and 10.3). The FSA's Regulatory Decisions Committee dismissed this argument stating:

> The FSA acknowledges it is unable to demonstrate conclusively Mr. Shevlin's access to non-public information at the Body Shop. However, the FSA is able to draw inferences from the weight of the circumstantial evidence surrounding this matter when it is considered as a whole and draw conclusions from that material.
>
> (*Shevlin, supra,* at para. 11.1)

[326] The Regulatory Decisions Committee found against the respondent based on circumstantial evidence that included his opportunity to obtain the material non-public information, the nature and timing of the trades and other circumstantial evidence. We note that in *Shevlin*, passwords had been given to the respondent that allowed him access to e-mail accounts that contained the material non-public information. That fact does not, in our view, distinguish *Shevlin* or affect the inferences we can properly draw in this case.

[327] We have concluded, based on the evidence, that Suman had the ability as an IT expert at MDS Sciex to obtain knowledge of the Proposed Acquisition and that he had the opportunity to do so. That is an important finding in the circumstances.

2. Fundamental Shift in the Nature of Trading

[328] In *Shevlin*, the FSA rejected the respondent's evidence that he "based his trading strategy on information obtained by research or analysis" and found that he made the trades "based on non-public information obtained from the computers of certain senior executives at the Body Shop" (*Shevlin, supra*, at para. 11.3). In reaching that conclusion, the FSA held that the respondent's arguments did not "provide sufficient grounds to outweigh the strong circumstantial case established by the FSA showing that Mr. Shevlin had the opportunity and the motive to commit market abuse and that he was willing to take on significant additional debt in order to maximize his profit from what was otherwise a very risky trade in the face of market expectations" (*Shevlin, supra*, at para. 9.4).

[329] In *Warde*, the Court held that Downe (the alleged tipper) and Warde (the alleged tippee) "engaged in uncharacteristic, substantial and exceedingly risky investments in Kidde warrants shortly after speaking with one another, suggesting that they discussed not only the non-public information, but also the best way to profit from it" (*Warde, supra,* at p. 48).

[330] In *Bennett*, it was alleged that the sales by the respondents of the relevant shares were based on an illegal tip. The B.C. Securities Commission made the following comment about the high proportion of market sales by the respondents:

> We find it impossible to believe that he simply thought about the situation and decided to sell, unless he knew information that others in the market did not know.
>
> W.R. Bennett would have us believe that it was just a coincidence that 99% of the Doman shares sold on November 4 were sold by he [sic] and his brother and Mills, Steed, Duhamel and Dunn after the commencement of Doman's call to R.J. Bennett and before the shares of Doman Industries were halted by the Toronto Stock Exchange.
>
> (*Bennett, supra,* at p. 121)

[331] The size of the trades was also a factor in *Michel*, where the Court noted that the tippee's purchases of the subject securities "represented as high as 14 percent of the national [market] volume, and averaged 11 percent for the six days" of the trades (*S.E.C. v. Michel*, 521 F. Supp. 2d 975 at para. 107).

[332] A substantial, uncharacteristic and highly risky investment relative to the trader's previous trading patterns and net worth can also constitute a fact supporting an inference of insider trading. For example, in *Bennett*, the B.C. Securities Commission stated:

> Here we have two brothers whose assets were mostly in real estate and who were unfamiliar with the stock market, each make an unsolicited investment in Doman shares, not recommended by their brokers, that was substantial in absolute terms, that represented a significant part of each of their net worths, that one broker thought was "very substantial" and the other had never handled purchases of this magnitude in his 41 years in the business, that both brokers thought were made with knowledge of something, and where both brothers borrowed the money to make the purchases on terms we found outside banking industry practice, with annual interest charges that neither could meet beyond a few months without selling assets, including the Doman shares. We find that there was nothing ordinary about these circumstances, in fact, we find that taken together these circumstances were most unusual, and, especially so, when we consider these circumstances were the same for both R.J. Bennett and W.R. Bennett.
>
> (*Bennett, supra,* at p. 90)

[333] In *Musella*, the "substantial amounts of money invested by [the tippees] on the rare occasions when they entered the market" was considered, along with other factors, in concluding that "[a]ny innocent explanation ... is less plausible than an inference of wrongdoing" (*Musella, supra,* at p. 441).

[334] While all of the cases we refer to above made inferences based on circumstantial evidence, the specific circumstantial evidence varied. For instance, in *Shevlin*, the respondent arranged substantial financing on an urgent basis to enable him to trade before the relevant public announcement. In *Bennett, supra*, (i) the respondents were unfamiliar with the stock market; (ii) sales were made immediately after the telephone call allegedly imparting the material non-public information; and (iii) sales by the persons with knowledge of that information represented 99% of the shares sold on the exchange on the relevant day. However, in each case, the question to be decided was the same: whether the combined weight of the evidence led reasonably and logically to the inferences that were made.

[335] We have found that the Respondents' purchases of the Molecular Securities represented a fundamental shift in the nature of their trading and that their well-timed, highly uncharacteristic, risky and highly profitable purchases strongly support the

inference that the Respondents purchased the Molecular Securities with knowledge of the Proposed Acquisition (see paragraph 207 of these reasons).

3. Consciousness of Guilt and After-the-Fact Conduct

[336] Staff submits that Suman's conduct after the Respondents began purchasing the Molecular Securities shows a consciousness of guilt and supports the inferences that Staff invites us to make. In this respect, Staff relies on Suman's denial during the First Staff Interview that he and Rahman made the purchases of the Molecular Securities and Suman's use of Window Washer on February 3, 2007.

[337] In *Landen,* the trial judge stated:

> Not only is his possession of that information the natural inference from his attendance at the meetings, there are a number of circumstances which shade his actions with consciousness of guilt.
>
> (*Landen, supra,* at para. 109)

[338] Staff submits that Suman's use of Window Washer, after he was expressly warned by Staff not to delete data or information from or tamper with his office computer, supports the inference that the information erased from his Computers was inculpatory. Staff relies on the law of spoliation, which states that where a party has intentionally destroyed evidence relevant to ongoing or contemplated litigation in circumstances where a reasonable inference can be drawn that the evidence was destroyed to affect the litigation, a presumption arises that the destroyed evidence would have been unfavourable to the party who destroyed it. The presumption is rebuttable by evidence that although the destruction was intentional, it was not aimed at affecting the litigation but was done in the regular course of business before litigation was contemplated (*St. Louis v. the Queen* (1894), 25 S.C.R. 649 (Q.L.), *Dickson v. Broan-NuTone Canada Inc.*, [2007] O.J. No. 5114, at paras. 38 and 44 (Ont. S.C.J.), and *McDougall v. Black & Decker Canada Inc.*, [2008] A.J. No. 1182 (Alta. C.A.), at para. 18).

[339] The Respondents caution us that, in considering consciousness of guilt and after-the-fact evidence, it is important to consider any alternative explanations for such evidence because it may be ambiguous (*R. v. Diu*, [2000] O.J. No. 1770 (Ont. C.A.), at paras. 119-120).

[340] In our view, a person's conduct after committing an alleged offence can show a consciousness of guilt that will support an inference that the person committed the relevant offence. In this case, there is evidence of Suman's consciousness of guilt by reason of his denial in the First Staff Interview of the purchases of the Molecular Securities and by reason of his use of Window Washer on February 3, 2007 to wipe data and information from three of his Computers (see paragraphs 251 and 278 of these reasons). Both circumstances evidence a consciousness of guilt and, taken together, strongly support the inferences we make in paragraph 345 of these reasons.

4. Conclusion: Inferences Made Based on the Evidence

[341] It is clear that Suman had the ability and opportunity to acquire knowledge of the Proposed Acquisition through his IT role at MDS Sciex (see paragraphs 77 and 134 of these reasons).

[342] We have also found that the Respondents' well-timed, highly uncharacteristic, risky and highly profitable purchases of the Molecular Securities constituted a fundamental shift in the nature of their trading that was not satisfactorily explained (see paragraphs 179 and 207 of these reasons). That finding is supported by the following evidence:

(a) the fundamental shift in the Respondents' previous pattern of day trading and their first purchases of a large number of Molecular shares and of a very large number of Molecular options (see paragraphs 194 and 201 of these reasons);

(b) the timing of the Respondents' purchases of the Molecular Securities, which began shortly after the markets opened on January 24, 2007 and just five days before the public Announcement of the Proposed Acquisition;

(c) the fact that the Respondents' purchases of Molecular shares on January 24, 2007 represented approximately 7.8% of the total market volume for Molecular shares traded that day (see paragraph 180(h) of these reasons);

(d) the fact that the Respondents' purchases of Molecular options on the CBOE represented 77.2% of all series of Molecular options traded on January 24, 2007, 69.3% of all series of Molecular options traded on January 25, 2007, and 58.8% of all series of Molecular options traded on January 26, 2007 (see paragraph 180(i) of these reasons);

(e) the total cost of the purchases of the Molecular Securities which was more than the value of the Respondents' total assets (see paragraph 180(e) of these reasons); and

(f) the total profit from the sales of the Molecular Securities which was $954,938.07 (USD).

Taken together, this is strong circumstantial evidence supporting the inferences we make in paragraph 345 of these reasons.

[343] The evidence in this matter also includes:

(a) Suman's knowledge that MDS was considering the possibility of a very significant acquisition as a result of his conversation with Young (see our finding in paragraph 81 of these reasons);

(b) Suman's interaction with Halligan in the morning on January 23, 2007, when he became aware of a confidential document being prepared by her for the President of MDS Sciex described as "Andy's Monument Message" (see our finding in paragraph 105 of these reasons);

(c) Suman's internet searches for "MDCC" and "monument inc." later that day, which show that Suman had made the connection between "monument inc." and MDCC (see our finding in paragraph 159 of these reasons); Suman had no explanation for the "monument inc." search;

(d) Suman's long telephone conversation with Rahman at the end of the day on January 23, 2007, which the Respondents acknowledge included a discussion about investing in Molecular securities (see our finding in paragraph 168 of these reasons);

(e) Suman's internet searches on January 24, 2007, which included searches related to possible insider trading charges against Martha Stewart and searches for Loudeye (see our finding in paragraph 216 of these reasons);

(f) the timing of the sequence of events referred to in paragraphs (a), (b), (c), (d) and (e) of this paragraph;

(g) Suman's denial in the First Staff Interview that he purchased the Molecular Securities or told anyone else to purchase them (see our findings in paragraphs 248 and 251 of these reasons); and

(h) Suman's use of Window Washer on February 3, 2007 to permanently wipe data and information from three of his Computers, after being expressly warned by Staff not to delete data or information from or tamper with his office computer (see our finding in paragraph 278 of these reasons).

Taken together, this is strong circumstantial evidence supporting the inferences we make in paragraph 345 of these reasons.

[344] The evidence of Suman's ability and opportunity to acquire knowledge of the Proposed Acquisition through his IT role at MDS Sciex, the fundamental shift in and the nature of the Respondents' trading referred to in paragraph 342 of these reasons, and the circumstantial evidence referred to in paragraph 343 of these reasons, taken together, constitute clear, convincing and cogent evidence supporting the inferences we make in paragraph 345 of these reasons. In our view, the combined weight of the evidence overwhelmingly supports those inferences. Any innocent explanation for the Respondents' purchases of the Molecular Securities is not plausible in all the circumstances.

[345] Accordingly, we infer, based on the combined weight of the evidence, that Suman learned of the Proposed Acquisition through his role in the IT group at MDS Sciex, that he informed Rahman of it, and that the Respondents purchased the Molecular Securities with knowledge of the Proposed Acquisition. In our view, the combined weight of the evidence leads reasonably and logically to those conclusions. In our view, that is the most likely explanation for the Respondents' purchases of the Molecular Securities in all the circumstances.

VIII. CONCLUSIONS

A. Findings

[346] Based on the evidence, we find that, at the Relevant Time:

(a) MDS was a "reporting issuer" within the meaning of the Act;

(b) as an employee of MDS Sciex, a division of MDS, Suman was a person in a special relationship with MDS within the meaning of subsection 76(5) (c) of the Act;

(c) MDS's proposal to acquire Molecular was a fact that would reasonably be expected to have a significant effect on the market price or value of the MDS shares and options and was therefore a "material fact" with respect to MDS, within the meaning of the Act; and

(d) Suman informed Rahman, other than in the necessary course of business, of the material fact referred to in paragraph (c) above before that material fact had been generally disclosed.

[347] Based on the findings set out in paragraph 346 of these reasons, we find that Suman contravened subsection 76(2) of the Act by informing Rahman of the Proposed Acquisition.

[348] Molecular was a public company whose shares were listed on NASDAQ, but it was not a "reporting issuer" within the meaning of the Act.

[349] If Molecular had been a "reporting issuer", we find that, at the Relevant Time:

(a) MDS was proposing to make a take-over bid for the Molecular shares or to become a party to a merger or similar business combination with Molecular within the meaning of subsection 76(5)(a)(ii) or (iii) of the Act;

(b) Suman was an employee of MDS Sciex, a division of MDS, and was therefore a person in a special relationship with Molecular within the meaning of subsection 76(5)(c) of the Act;

(c) MDS's proposal to acquire Molecular was a fact that would reasonably be expected to have a significant effect on the market price or value of the Molecular shares and options and was therefore a "material fact" with respect to Molecular, within the meaning of the Act;

(d) Rahman learned of the material fact referred to in paragraph (c) above from Suman, and Rahman knew or ought reasonably to have known that Suman was a person in a special relationship with Molecular as we have found in paragraph (b) above;

(e) as a result of our findings in paragraph (d) above, Rahman was a person in a special relationship with Molecular within the meaning of subsection 76(5)(e) of the Act;

(f) options to purchase shares of Molecular are "securities" of Molecular within the meaning of subsection 76(6)(a) of the Act;

(g) the Molecular Securities were purchased in an account in the name of Rahman and some of those purchases were made by each of the Respondents; and

(h) based on the foregoing, the Respondents each purchased Molecular Securities with knowledge of a material fact with respect to Molecular that had not been generally disclosed.

[350] Based on our findings set out in paragraphs 348 and 349 of these reasons, the Respondents' purchases of the Molecular Securities did not contravene subsection 76(1) of the Act but would have contravened that subsection if Molecular had been a reporting issuer within the meaning of the Act.

[351] The Respondents' purchases of the Molecular Securities with knowledge of the Proposed Acquisition was inconsistent with the underlying policy objectives of subsection 76(1) of the Act. Accordingly, we find that the conduct of the Respondents in purchasing the Molecular Securities with knowledge of the Proposed Acquisition was contrary to the public interest.

B. Summary Conclusions

[352] Based on the foregoing, we find that Suman informed Rahman of the Proposed Acquisition contrary to subsection 76(2) of the Act. We also find that the conduct of the Respondents in purchasing the Molecular Securities with knowledge of the Proposed Acquisition was conduct that was contrary to the public interest.

[353] The parties should contact the Office of the Secretary within 30 days of this decision to schedule a sanctions and costs hearing".

DATED at Toronto this 19th day of March, 2012.

"James E. A. Turner"

"Paulette L. Kennedy"

SCHEDULE A

STATEMENT OF AGREED FACTS

1. The value of the Respondents' assets on January 23, 2007 was $370, 227.86 (USD).

MDCC Shares

2. The 12,000 MDCC shares in the Respondents' account were purchased by Ms. Rahman between January 24, 2007 and January 26, 2007, as summarized in the following table:[2]

Respondent	Date	Time	Quantity	Price
Rahman	Jan 24	9:34 a.m.	2000	23.98
Rahman	Jan 24	10:22 a.m.	2000	24.03
Rahman	Jan 24	11:55 a.m.	2000	24.03
Rahman	Jan 24	12:03 p.m.	2000	23.97
Rahman	Jan 24	12:17 p.m.	2000	23.88
Rahman	Jan 24	2:42 p.m.	2000	23.96

3. A chart containing the respondents' transactions (identified by IP address) relating to MDCC shares in January 2007 can be found at Appendix 1 [omitted].

MDCC Options

4. The Respondents purchased 900 option contracts, all exercisable at $25.00 between January 24, 2007 and January 26, 2007:

Respondent[3]	Date	Order Time	Expiry Date	Quantity[4]	Fill Price	Order Price
Suman*	Jan 24	9:40 a.m.	Feb 17/07	10	0.80	Market
Suman	Jan 24	11:03 a.m.	Feb 17/07	20	0.85	Market
Suman	Jan 24	11:05 a.m.	March 17/07	30	1.40	Market
Suman	Jan 24	11:11 a.m.	Feb 17/07	20	0.85	Market
Suman	Jan 24	11:13 a.m.	March 17/07	20	1.40	Market
Suman	Jan 24	11:27 a.m.	Feb 17/07	30	0.85	Market
Suman	Jan 24	11:38 a.m.	Feb 17/07	20	0.89	Market

5. A chart containing the transactions (identified by IP address) relating to MDCC options purchased or sold by the Respondents in January 2007 can be found at Appendix 2 [omitted]. As indicated in Appendix 2, the option purchase orders were good for the day of order only ("GTD" or Good Through Date") and were not "All or Nothing" (AON) orders.

6. The Respondents began selling their options at 11:14 a.m. on January 29, 2007. By 2:47 p.m. on January 30, 2007 they had sold 350 options, as follows:

Trade Date	Quantity	Price	Expiry Date
January 29	10	10.10	February 17
January 29	10	10.10	February 17
January 30	80	10.20	February 17

[2] All the shares were purchased through IP address 70.57.88.87

[3] The transactions marked with a "*" were made from Mr. Suman's home computer (IP address 74.121.94.96). The others made by Mr. Suman were made through Sciex's internet address (206.221.252.133).

[4] Each option was for a unit of 100 shares in MDCC.

Trade Date	Quantity	Price	Expiry Date
January 30	50	10.20	February 17
January 30	50	10.20	February 17
January 30	50	10.20	February 17
January 30	40	10.20	February 17
January 30	30	10.20	February 17
January 30	20	10.20	February 17
January 30	10	10.50	April 21

7. The remaining 12,000 shares and 550 options that the Respondents held as of January 31, 2007, were all liquidated by March 16, 2007 as follows:

Settlement Date	Activity	Share/Option	Quantity	Price	Note
Feb 1	Sold	Shares	500	35.208	
Feb 2	Sold	Options	40	10.20	Feb 17 expiry
Feb 2	Sold	Options	100	10.30	March 17 expiry
Feb 2	Sold	Options	10	10.30	March 17 expiry
Feb 14	Sold	Shares	210		Exercised – 21,000 shares added to account on Feb 16
Feb 16	Sold	Shares	6,500	35.253	
Feb 16	Sold	Shares	5,000	35.25	
Feb 16	Sold	Shares	5,000	35.25	
Feb 16	Sold	Shares	6,000	35.25	
Feb 16	Sold	Shares	10,000	35.25	
March 13	Sold	Options	4	10.50	
March 13	Sold	Options	186		Exercised – 18,600 shares added to account on Mar 15
March 16	Sold	Shares	18,600	35.407	

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
High River Gold Mines Ltd.	15 Mar 12	27 Mar 12		
Pacrim International Capital Inc.	22 Mar 12	03 Apr 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
Pacrim International Capital Inc.	30 Dec 11	11 Jan 12	11 Jan 12	27 Mar 12	27 Mar 12

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	27 Mar 12	27 Mar 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
01/01/2011 to 12/31/2011	131	Acker Finley Select Canada Focus Fund - Trust Units	1,283,829.30	145,497.04
01/01/2011 to 12/31/2011	177	Acker Finley Select US Value 50 Fund - Trust Units	2,342,626.90	687,080.83
12/31/2010 to 12/23/2011	39	Addenda Bond Pooled Fund - Trust Units	130,654,137.00	10,369,242.00
03/01/2011 to 12/16/2011	20	Addenda Corporate Bond Pooled Fund - Trust Units	27,145,000.00	2,569,968.00
07/08/2011	5	Addenda International Equity Pooled Fund - Trust Units	1,768,000.00	21,913.00
12/31/2010 to 06/17/2011	26	Addenda Long Term Corporate Bond Pooled Fund - Trust Units	35,867,000.00	4,414,836.00
12/31/2010 to 07/08/2011	18	Addenda Long Term Government Bond Pooled Fund - Trust Units	35,860,125.00	3,492,612.00
02/21/2012	6	Advanced Proteome Therapeutics Corporation - Common Shares	34,999.92	583,332.00
02/23/2012 to 02/24/2012	25	Americas Petrogas Inc. - Common Shares	70,759,500.00	20,217,000.00
06/30/2011 to 12/31/2011	5	Anchorage Capital Partners Offshore, Ltd. - Common Shares	232,689,600.00	N/A
02/03/2012 to 02/13/2012	23	Argent Energy Trust - Trust Units	1,865,000.00	0.00
02/13/2012	13	AT&T Inc. - Notes	39,941,500.00	N/A
02/22/2011 to 03/03/2011	12	Baby Gourmet Foods Inc. - Common Shares	687,999.90	1,408,222.00
04/11/2011	1	Baby Gourmet Foods Inc. - Common Shares	25,000.00	50,000.00
11/23/2011	2	Baby Gourmet Foods Inc. - Common Shares	78.57	785,772.00
02/24/2012	4	Ball Corporation - Notes	7,200,000.00	7,200.00
01/10/2011 to 12/30/2011	141	Burgundy American Equity Fund - Units	34,742,231.34	1,538,195.74
01/10/2011 to 12/28/2011	67	Burgundy Asian Equity Fund - Units	17,414,983.82	832,183.83
01/10/2011 to 12/28/2011	12	Burgundy Balanced Foundation Fund - Units	7,013,912.88	412,423.04
04/25/2011	1	Burgundy Balanced Income Fund - Units	7,118.01	196.41

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/10/2011 to 12/30/2011	16	Burgundy Balanced Pension Fund - Units	35,883,871.23	1,932,544.59
01/10/2011 to 12/30/2011	224	Burgundy Bond Fund - Units	64,186,443.51	1,545,455.50
08/02/2011	1	Burgundy Canada Plus Fund - Units	418,540.27	41,854.03
02/28/2011 to 12/30/2011	18	Burgundy Canadian Equity Fund - Units	23,689,259.68	157,494.02
01/10/2011 to 12/30/2011	78	Burgundy Canadian Small Cap Fund - Units	10,871,617.03	63,450.06
01/17/2011 to 12/19/2011	25	Burgundy Compound Reinvestment Fund - Units	7,856,002.34	591,355.91
03/14/2011	1	Burgundy Core Plus Bond Fund - Units	175,000.00	14,417.65
01/24/2011 to 12/01/2011	10	Burgundy EAFE Fund - Units	36,446,702.82	2,969,091.29
07/25/2011	2	Burgundy Emerging Markets Foundation Fund - Units	1,479,000.00	146,966.76
07/11/2011 to 12/28/2011	16	Burgundy Emerging Markets Fund - Units	4,804,214.30	345,099.96
01/10/2011 to 12/28/2011	119	Burgundy European Equity Fund - Units	42,647,757.41	1,873,927.76
03/14/2011 to 12/19/2011	3	Burgundy European Foundation Fund - Units	1,101,086.36	63,103.17
01/10/2011 to 12/28/2011	39	Burgundy Focus Asian Equity Fund - Units	935,026.91	84,736.11
01/10/2011 to 12/30/2011	170	Burgundy Focus Canadian Equity Fund - Units	110,511,309.43	3,456,602.62
01/10/2011 to 12/28/2011	38	Burgundy Foundation Trust Fund - Units	8,161,638.56	224,993.72
02/07/2011 to 11/14/2011	6	Burgundy Global Equity Fund (Excluding Canada) - Units	18,731,634.24	1,693,799.74
01/10/2011 to 12/28/2011	27	Burgundy Global Focused Opportunities Fund - Units	1,831,173.87	186,575.67
08/02/2011	1	Burgundy Independence Fund - Units	418,540.27	41,854.03
08/15/2011 to 12/19/2011	4	Burgundy MM Fund - Units	2,633,084.40	185,193.14
01/10/2011 to 12/30/2011	262	Burgundy Money Market Fund - Units	98,198,380.69	6,475,576.52
01/10/2011 to 12/30/2011	95	Burgundy Partners' Balanced RSP Fund - Units	10,652,799.09	174,909.68
02/07/2011 to 12/01/2011	9	Burgundy Partners' Equity RSP Fund - Units	2,067,065.75	55,733.30
01/10/2011 to 12/30/2011	673	Burgundy Partners' Global Fund - Units	121,508,169.77	2,252,511.83

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/10/2011 to 12/30/2011	284	Burgundy Total Return Bond Fund - Units	41,406,525.47	3,121,674.64
01/10/2011 to 12/30/2011	15	Burgundy U.S. Money Market Fund - Units	13,846,202.46	1,050,008.25
01/10/2011 to 12/30/2011	67	Burgundy U.S. Smaller Companies Fund - Units	67,759,052.07	1,852,656.72
02/22/2011 to 11/07/2011	10	Burgundy U.S. Small/Mid Cap Fund - Units	7,083,756.51	593,531.02
02/15/2012	18	CanAir Nitrogen Fund - Trust Units	4,812,408.09	7,638,743.00
01/31/2012	93	Centurion Apartment Real Estate Investment Trust - Units	4,488,312.20	441,719,541.00
12/20/2011	1	CI Cambridge Core Canadian Equity Fund - Units	1,000,000.00	100,000.00
01/06/2011 to 12/30/2011	194	CI Signature Canadian Balanced Fund - Units	235,453,749.65	4,239,540.79
01/04/2011 to 12/30/2011	124	CI Signature Canadian Bond Plus Fund - Units	6,756,782.42	170,272.12
07/27/2010	1	CI Signature Canadian Equity Plus Fund - Units	100.00	10.00
11/04/2011	1	CI Signature Canadian Equity Plus Fund - Units	8,500,000.00	781,968.72
01/31/2012	9	Clearview Resources Ltd. - Common Shares	1,265,000.00	126,500.00
02/20/2012 to 02/24/2012	17	Colwood City Centre Limited Partnership - Notes	627,000.00	627,000.00
03/06/2012	1	Credit Suisse AG - Notes	37,876,120.00	3.00
02/01/2012	1	CYS Investments, Inc. - Common Shares	664,000.00	50,000.00
12/01/2011	2	Eleven Fund - Units	130,000.00	12,959.31
11/01/2011	17	Eleven Fund - Units	3,963,825.58	396,382.56
02/15/2012	3	Empire Communities (2183 Lakeshore Blvd.), L.P. - Units	2,053,312.80	666.66
02/01/2012	1	EMSO Saguaro Ltd. - Common Shares	20,000,000.00	2,000.00
07/11/2011 to 11/10/2011	13	Exodos Life Sciences Limited Partnership - Units	644,930.00	750,000.00
01/01/2011 to 12/31/2011	80	FGP Balanced Pooled Fund - Units	54,380,279.00	691,930.52
01/01/2011 to 12/31/2011	304	FGP Bond Pooled Fund - Units	122,077,530.00	2,916,036.98
01/01/2011 to 12/31/2011	2	FGP Canadian Balanced Pooled Fund - Units	30,000.00	2,749.02
01/01/2011 to 12/31/2011	140	FGP Canadian Equity Pooled Fund - Units	67,782,647.00	355,246.81
01/01/2011 to 12/31/2011	64	FGP Corporate Bond Pooled Fund - Units	9,507,486.00	475,490.92

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2011 to 12/31/2011	4	FGP Foreign Equity Pooled Fund - Units	3,869,322.00	354,115.93
01/01/2011 to 12/31/2011	154	FGP Income Pooled Fund - Units	32,299,138.00	378,130.36
01/01/2011 to 12/31/2011	48	FGP International Equity Pooled Fund - Units	10,249,272.00	252,714.78
01/01/2011 to 12/31/2011	14	FGP Private Balanced Pooled Fund - Units	2,291,172.00	35,855.85
01/01/2011 to 12/31/2011	109	FGP Private Canadian Equity Pooled Fund - Units	4,201,325.00	53,209.41
01/01/2011 to 12/31/2011	10	FGP Private Developing Markets Pooled Fund - Units	3,765,300.00	452,338.08
01/01/2011 to 12/31/2011	170	FGP Private International Equity Pooled Fund - Units	21,565,188.00	159,316.46
01/01/2011 to 12/31/2011	119	FGP Private U.S. Equity Pooled Fund - Units	6,777,933.00	114,071.83
01/01/2011 to 12/31/2011	7	FGP Short Term Bond Pooled Fund - Units	1,346,813.00	15,904.17
01/01/2011 to 12/31/2011	343	FGP Short Term Investment Pooled Fund - Units	409,944,158.00	20,469,321.07
01/01/2011 to 12/31/2011	73	FGP Small Cap Canadian Equity Pooled Fund - Units	136,512,111.00	8,693,112.67
01/01/2011 to 12/31/2011	64	FGP U.S. Equity Pooled Fund - Units	12,317,595.00	376,554.92
01/01/2011 to 12/31/2011	41	Fiera Global Macro Fund - Units	43,809,111.57	4,419,214.99
01/01/2011 to 12/31/2011	99	Fiera Long Short Equity Fund - Units	39,639,047.00	4,235,721.18
01/01/2011 to 12/31/2011	569	Fiera Market Neutral Equity Fund - Units	20,364,852.69	1,733,435.44
02/14/2012	15	Global Green Matrix Corp. - Units	512,793.00	5,697,700.00
03/02/2012	25	GoldQuest Mining Corp. - Units	660,000.00	6,600,000.00
12/16/2010 to 12/15/2011	913	Heathbridge Checkmark Equity Pooled Fund - Units	10,313,819.16	922,632.98
01/01/2011 to 12/31/2011	12	Hexavest Canadian Equity Fund - Common Shares	56,680,417.00	80,115.00
01/21/2011 to 12/31/2011	7	Hexavest Global (ACWI) Fund - Common Shares	198,314,164.00	192,361.00
01/01/2011 to 12/31/2011	92	Hexavest World Fund - Common Shares	799,547,112.00	1,996,454.00
02/21/2012	29	Honda Canada Finance Inc. - Debentures	300,000,000.00	300,000.00
02/21/2012	7	Hoopla.com Entertainment Inc. - Common Shares	172,900.00	53,198.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
02/20/2012 to 02/24/2012	32	IGW Real Estate Investment Trust - Units	1,026,544.86	N/A
02/10/2012	39	International Business Machines Corporation - Notes	497,366,339.50	500,000,000.00
01/10/2011	1	KBSH Canadian Growth Equity Fund - Units	11,860.95	207.19
01/04/2011 to 03/10/2011	42	KBSH Enhanced Income Fund - Units	1,816,600.00	179,270.16
01/11/2011 to 12/22/2011	25	KBSH Money Market Fund - Units	4,580,000.00	458,000.00
01/07/2011 to 02/24/2011	7	KBSH Private Fixed Income Fund - Units	139,764.13	13,799.42
02/24/2012	32	Kitrinor Metals Inc. - Units	445,048.48	2,772,442.00
01/04/2011 to 12/30/2011	348	Man AHL Diversified (Canada) Fund - Units	20,759,226.03	2,075,922.60
01/04/2010 to 12/30/2010	57	Man Canada Investment Strategies Fund - Units	1,608,050.00	160,805.00
08/02/2011 to 12/30/2011	30	Man GLG Emerging Markets Income Fund - Units	2,072,000.00	207,200.00
08/02/2011 to 12/30/2011	32	Man GLG Global Opportunity Fund - Units	1,195,000.00	119,500.00
01/01/2011 to 12/31/2011	592	McLean & Partners Private Global Dividend Growth Pool - Trust Units	4,115,464.79	563,867.37
01/01/2011 to 12/31/2011	295	McLean & Partners Private International Equity Pool - Trust Units	6,718,110.54	972,943.53
02/21/2012 to 02/24/2012	8	Member-Partners Solar Energy Capital Inc. - Bonds	175,000.00	1,750.00
02/29/2012	6	Myca Helath Inc. - Common Shares	125,000.00	26,124.00
02/22/2012	1	Newcastle Minerals Ltd. - Common Shares	21,000.00	350,000.00
09/01/2011	1	Numeric Absolute Return Fund, L.P. - Limited Partnership Interest	2,427,363.93	2,412,199.27
01/28/2011 to 12/30/2011	39	NWM Alternative Strategies Fund - Units	13,118,150.00	1,327,534.73
01/31/2011 to 12/30/2011	62	NWM Balanced Mortgage Fund - Units	40,855,279.23	4,106,976.72
01/14/2011 to 12/30/2011	101	NWM Bond Fund - Units	153,747,262.72	15,368,302.73
01/07/2011 to 12/30/2011	83	NWM Global Bond Fund - Units	19,932,747.00	1,936,118.85
01/07/2011 to 12/30/2011	112	NWM Global Equity Fund - Units	33,863,554.49	2,424,608.10
01/07/2011 to 12/30/2011	104	NWM High Yield Bond Fund - Units	33,906,002.75	2,857,391.14

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/07/2011 to 12/30/2011	62	NWM Precious Metal Fund - Units	32,244,630.93	3,248,851.77
01/07/2011 to 12/30/2011	87	NWM Preferred Share Fund - Units	22,834,287.00	1,854,226.31
01/28/2011 to 12/30/2011	48	NWM Primary Mortgage Fund - Units	35,081,002.00	3,409,761.70
01/28/2011 to 12/30/2011	81	NWM Real Estate Fund - Units	17,478,215.96	907,343.12
01/07/2011 to 12/30/2011	132	NWM Strategic Income Fund - Units	71,864,717.31	8,503,582.65
01/31/2011 to 12/30/2011	17	NWM Tactical High Income Fund (CAD) - Units	5,004,400.00	523,716.23
01/31/2011 to 12/30/2011	16	NWM Tactical High Income Fund (USD) - Units	5,665,370.70	517,906.81
02/24/2012	1	Parallel Mining Corp. - Units	144,000.00	800,000.00
01/01/2011 to 12/31/2011	33	Picton Mahoney 130/30 Alpha Extension Canadian Equity Fund - Units	208,113,665.70	13,732,633.40
01/01/2011 to 12/31/2011	91	Picton Mahoney Diversified Strategies Fund - Units	8,360,293.71	690,796.53
01/01/2011 to 12/31/2011	83	Picton Mahoney Global Long Short Equity Fund - Units	2,802,318.47	271,743.31
01/01/2011 to 12/31/2011	164	Picton Mahoney Global Market Neutral Equity Fund - Units	12,188,224.52	1,120,781.43
01/01/2011 to 12/31/2011	1322	Picton Mahoney Income Opportunities Fund - Units	107,135,603.09	9,355,459.64
01/01/2011 to 12/31/2011	30	Picton Mahoney Long Short Emerging Markets Fund - Units	856,860.00	71,374.51
01/01/2011 to 12/31/2011	402	Picton Mahoney Long Short Equity Fund - Units	21,356,503.60	1,088,963.95
01/01/2011 to 12/31/2011	175	Picton Mahoney Long Short Global Resource Fund - Units	4,472,292.32	210,827.17
01/01/2011 to 12/31/2011	1388	Picton Mahoney Market Neutral Equity Fund - Units	103,806,393.49	5,576,514.41
01/19/2011 to 12/29/2011	79	Polar Investment Funds Limited (Altairis Long/Short Class) - Common Shares	18,441,458.82	182,181.63
02/24/2012	6	Range Resources Corporation - Notes	10,250,000.00	10,250.00
01/24/2012	3	Return On Innovation Capital Ltd. - Units	889,600.00	889,600.00
01/31/2012	1	Return On Innovation Capital Ltd. - Units	759,136.00	759,136.00
01/31/2012	2	Return On Innovation Capital Ltd. - Units	300,000.00	300,000.00
01/03/2011 to 12/01/2011	74	Roundtable Dividend and Income Fund - Trust Units	14,222,046.54	1,143,081.47

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
04/01/2011	15	Roundtable Energy Income II LP Fund - Limited Partnership Units	16,800,000.00	16,800.00
07/04/2011 to 09/01/2011	2	Roundtable Everkey Global Focus Fund - Trust Units	589,276.08	62,643.11
01/03/2011	1	Roundtable Everkey Global Fund - Trust Units	50,000.00	5,071.15
01/03/2011 to 12/01/2011	150	Roundtable Growth Fund - Trust Units	9,826,032.27	630,671.08
01/03/2011 to 12/01/2011	66	Roundtable US Dividend and Income Fund - Trust Units	2,085,778.07	221,414.34
02/13/2012	2	Roundys, Inc. - Common Shares	2,975,000.00	350,000.00
02/06/2012	27	Royal Bank of Canada - Notes	2,865,000.00	2,865.00
01/27/2012	64	Saber Capital Corp. - Common Shares	790,500.00	7,905,000.00
05/01/2011	6	Scale Opportunities Fund - Units	1,600,000.00	160,000.00
06/01/2011	6	Scale Opportunities Fund - Units	850,000.00	85,088.49
07/01/2011	1	Scale Opportunities Fund - Units	300,000.00	30,509.20
08/01/2011	1	Scale Opportunities Fund - Units	250,000.00	24,667.00
12/01/2011	1	Scale Opportunities Fund - Units	250,000.00	24,807.49
01/01/2011 to 12/01/2011	158	Seven Seas Capital Appreciation Fund - Trust Units	23,396,050.31	2,339,605.03
01/01/2011 to 12/01/2011	1	Seven Seas Capital Appreciation Fund LP - Limited Partnership Units	23,396,050.31	2,132,942.34
01/01/2011 to 12/01/2011	230	Sherpa Diversified Returns Fund - Trust Units	20,632,782.17	1,997,080.46
01/01/2011 to 12/01/2011	673	Sherpa Market Neutral Income Fund - Trust Units	84,249,650.06	8,431,287.05
11/24/2011	10	Silver Lake Resources Limited - Common Shares	72,676,470.00	20,588,235.00
05/01/2011	58	Spartan Multi Strategy Fund Limited Partnership - Units	2,975,585.57	241,226.94
06/01/2011	37	Spartan Multi Strategy Fund Limited Partnership - Units	1,850,050.00	152,056.52
07/01/2011	24	Spartan Multi Strategy Fund Limited Partnership - Units	1,083,050.00	90,451.10
08/01/2011	17	Spartan Multi Strategy Fund Limited Partnership - Units	837,155.00	70,279.46
09/01/2011	23	Spartan Multi Strategy Fund Limited Partnership - Units	687,315.61	59,602.86
10/01/2011	14	Spartan Multi Strategy Fund Limited Partnership - Units	564,700.00	48,552.08
11/01/2011	5	Spartan Multi Strategy Fund Limited Partnership - Units	87,000.00	7,486.62
12/01/2011	22	Spartan Multi Strategy Fund Limited Partnership - Units	1,080,900.00	93,608.40
01/01/2011 to 12/31/2011	16	Sprucegrove Global Pooled Fund - Units	241,113,531.73	18,711,901.13

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
01/01/2011 to 12/31/2011	16	Sprucegrove Global Pooled Fund (Pension) - Units	268,229,692.75	13,613,280.46
01/01/2011 to 12/31/2011	23	Sprucegrove International Pooled Fund - Units	328,928,024.49	3,710,117.54
01/01/2011 to 12/31/2011	17	Sprucegrove Special International Pooled Fund - Units	319,130,359.10	2,753,949.78
02/23/2012	1	The Bank of Tokyo-Mistsubishi UFJ, Ltd. - Note	6,985,585.88	1.00
01/31/2012	39	The Cash Store Financial Services Inc. - Notes	125,377,501.00	39.00
01/01/2011 to 12/01/2011	33	The K2 Principal Fund L.P. - Limited Partnership Units	59,502,659.48	3,134.94
01/01/2011 to 11/01/2011	108	The K2 Principal Trust - Trust Units	10,324,319.19	724,931.42
02/23/2012	3	TNR Gold Corp. - Common Shares	4,200.00	60,000.00
01/31/2011 to 12/31/2011	6	Triasima Canadian All Capitalization Fund - Units	51,800.00	4,447,447.00
01/31/2011 to 11/30/2011	18	Triasima Canadian Long/Short Fund - Units	4,958,191.40	477,628,870.00
02/28/2011 to 03/31/2011	3	Triasima Canadian Small Capitalization Fund - Units	62,000.00	5,000.45
01/31/2011 to 12/30/2011	202	Trident Global Opportunities Fund - Units	9,325,175.03	40,110.28
02/09/2012	46	U308 Corp. - Units	11,523,000.00	19,205,000.00
02/22/2012	3	ViaSat, Inc. - Notes	3,500,000.00	3.00
01/01/2011	3	Visum Multi Strategy Fund - Units	2,300,000.00	2,300.00
02/01/2011	9	Visum Multi Strategy Fund - Units	3,774,943.33	340,834.20
03/01/2011	13	Visum Multi Strategy Fund - Units	2,568,188.47	217,333.66
04/01/2011	3	Visum Multi Strategy Fund - Units	751,010.10	66,404.08
06/01/2011	2	Visum Multi Strategy Fund - Units	1,120,000.00	95,612.77
07/01/2011	1	Visum Multi Strategy Fund - Units	35,000.00	3,076.84
12/01/2011	4	Visum Multi Strategy RRSP Fund - Units	266,289.99	31,818.09

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
49 North 2012 Resource Flow-Through Limited Partnership
Principal Regulator - Saskatchewan
Type and Date:
Preliminary Long Form Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
$5,000,000 (MAXIMUM OFFERING)
A MAXIMUM OF 500,000 LIMITED PARTNERSHIP UNITS
$1,000,000 (MINIMUM OFFERING)
A MINIMUM OF 100,000 LIMITED PARTNERSHIP UNITS
PRICE PER UNIT: $10.00
MINIMUM SUBSCRIPTION: $2,000 (200 Units)
Underwriter(s) or Distributor(s):
MGI Securities Inc.
Promoter(s):
49 North 2012 Resource Fund Inc.
Tom MacNeill
Project #1871616

Issuer Name:
AGF Dividend Income Fund
AGF Equity Income Focus Fund
AGF Floating Rate Income Fund
AGF Income Focus Fund
AGF Inflation Focus Fund
AGF Monthly High Income Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated March 16, 2012
NP 11-202 Receipt dated March 20, 2012
Offering Price and Description:
Mutual Fund Series, Series F, Series O, Series T and Series V Securities
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
AGF Investments Inc.
Project #1873154

Issuer Name:
Amaya Gaming Group Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated March 15, 2012
NP 11-202 Receipt dated March 16, 2012
Offering Price and Description:
$28,750,000 - 28,750 Units comprised of 28,750 Convertible Debentures and
1,437,500 Warrants issuable upon exercise of 28,750 Special Warrants
Price: $1,000 per Special Warrant
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Desjardins Securities Inc.
Union Securities Ltd.
Promoter(s):
David Baazov
Project #1872524

Issuer Name:
Constellation Software Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 19, 2012
NP 11-202 Receipt dated March 19, 2012
Offering Price and Description:
$150,062,500 - 1,715,000 Common Shares
Price: C$87.50 per Common Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
Promoter(s):
-
Project #1873523

Issuer Name:
Crombie Real Estate Investment Trust
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
$67,135,000 - 4,630,000 Units
Price: $14.50 per Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
MACQUARIE CAPITAL MARKETS CANADA LTD.
RAYMOND JAMES LTD.
BEACON SECURITIES LIMITED
BROOKFIELD FINANCIAL CORP.
DESJARDINS SECURITIES INC.
Promoter(s):
-
Project #1871677

Issuer Name:
Dundee Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
$201,495,000 - 5,700,000 REIT Units, Series A
PRICE: $35.35 per Unit
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
HSBC SECURITIES (CANADA) INC.
BROOKFIELD FINANCIAL CORP.
GMP SECURITIES L.P.
NATIONAL BANK FINANCIAL INC.
Promoter(s):
-
Project #1871732

Issuer Name:
E-L Financial Corporation Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 15, 2012
Offering Price and Description:
$100,000,000 - (4,000,000 shares) - 5.50% Non-Cumulative Redeemable First Preference Shares, Series 3
Price: $25.00 per share to yield 5.50%
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
TD SECURITIES INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
DESJARDINS SECURITIES INC.
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #1871930

Issuer Name:
Enerkem Inc.
Principal Regulator - Quebec
Type and Date:
Amendment dated March 19, 2012 to Preliminary Long Form Prospectus dated February 3, 2012
NP 11-202 Receipt dated March 19, 2012
Offering Price and Description:
US$ * - 7,250,000 Common Shares
Price: US$ * per Common Share
Underwriter(s) or Distributor(s):
GOLDMAN SACHS CANADA INC.
CREDIT SUISSE SECURITIES (CANADA), INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
CIBC WORLD MARKETS INC.
Promoter(s):
-
Project #1855592

Issuer Name:
GLG EM Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated March 15, 2012
NP 11-202 Receipt dated March 16, 2012
Offering Price and Description:
Class L and Class M Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
MAN INVESTMENTS CANADA CORP.
Project #1872957

Issuer Name:
Great Basin Gold Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 16, 2012
NP 11-202 Receipt dated March 16, 2012
Offering Price and Description:
$50,025,000 - 66,700,000 Units
Price: $0.75 per Unit
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
RAYMOND JAMES LTD.
CIBCWORLD MARKETS INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
STIFEL NICOLAUS CANADA INC.
Promoter(s):
-
Project #1872995

Issuer Name:
Lexaria Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 15, 2012
NP 11-202 Receipt dated March 15, 2012
Offering Price and Description:
Minimum: US$500,000
Maximum: US$5,000,000
Up to 20,000,000 Units
Price: US$0.25 per Unit
Underwriter(s) or Distributor(s):
Leede Financial Markets Inc.
Promoter(s):
-
Project #1872275

Issuer Name:
Megal Capital Corporation
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Final CPC Prospectus dated March 16, 2012
NP 11-202 Receipt dated March 20, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
MACQUARIE PRIVATE WEALTH INC.
Promoter(s):
Harold Lee
Project #1811379

Issuer Name:
Northland Power Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated March 16, 2012
NP 11-202 Receipt dated March 16, 2012
Offering Price and Description:
$500,000,000
Common Shares
Preferred Shares
Debentures (unsecured)
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1872763

Issuer Name:
Novadaq Technologies Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated March 19, 2012
NP 11-202 Receipt dated March 20, 2012
Offering Price and Description:
US$100,000,000
Preferred Shares
Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1873684

Issuer Name:
Renegade Petroleum Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated March 19, 2012
NP 11-202 Receipt dated March 19, 2012
Offering Price and Description:
$10,003,200 - 2,084,000 Flow-Through Shares and $40,000,000 - 10,000,000 Common Shares
Price: $4.00 per Common Share and $4.80 per Flow-Through Share
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
MACQUARIE CAPITAL MARKETS CANADA LTD.
PARADIGM CAPITAL INC.
TD SECURITIES INC.
ALTACORP CAPITAL INC.
FIRSTENERGY CAPITAL CORP.
Promoter(s):
-
Project #1873637

Issuer Name:
Revolution Resources Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
$5,015,000 - 14,750,000 Units
Price of $0.34 per Unit
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
PARADIGM CAPITAL INC.
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #1871754

Issuer Name:
Sandspring Resources Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
$25,002,000 - 23,150,000 Common Shares
Price: $1.08 per Common Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
CLARUS SECURITIES INC.
Promoter(s):
Richard A. Munson
Crescent Global Gold Ltd.
Project #1871703

Issuer Name:
Silver Bull Resources, Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Prospectus - MJDS dated March 15, 2012
NP 11-202 Receipt dated March 15, 2012
Offering Price and Description:
US$125,000,000
Senior Debt Securities
Subordinated Debt Securities
Common Stock
Warrants
Rights
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1872577

Issuer Name:
Stornoway Diamond Corporation
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
$15,000,000 - 15,000,000 Units
Price: $1.00 per Unit

Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Promoter(s):
-
Project #1871806

Issuer Name:
Vista Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated March 16, 2012
NP 11-202 Receipt dated March 16, 2012
Offering Price and Description:
US$200,000,000
Common Shares
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1872859

Issuer Name:
West Melville Metals Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated March 13, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
$7,500,000 to $10,000,000
15,000,000 to 20,000,000 Common Shares
Price: $0.50 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Byron Capital Markets Ltd.
Promoter(s):
-
Project #1871452

Issuer Name:
Canadian Satellite Radio Holdings Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 19, 2012
NP 11-202 Receipt dated March 19, 2012
Offering Price and Description:
$24,000,000 - 8,000,000 Class A Subordinate Voting Shares (the "Offered Shares")
Price: $3.00 per Offered Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
National Bank Financial Inc.
Promoter(s):
-
Project #1867389

Issuer Name:
Cargojet Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
$25,000,000.00 - 6.5% Convertible Unsecured Subordinated Debentures Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #1869032

Issuer Name:
DeeThree Exploration Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated March 15, 2012
NP 11-202 Receipt dated March 15, 2012
Offering Price and Description:
$15,003,000.00 - 3,334,000 Flow-Through Shares Price: $4.50 per Flow-Through Share
Underwriter(s) or Distributor(s):
DUNDEE SECURITIES LTD.
CASIMIR CAPITAL LTD.
CORMARK SECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
STIFEL NICOLAUS CANADA INC.
NCP NORTHLAND CAPITAL PARTNERS INC.
Promoter(s):
-
Project #1869565

Issuer Name:
Firm Capital Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
$18,023,000.00 - 1,340,000 Common Shares - and - $18,000,000.00 - 5.25% Convertible Unsecured Subordinated Debentures due March 31, 2019 PRICE: $13.45 per Share
PRICE: $1,000 per Debenture
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
DUNDEE SECURITIES LTD.
NATIONAL BANK FINANCIAL INC.
DESJARDINS SECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
Promoter(s):
-
Project #1868975

Issuer Name:
Horizons Enhanced Income Energy ETF
Horizons Enhanced Income Equity ETF
Horizons Enhanced Income Financials ETF
Horizons Enhanced Income Gold Producers ETF
Horizons Enhanced Income International Equity ETF
Horizons Enhanced Income US Equity (USD) ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated March 16, 2012
NP 11-202 Receipt dated March 20, 2012
Offering Price and Description:
Class E Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1856438

Issuer Name:
Labrador Iron Mines Holdings Limited
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 13, 2012
NP 11-202 Receipt dated March 13, 2012
Offering Price and Description:
$60,950,000
11,500,000 Common Shares
$10,675,000
1,750,000 Flow-Through Shares
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
JENNINGS CAPITAL INC.
OCTAGON CAPITAL CORP.
RBC DOMINION SECURITIES INC.
HAYWOOD SECURITIES INC.
SCOTIA CAPITAL INC.
PARADIGM CAPITAL INC.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #1864009

Issuer Name:
Lysander Balanced Fund
Lysander Bond Fund
Lysander Corporate Value Bond Fund
Principal Regulator - Ontario
Type and Date:
Amended and Restated to Final Simplified Prospectuses and Annual Information Form dated February 3, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
Series A and Series F Units
Underwriter(s) or Distributor(s):

Promoter(s):
Lysander Funds Limited
Project #1816003

Issuer Name:
New Zealand Energy Corp.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
$55,200,000 - 18,400,000 Common Shares
Price: $3.00 per Common Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
MACQUARIE CAPITAL MARKETS CANADA LTD.
MACKIE RESEARCH CAPITAL CORPORATION
PI FINANCIAL CORP.
HAYWOOD SECURITIES INC.
Promoter(s):
John G. Proust
Project #1869003

Issuer Name:
Morneau Shepell Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 20, 2012
NP 11-202 Receipt dated March 20, 2012
Offering Price and Description:
$70,000,000 - 5.75% Convertible Unsecured Subordinated Debentures
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
BMO NESBITT BURNS INC.
GMP SECURITIES L.P.
Promoter(s):
-
Project #1871126

Issuer Name:
Sentry Mining Opportunities Class
Sentry Precious Metals Growth Class
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated March 16, 2012 to Final Simplified Prospectuses and Annual Information Form dated May 27, 2011
NP 11-202 Receipt dated March 19, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Sentry Investments Inc.
Promoter(s):
SENTRY INVESTMENTS INC.
Project #1735515

Issuer Name:
Scotia Canadian Tactical Asset Allocation Fund
Scotia Canadian Small Cap Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectuses and Annual Information Form dated February 29, 2012 NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
Series A, Series F, Series I, Series M and Advisor Series Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Scotia Securities Inc.
Scotia Securites Inc.
Promoter(s):
-
Project #1818276

Issuer Name:
Scotia Canadian Small Cap Fund
Scotia Private Canadian Preferred Share Pool
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated February 29, 2012 to Final Simplified Prospectuses and Annual Information Form dated November 30, 2011
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
Series I and Series M units @ Net Asset Value
Underwriter(s) or Distributor(s):
Scotia Securities Inc.
Promoter(s):
Scotia Asset Management L.P.
Project #1818284

Issuer Name:
Sojourn Ventures Inc.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 14, 2012
Offering Price and Description:
$350,000
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:
Trimark Europlus Fund
Trimark Fund
Trimark Global Fundamental Equity Fund
Trimark Global Fundamental Equity Class
Principal Regulator - Ontario
Type and Date:
Amendment #5 dated March 16, 2012 to Annual Information Form dated July 29, 2011
NP 11-202 Receipt dated March 16, 2012
Offering Price and Description:
Series A, Series F, Series FH, Series H, Series I, Series P, Series PF, Series PH, Series SC, Series T4, Series T6 and Series T8 @ Net Asset Value
Underwriter(s) or Distributor(s):

Promoter(s):
Invesco Canada Ltd.
Invesco Trimark Ltd.
Project #1760534

Issuer Name:
Tucson Acquisition Corporation
Principal Regulator - Alberta
Type and Date:
Final CPC Prospectus dated March 14, 2012
NP 11-202 Receipt dated March 15, 2012
Offering Price and Description:
$300,000 1,500,000 common shares Price: $0.20 per common share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Alain Lambert
Project #1856319

Issuer Name:
Verde Potash Plc (formerly Amazon Mining Holding Plc)
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 16, 2012
NP 11-202 Receipt dated March 16, 2012
Offering Price and Description:
$25,000,000
3,875,969 ORDINARY SHARES
$6.45 PER ORDINARY SHARE
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Mackie Research Capital Corporation
Promoter(s):
-
Project #1869073

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Integra Capital Financial Corporation	Investment Fund Manager	March 14, 2012
Name Change	From: Ambrose Investment Counsel Ltd. To: Ballast Healthcare Partners Inc.	Portfolio Manager	March 14, 2012
Change in Registration Category	Radin Capital Partners Inc.	From: Portfolio Manager To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager	March 16, 2012
Change in Registration Category	Innocap Investment Management Inc.	From: Portfolio Manager and Exempt Market Dealer To: Exempt Market Dealer, Portfolio Manager and Commodity Trading Manager	March 19, 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 and Universal Market Integrity Rules (UMIR) – Consolidation of IIROC Enforcement, Procedural, Examination and Approval Rules

IIROC RULES NOTICE – REQUEST FOR COMMENT –
PROPOSED AMENDMENTS TO DEALER MEMBER RULES AND
UNIVERSAL MARKET INTEGRITY RULES (UMIR) -
CONSOLIDATION OF IIROC ENFORCEMENT,
PROCEDURAL, EXAMINATION AND APPROVAL RULES

The Commission is publishing for comment IIROC's proposed amendments to its Dealer Member Rules and UMIR to consolidate IIROC's enforcement, procedural, examination and approval rules. The proposed rules and IIROC's Rules Notice can be found at www.osc.gov.on.ca. Comments on the proposed amendments should be in writing and submitted within 90 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin.

13.3 Clearing Agencies

13.3.1 CDS – Notice and Request for Comment – Material Amendments to CDS Procedures – GIC Funds-Only Trade Service in CDSX

CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS®)

MATERIAL AMENDMENTS TO CDS PROCEDURES

GIC FUNDS-ONLY TRADE SERVICE IN CDSX

REQUEST FOR COMMENTS

A. DESCRIPTION OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed amendments to CDS Participant Procedures will introduce a new service – the GIC Funds-Only Trade Service – into CDS's CDSX settlement system. This new participant-requested service will automate the process for the exchange of funds between Guaranteed Investment Certificate (GIC) issuers and GIC purchasers in the Canadian capital markets.

CANNEX Financial Exchanges Limited (CANNEX) is a service provider that compiles interest rate and calculation value information for a variety of financial products (e.g. GICs, term deposits and Guaranteed Interest Annuities) from 49 Canadian issuing institutions (of which 20 are CDS participants) and redistributes that information to subscribing agents, brokers and dealers. Through the CANNEX Financial Network system, subscribing clients are able to transmit purchase order files to participating financial institutions to electronically confirm their purchases of offered financial products. Through the same system, the financial institutions are also able to transmit order confirmation files back to the agents, brokers, and dealers verifying the details of their purchases.

The current process for the completion of these purchases involves an exchange of funds between the issuing financial institution and the purchasing agent, broker or dealer via the issuance of physical cheques, and the manual delivery and deposit of those cheques. Throughout the day, various cheque payments may be exchanged between these parties for daily money settlement of new purchases, and payments of maturity amounts, interest payments, commissions and early redemptions. Security positions are held electronically by the issuing institution and require no physical exchange. A regular reconciliation is performed by issuers and purchasers to verify their electronic positions.

CDS was asked by some of its participants through the Debt & Equity Subcommittee of the Strategic Development Review Committee (SDRC) to introduce a facility within CDSX whereby daily payments specific to GICs could be exchanged. This request is in line with a continuing effort by the financial community to reduce the exchange of non-electronic funds.

To accommodate this request, CDS, the SDRC and CANNEX agreed to a process whereby CANNEX will deliver a daily payments file related to GIC activity between eligible clients to CDS for funds-only settlement in CDSX. The payments file will be transmitted to CDS daily at approximately 2:00 p.m. ET, with additional files containing late delivery information sent up to 3:00 p.m. ET, as required. With the introduction of seven new trade types in CDSX, CANNEX will be able to instruct on payments that represent the netted exchange of funds on purchases, maturities, interest payments, commissions, early redemptions, other miscellaneous payments such as correction amounts, as well as a single total netted settlement amount. Each individual payment will be instructed as a non-exchange trade with a designated trade type. Trades reported by CANNEX will be identified by a unique source ID. The payment types and related non-exchange trade types are described on page 12 of CDS's *Trade and Settlement Procedures* manual, in the proposed documentation changes.

CDS participants that are also clients of CANNEX will be required to instruct both CANNEX and CDS of their wish to participate in this service. Participants will be required to advise CDS to accept transactions from CANNEX by subscribing to this service within CDSX. CDS will control inbound activity and subsequent non-exchange trade activity by insuring that both parties to the transaction provided by CANNEX have subscribed to the service and that the transactions reflect one of the seven acceptable trade types.

CANNEX clients that are not CDS participants (primarily credit unions and municipalities that issue GICs) may arrange for a CDSX participant to act as their settlement agent in order to exchange owing funds electronically within CDSX, replacing the current manual delivery of cheques. This relationship is arranged outside of CDS.

Upon receipt of the payments file from CANNEX, the non-exchange trade transactions will be uploaded into the CDSX settlement system in a confirmed status. The generic Canadian or U.S. funds ISINs will be reported on the non-exchange trade record (CA99997Z1099 or US99997Z2083), depending on the currency identified on the payment. The submitter/acceptor and buyer/seller roles on the trade will be determined based on which counterparty owes/is owed funds, with the submitter being deemed as the seller who will be credited with the netted funds at settlement, and the acceptor being deemed as the buyer who

is being debited. The settlement control indicators for each party will be set to 'N'o. Both the submitter and acceptor will be required to confirm their agreement with the funds amount of each trade by re-setting their own settlement control indicator to 'Y'es. Current non-exchange trade functionality applies. Once both settlement control indicators on a trade have been updated, the transaction will be considered for settlement. The settlement of these trades will be subject to the existing funds and aggregate collateral value (ACV) edits, ensuring that the acceptor has sufficient funds and collateral to allow settlement.

CANNEX will provide their clients with a daily report that will provide a breakdown of each payment record, allowing easier reconciliation of settlement amounts. It is expected that if both parties disagree with the funds amount reported, they will delete the incorrect trade in CDSX and manually setup a replacement one.

CDSX participants will have the ability to report non-exchange trades with these new trade types directly. They may choose to do so if (i) they are not clients of CANNEX, but the issuing GIC institution is able to settle funds through CDSX, or (ii) they are now able to accept a previously rejected payment. If directly entered, these non-exchange trades will follow the current non-exchange trade lifecycle from trade entry through to settlement.

In addition to the above mentioned changes to the non-exchange trade function, a new EAS Alert will be implemented advising participants that the current day's transactions have been received from CANNEX and loaded into CDSX. Multiple alerts may be received by participants in a single day, depending on the number of files CANNEX provides, and if another GIC service provider joins the new service.

Based on the above, CDS proposes to implement system and procedure changes to accommodate the electronic settlement of funds movements related to GIC transactions.

B. NATURE AND PURPOSE OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The proposed procedure amendments support the financial industry's objective of straight-through electronic processing. The amendments facilitate a reduction in the physical creation, certification and delivery of cheques and bank drafts as payment for various GIC transactions.

CDS participants will benefit from the introduction of funds settlements in CDSX for GIC payment activities through (i) improved delivery efficiency of payments (electronic exchange of funds versus manual delivery by messenger), (ii) lowered processing and staffing costs, (iii) settlement process efficiencies (by keeping funds inside CDSX that may be used for other investment activities), and (iv) reduced risk through finality of payment.

C. IMPACT OF THE PROPOSED CDS PROCEDURE AMENDMENTS

The elimination of physical cheques, and the associated delivery and handling of those payments, will allow CDS participants to securely settle the funds related to their GIC investment activities within CDSX.

C.1 Competition

The proposed procedure amendments will have no impact on the ability of eligible market players, both CDS participants and non-CDS participants, to use the new service. All information service providers that facilitate transactions between GIC issuers and purchasers will be able to provide CDS with settlement details to enable the exchange of the funds related to those transactions within CDSX.

No CDS participant will be at a disadvantage if they chose not to subscribe to the GIC Funds-Only Trade service. All CDS participants may use the new trade types to settle funds movements related to GIC transactions. Institutions that are clients of both CANNEX and CDS may elect to have their netted transaction details uploaded electronically into the CDSX settlement system, but are not required to do so. CANNEX clients that are not CDSX participants may arrange to have an existing CDS participant act as their agent to effect settlement of these transactions.

C.2 Risks and Compliance Costs

The development of the new service was undertaken at the request of some of CDS's participants, and is intended to reduce both the risk and costs associated with GIC investment activities. There are no compliance costs or issues for participants vis-à-vis CDS with regard to the new service.

The reduced costs and increased efficiencies in the processing of funds related to GIC transactions will benefit those participants that use the new trade types. The settlement of these funds trades will be subject to the existing funds and ACV edits, ensuring that the acceptor has sufficient funds and aggregate collateral value to allow settlement.

As with all other transactions, GIC related delivery of funds transactions expose CDS to payment risk. CDSX addresses this payment risk by ensuring that the corresponding participants are appropriately funded and collateralized at all points of time.

Settlements of free deliveries of funds are subject to the existing risk edits. Payment risk is mitigated by ensuring that the purchasing participant has sufficient funds and aggregate collateral value to allow settlement.

In order for a free delivery of funds to settle, the following payment risk edits are applied:

- The buyer must have sufficient available funds, unused cap and/or unused lines of credit to cover their funds obligation after the settlement (the Funds edit)

- The buyer and the seller must have sufficient ACV after the settlement to cover the resulting funds obligation (the ACV edit)

The Funds edit ensures that the GIC related transactions do not exceed the corresponding participant's limit as calculated by the sum of cap and line of credit.

C.3 Comparison to International Standards – (a) Committee on Payment and Settlement Systems of the Bank for International Settlements, (b) Technical Committee of the International Organization of Securities Commissions, and (c) the Group of Thirty

CDS continues to monitor the development of new international standards for payment, clearing and settlement systems set out in the CPSS/IOSCO report *Principles for Financial Market Infrastructures*[1], and will work with the financial services industry to achieve compliance with the new standards.

The proposed new service is within the scope of Principle #21 – Efficiency and effectiveness – which states that a financial market infrastructure such as CDS "should be designed to meet the needs of its participants and the markets it services, in particular, with regard to choice of a clearing and settlement scheme; operating structure; scope of products recorded, cleared or settled; and use of technology and procedures".

The development requested by some of CDS's participants will support timely delivery of funds related to GIC investment activities. While the exchange and custody of the GIC security will continue to occur outside of CDSX, the delivery of funds for purchases and entitlements will be accomplished within the secure processing environment of CDSX, where finality of payment is ensured.

No other comparison is available in respect of the proposed amendments.

D. DESCRIPTION OF THE PROCEDURE DRAFTING PROCESS

D.1 Development Context

The development request was tabled at the SDRC Debt & Equity subcommittee, as an opportunity to streamline GIC related payment activities. Once approved by the SDRC for further analysis, CDS was requested to consult with CANNEX to understand their financial products information service, and to determine how best to integrate their clients GIC payment transaction details with the CDSX settlement system. The resulting straw-man approach was reviewed in detail with the SDRC and any additional participant requirements were incorporated into the final approved design.

D.2 Procedure Drafting Process

The CDS Procedure Amendments were drafted by CDS's Business Systems Development and Support group, and subsequently reviewed and approved by CDS's Strategic Development Review Committee ("SDRC"). The SDRC determines or reviews, prioritizes and oversees CDS-related systems development and other changes proposed by participants and CDS. The SDRC's membership includes representatives from a cross-section of the CDS participant community and it meets on a monthly basis.

These amendments were reviewed and approved by the SDRC on March 16, 2012.

D.3 Issues Considered

The original design of this initiative involved the creation of a single new trade type that would identify a trade as being the total netted amount of all funds settlements between a GIC issuer and purchaser on a given day (i.e. all new purchases, maturing

[1] The report can be found at http://www.bis.org/publ/cpss94.pdf

amounts, interest payments, commissions, early redemptions, and payment corrections). After an initial review with the SDRC Debt & Equity subcommittee, it was identified that some participants would have difficulty reconciling this single amount as various types of payments are handled in different departments (i.e. interest payments may be reconciled in an entitlement area, while new purchases are handled in a settlement area). As a result, the number of new trade types was expanded to seven to identify each type of payment that would be exchanged.

CANNEX requested an end of day file that would identify whether the original payment amounts submitted by them were completed, outstanding or deleted by the counterparties. In order to maintain the scope of the project and control costs, the SDRC Debt & Equity subcommittee rejected this item, for consideration at a later time.

D.4 Consultation

This development initiative was requested by the SDRC Debt & Equity subcommittee. CDS has reviewed the related requirements documentation with that group, and received their final approval of the proposal.

CDS has regular consultations with CANNEX to better understand their financial service offerings, to determine how best to receive their client's GIC funds-related information, and to exchange project status updates. CDS and CANNEX have met frequently to arrive at a mutually acceptable electronic communications protocol. Business requirements and the business relationships required to make this project successful have also been discussed, and will be reflected in a formal agreement, which will be in place prior to the implementation of this initiative.

CDS's Customer Service account managers provide continuous communication and status updates of all proposed changes to their clients, as well as soliciting input on those changes. They will provide customer-related training prior to implementation, as required. As per usual practice, CDS will distribute a bulletin to all participants the week before implementation reminding them of the upcoming changes.

CANNEX has reviewed the details of this project with their clients at their scheduled user group meetings, and are working with their "non-CDS participant" clients to assist them in establishing settlement agent relationships with existing CDS participants.

CDS facilitates consultation through a variety of means, including regularly scheduled SDRC subcommittee meetings which provide a forum for detailed requirement review, and monthly meetings with service bureaus to discuss development impacts to them. All development initiatives are presented to IIROC's FAS working groups.

This initiative was discussed at the CDS Risk Advisory Committee, and CDS Risk Management will be providing an analysis for their review.

D.5 Alternatives Considered

Preliminary analysis by CDS to introduce GIC securities into CDSX concluded that a system constraint within the Security Master File function prevents multiple securities from having the same description and maturity date (i.e. CDS's entitlement system could not calculate the appropriate accrued interest on a GIC issued on many different days, but with the same maturity date and rate). CDS concluded that the alternative of introducing funds-only GIC transactions would allow participants to exchange settlement funds with issuing financial institutions in an electronic and secure manner. The exchange and custody of the GIC security will continue to occur outside of CDSX.

D.6 Implementation Plan

The proposed changes and the scheduled date of implementation have been communicated regularly to CDS participants through the SDRC and its subcommittees, as well as through Customer Service relationship meetings. As per usual practice, the Customer Service account managers will provide their clients with details of the upcoming changes, and provide training as required. CDS will distribute a bulletin to all participants the week before implementation reminding them of the upcoming changes, and confirming the effective date of those changes.

Prior to implementation, CDS and CANNEX will perform file transmission and settlement process testing. CDS participants will be required to advise CDS that details of their GIC funds settlements are to be accepted electronically from CANNEX. CANNEX will maintain similar eligibility criteria where their clients instruct CANNEX to send their GIC fund settlement details to CDS.

CDS is recognized as a clearing agency by the Ontario Securities Commission pursuant to section 21.2 of the Ontario *Securities Act*. The Autorité des marchés financiers has authorized CDS to carry on clearing activities in Québec pursuant to sections 169 and 170 of the Québec *Securities Act*. In addition CDS is deemed to be the clearing house for CDSX®, a clearing and settlement system designated by the Bank of Canada pursuant to section 4 of the *Payment Clearing and Settlement Act.* The Ontario Securities Commission, the Autorité des marchés financiers and the Bank of Canada will hereafter be collectively referred to as the "Recognizing Regulators".

The amendments to Participant Procedures may become effective upon approval of the amendments by the Recognizing Regulators following public notice and comment. Implementation of this change is planned for May 28, 2012.

E. TECHNOLOGICAL SYSTEMS CHANGES

E.1 CDS

CDSX functionality will be impacted by these changes, as follows:

a) Accept daily files of payment transaction details from GIC service providers

b) Implement a new service transmission code for GIC funds settlements from CANNEX

c) Modify the trade entry function such that the non-exchange trades delivered to CDSX:

- are from an acceptable GIC service provider
- identify the GIC service provider in the Source ID field
- both parties have agreed to allow the service provider to send settlement details on their behalf
- are accepted in a confirmed status
- are accepted with both the submitter's and acceptor's settlement control indicators set to 'N'o
- instruct one of the seven agreed trade types

d) Report these trades in the existing transaction reports

e) Exclude these trades from non-exchange trade statistics

In addition, a new EAS alert will be available to subscribing participants advising when the current day's file for a given service provider has been received and processed.

E.2 CDS Participants

CDS participants may need to make changes to their internal systems to recognize (i) a new trade source ID, and (ii) the new funds-only GIC trade types. If a participant chooses to process these types of non-exchange trades differently from their other trade activity, they may need to make appropriate system changes. No one has indicated this to be the case.

E.3 Other Market Participants

Service bureaus may be required to make changes to their internal systems on behalf of their clients to recognize (i) a new source ID, and (ii) the new funds-only GIC trade types. If a service bureau chooses to process these types of non-exchange trades differently from their other trade activity, they may need to make related system changes. No one has indicated this to be the case.

CANNEX is making the necessary arrangements to update their systems and/or communicate any necessary changes to their clients' systems to benefit from this implementation.

F. COMPARISON TO OTHER CLEARING AGENCIES

No comparable or similar procedures were available for other clearing agencies in order to conduct an analysis.

G. PUBLIC INTEREST ASSESSMENT

CDS has determined that the proposed amendments are not contrary to the public interest.

H. COMMENTS

Comments on the proposed amendments should be in writing and submitted within 30 calendar days following the date of publication of this notice in the Ontario Securities Commission Bulletin to:

Laura Ellick
Manager, Business Systems
CDS Clearing and Depository Services Inc.
85 Richmond Street West
Toronto, Ontario M5H 2C9

Phone: 416-365-3872
Fax: 416-365-0842
Email: lellick@cds.ca

Copies should also be provided to the Autorité des marchés financiers and the Ontario Securities Commission by forwarding a copy to each of the following individuals:

M^{e} Anne-Marie Beaudoin
Secrétaire générale
Autorité des marchés financiers
800, square Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Télécopieur: (514) 864-6381
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Manager, Market Regulation
Capital Markets Branch
Ontario Securities Commission
Suite 1903, Box 55,
20 Queen Street West
Toronto, Ontario, M5H 3S8

Fax: 416-595-8940
e-mail: marketregulation@osc.gov.on.ca

CDS will make available to the public, upon request, all comments received during the comment period.

I. PROPOSED CDS PROCEDURE AMENDMENTS

Access the proposed amendments to the CDS Procedures and CDS Forms (if applicable) on the User documentation revisions web page (http://www.cds.ca/cdsclearinghome.nsf/Pages/-EN-UserDocumentation?Open). The revision portfolio contains text of CDS Procedures marked to reflect proposed amendments, as well as text of these procedures reflecting the adoption of the proposed amendments.

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