The Ontario Securities Commission

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

The Ontario Securities Commission
Cadillac Fairview Tower
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

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Table of Contents

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

June 21, 2012

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
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Vern Krishna	—	VK
Christopher Portner	—	CP
Judith N. Robertson	—	JNR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

June 25, 2012 11:00 a.m.	**David Charles Phillips and John Russell Wilson** s. 127 Y. Chisholm in attendance for Staff Panel: JDC
July 4, 2012 10:00 a.m.	**Thirdcoast Limited and Parrish & Heimbecker, Limited** s. 127 K. Daniels in attendance for Staff Panel: MGC/PLK/CWMS
July 5, 2012 10:00 a.m.	**North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti** s. 127 M. Vaillancourt in attendance for Staff Panel: MGC
July 12, 2012 10:00 a.m.	**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: MGC
July 12, 2012 10:00 a.m.	**Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho, Simon Yeung and David Horsley** s. 127 H. Craig in attendance for Staff Panel: MGC

July 16, 2012 10:00 a.m.	**Shane Suman and Monie Rahman** s. 127 and 127(1) C. Price in attendance for Staff Panel: JEAT/PLK
July 18, 19, 20 and 23, 2012 10:00 a.m.	**Crown Hill Capital Corporation and Wayne Lawrence Pushka** s. 127 A. Perschy/A. Pelletier in attendance for Staff Panel: JEAT/CP/JNR
July 18, 2012 10:30 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
August 1, 2012 10:00 a.m.	**Marlon Gary Hibbert, Ashanti Corporate Services Inc., Dominion International Resource Management Inc., Kabash Resource Management, Power to Create Wealth Inc. and Power to Create Wealth Inc. (Panama)** s. 127 J. Lynch/S. Chandra in attendance for Staff Panel: JDC
August 7-13, August 15-16 and August 21, 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
August 15, 2012 10:00 a.m.	**Morgan Dragon Development Corp., John Cheong (aka Kim Meng Cheong), Herman Tse, Devon Ricketts and Mark Griffiths** s. 127 J. Feasby in attendance for Staff Panel: EPK
August 15 and 16, 2012 10:00 a.m.	**Goldpoint Resources Corporation, Pasqualino Novielli also known as Lee or Lino Novielli, Brian Patrick Moloney also known as Brian Caldwell, and Zaida Pimentel also known as Zaida Novielli** s. 127(1) and 127(5) C. Watson in attendance for Staff Panel: MGC

September 4-10, September 2-14, 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 4, 2012 11:00 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
September 5, 2012 10:00 a.m.	**Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)** s. 127 M. Vaillancourt in attendance for Staff Panel: VK
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: VK
September 11, 2012 3:00 p.m.	**Systematech Solutions Inc., April Vuong and Hao Quach** s. 127 J. Feasby in attendance for Staff Panel: EPK
September 12, 2012 9:00 a.m.	**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: EPK
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: JDC
October 10, 2012 10:00 a.m.	**Peter Beck, Swift Trade Inc. (continued as 7722656 Canada Inc.), Biremis, Corp., Opal Stone Financial Services S.A., Barka Co. Limited, Trieme Corporation and a limited partnership referred to as "Anguilla LP"** s. 127 B. Shulman in attendance for Staff Panel: TBA

October 11, 2012 9:00 a.m.	**New Solutions Capital Inc., New Solutions Financial Corporation, New Solutions Financial (II) Corporation, New Solutions Financial (III) Corporation, New Solutions Financial (VI) Corporation and Ron Ovenden** s. 127 S. Horgan 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
October 22, October 24-31, November 1-2, November 7-14, 2012 10:00 a.m.	**Peter Sbaraglia** s. 127 J. Lynch in attendance for Staff Panel: CP
October 29-31, 2012 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva and Abraham Herbert Grossman aka Allen Grossman and Kevin Wash** s. 127 H. Craig/S. Schumacher in attendance for Staff Panel: JDC
October 31 – November 5, November 7-9, December 3, December 5-17 and December 19, 2012 10:00 a.m.	**Rezwealth Financial Services Inc., Pamela Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc., Sylvan Blackett, 1778445 Ontario Inc. and Willoughby Smith** s. 127(1) and (5) A. Heydon in attendance for Staff Panel: TBA
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 12-19 and November 21, 2012 10:00 a.m.	**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
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
December 4, 2012 3:30 p.m.	**Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Siklos (Also Known As Peter Kuti), Jan Chomica, and Lorne Banks** s. 127 H. Craig/C. Rossi in attendance for Staff Panel: CP
January 7 – February 5, 2013 10:00 a.m.	**Jowdat Waheed and Bruce Walter** s. 127 J. Lynch in attendance for Staff Panel: TBA
January 21-28 and January 30 – February 1, 2013 10:00 a.m.	**Moncasa Capital Corporation and John Frederick Collins** s. 127 T. Center in attendance for Staff Panel: TBA
January 23-25 and January 30-31, 2013 10:00 a.m.	**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	**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

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

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

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

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

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

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

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

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

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
TBA	**Energy Syndications Inc. Green Syndications Inc. , Syndications Canada Inc., Daniel Strumos, Michael Baum and Douglas William Chaddock** s. 127 C. Johnson 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	**Bunting & Waddington Inc., Arvind Sanmugam, Julie Winget and Jenifer Brekelmans** s. 127 S. Schumacher in attendance for Staff Panel: TBA
TBA	**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: TBA
TBA	**Colby Cooper Capital Inc., Colby Cooper Inc., Pac West Minerals Limited John Douglas Lee Mason** s. 127 B. Shulman 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	**Beryl Henderson** s. 127 S. Schumacher in attendance for Staff Panel: TBA

TBA **Ciccone Group, Cabo Catoche Corp. (a.k.a Medra Corp. and Medra Corporation), 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vincent Ciccone (a.k.a. Vince Ciccone), Darryl Brubacher, Andrew J Martin, Steve Haney, Klaudiusz Malinowski and Ben Giangrosso**

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA **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: 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 **David Charles Phillips**

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

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

s. 127

M. Britton in attendance for Staff

Panel: TBA

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

s. 37, 127 and 127.1

C. Price in attendance for Staff

Panel: TBA

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

s. 127

C. Watson 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 CSA Consultation Paper 91-406 – Derivatives: OTC Central Counterparty Clearing

CANADIAN SECURITIES ADMINISTRATORS

CSA CONSULTATION PAPER 91-406

DERIVATIVES: OTC CENTRAL COUNTERPARTY CLEARING

Canadian Securities Administrators Derivatives Committee

June 20, 2012

Table of Contents

CSA Consultation Paper 91-406 – Derivatives: OTC Central Counterparty Clearing

On November 2, 2010, the Canadian Securities Administrators ("CSA") Derivatives Committee (the "Committee") published Consultation Paper 91-401 – *Over-the-Counter Derivatives Regulation in Canada* ("Consultation Paper 91-401").[1] Consultation Paper 91-401 set out high-level proposals for the regulation of over-the-counter ("OTC") derivatives. The Committee sought input from the public with respect to the proposals and eighteen comment letters were received from interested parties.[2]

The Committee has continued to contribute to and follow international regulatory proposals and legislative developments, and collaborate with the Bank of Canada, the Office of the Superintendent of Financial Institutions ("OSFI"), the Department of Finance Canada, market participants, as well as bodies such as the International Organization of Securities Commissions ("IOSCO"), the Financial Stability Board ("FSB") and the OTC Derivatives Regulators' Forum ("ODRF"). This public consultation paper, one in a series of eight papers that build on the regulatory proposals contained in Consultation Paper 91-401, proposes a framework for centralized clearing in the Canadian OTC derivatives markets. It is hoped that this paper will generate necessary commentary and debate that will assist members of the CSA in selecting appropriate policies and rules that will eventually be implemented in the various jurisdictions of Canada.

The Committee is working with foreign regulators to develop international standards that will shape the rules that we develop, including those regarding CCP clearing. Although a significant market in Canada, the Canadian OTC derivatives market comprises a relatively small share of the global market, with the majority of transactions involving Canadian market participants being entered into with foreign counterparties. It is therefore crucial that rules be developed for the Canadian market that accord with international practice to ensure that Canadian market participants have full access to international markets and are regulated in accordance with international principles. The Committee will continue to monitor and contribute to the development of international standards and specifically review proposals on industry standards relating to CCP clearing.

EXECUTIVE SUMMARY

The adoption of requirements relating to CCP clearing will be a key element in addressing the reform of financial markets in Canada. The introduction of requirements for CCP clearing of previously bilaterally cleared or uncleared derivatives transactions will not only greatly enhance the transparency of markets for regulators, but will also enhance the overall mitigation of risks. We include below a summary of the Committee's recommendations for CCP clearing:

Mandatory clearing requirements

In order to achieve Canada's G-20 commitments, and in accordance with international standards guidance from IOSCO and the FSB, the Committee proposes that CSA members take the necessary steps to make the CCP clearing of eligible OTC derivatives mandatory.

a) The Committee proposes that regulations be adopted requiring CCPs to submit derivatives or categories of derivatives for regulatory review to determine whether the instrument is eligible for CCP clearing and a possible determination that they be subject to a requirement to be centrally cleared by all market participants that are not exempt from the mandatory clearing requirement.

b) The coordinated development of procedures by CSA members will be a necessary first step in determining which OTC derivatives contracts can be centrally cleared and which of these must be centrally cleared, the factors relevant in those determinations and which participants must be required to clear their OTC contracts. In addition, CSA members will develop procedures for the recognition of CCPs and the approval of CCP rules and policies. All will be in accordance with international best practices.

c) Canadian market regulators should adopt a 'bottom-up approach' where OTC derivatives are submitted by a CCP to a market regulator . The market regulator will determine which derivatives will be eligible for CCP clearing and which of those will be subject to mandatory CCP clearing. In conjunction with this approach, the Committee recommends the use of the 'top down approach', a process where CSA members have the power to identify those OTC derivatives that have not been submitted by a CCP in the bottom-up approach but which nonetheless should be subject to mandatory CCP clearing.

d) Co-ordinated CSA regulations should establish the processes to be followed and the criteria that will be used in determining if a derivative should be subject to mandatory CCP clearing. The Committee believes that the evaluation processes should include a public comment period.

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1 See http://www.lautorite.qc.ca/files//pdf/consultations/derives/2010nov02-91-401-doc-consultation-en.pdf.

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

e) The Committee believes that a sixty-day public comment period will allow for sufficient time to provide feedback. A communications protocol should be established among CSA members to assist in the harmonization process.

f) A register for those derivatives determined to be subject to mandatory CCP clearing should be established and the information be publicly available.

Back-loading of pre-existing transactions

The Committee proposes that market participants be required to centrally clear new OTC derivative transactions that regulators have determined to be subject to a CCP clearing obligation. Derivatives transactions entered into before the regulations are in effect (pre-existing transactions) and which are not cleared through a CCP could be novated to the CCP at a later date (back-loading). The Committee believes that:

a) the back-loading of pre-existing transactions should be done on a voluntary basis. However, when such transactions are subject to novation or assigned, effectively becoming new trades, they should be subject to any clearing obligation, and that

b) market regulators should conduct a review using information from trade repositories and other sources to determine whether additional back-loading obligations are appropriate to address existing risks. This analysis will be completed once sufficient trade repository data is available.

Clearing timeframes

For voluntarily cleared derivatives, that is, OTC derivative trades not executed on an approved trading venue and not subject to mandatory clearing, the Committee recommends their prompt submission to the CCP (no later than the close of business on the day of execution.)

If a derivative which is subject to a clearing obligation is traded on a recognized trading venue, the counterparties must submit the trade as soon as possible.

Intra-group Transactions

The Committee will not be recommending a broad exemption for intra-group transactions based on the risks to the overall market and third parties resulting from such an exemption. The Committee does ask for comments on intra-group transactions.

Recognition of Central Counterparties

Canadian market regulators should recognize and regulate CCPs. This oversight would include the acceptance or rejection of rules and procedures, the application of terms and conditions to such rules, including the CCPs risk management model, as well as the review of regular CCP fillings and financial statements, and the performing of regular and ad hoc inspections.

Governance

CCPs must adopt corporate governance policies to ensure that conflicts of interest are managed and that the board of directors includes independent representation. CCP Boards must establish committees with appropriate structure and mandates to play key roles in the governance of the CCP.

Fees

Clearing and other fees must be fully transparent to clearing members, customers and regulators as well as to the public.

Participant Access

CCPs should develop robust access requirements to ensure that clearing members do not bring undue risk to the CCP and are able to fulfill their obligations, but which do not impose access restrictions for non-competitive ends. At the same time such rules should not unreasonably prohibit, condition, or limit access to the services offered by the CCP. The access policy should consider a potential clearing member's ability to meet its financial and operational responsibilities arising from its relationship with the CCP.

Open Access to Trading Platforms

Regulation should require the development of policies by CCPs to facilitate open access to trading platforms. Such policies should not unreasonably prohibit or limit access to the CCP regardless of how or where a transaction is executed. CCP access requirements should not result in a competitive advantage to any trading platform.

CCP Rules

The CCP's rule book and procedure framework, including default procedures, must be clear and comprehensive. Both market regulators and participants must have certainty that such rules will be followed during periods of market stress. CCP rules should clearly define and limit the range of circumstances in which it has the ability to invoke emergency powers ensuring that participants understand and manage the risk and cost associated with their participation in the CCP. In particular:

a) CCPs should ensure compliance with published default procedures in all situations and have processes in place to monitor compliance and deal with situations of non-compliance. A mechanism for appeals from CCP decisions should also exist.

b) CCPs must put in place a process for the adoption of rules, including their submission for regulatory, board and, where necessary, member approval.

c) Regulators of both domestic and foreign CCPs should develop and commit to clear co-operative oversight arrangements that deal with the regulation of CCPs subject to multi-jurisdictional regulation. Such protocols should clarify the role of regulators in monitoring and directing the governance model, the rule-making process and the operations of a CCP. They should also clarify the rights and responsibilities of all relevant regulators and their ability to take steps in addressing issues of a local public interest.

Risk Management

Regulations should be developed requiring that CCPs develop and implement a robust risk management program in accordance with international best practices and the FMI Principles. These programs should be fully transparent to regulators, clearing members and other relevant stakeholders. Specific requirements include that a CCP:

a) Have in place an effective, multi-level contingency structure that includes accurate liquidity analysis and member margining, a default waterfall that sets out clearly the funding events that will occur in the case of a member default and the contributions that will be required of members and the CCP's own capital (if any) and any further financial backstops or insurance that can be accessed;

b) Conducts a full analysis of all relevant risks and has in place appropriate risk management procedures, such as margin and haircut adjustments;

c) Impose risk limits on individual clearing members;

d) Inform its regulator or regulators when a clearing member is at risk of default and when any default procedures are triggered;

e) Undertake periodic testing and reviews of its clearing systems, including models and default procedures, and of clearing member procedures and systems. These tests should involve extreme but plausible market conditions;

f) Maintain and utilize accurate pricing and valuation procedures;

g) Maintain and utilize product approval procedures to ensure that new clearing products do not bring undue risk to the CCP and its members;

h) Have a chief risk officer who is responsible for the implementation of risk management procedures and who reports to the CCP's board of directors or risk management committee, as appropriate;

i) Subject risk management models, including those for valuation and margin calculations, to independent review and validation;

j) Provide regulators with periodic reports relating to the risks applicable to the CCP and a description of how such risks are managed; and

k) Provide regulators with financial reports relating to the CCP, which should include aggregated risk exposures.

Systems and Technology

The Committee believes that regulations for CCPs in Canada should require a program of risk analysis and oversight in order to identify and minimize the sources of operational risk, particularly in regards to systems and technology. The development of appropriate controls to ensure that systems are reliable, secure and have adequate scalability should be required.

Reporting

The Committee recommends that each CSA jurisdiction seek the legislative authority to require the CCP to transmit to regulators the information required for oversight purposes. This will include the frequency and format of the information required.

Foreign-based CCPs and Regulatory Co-operation

As a majority of counterparties to derivatives trades entered into by Canadian participants are resident outside of Canada, it is clear that Canadian market participants will require access to foreign CCPs to clear at least some OTC derivatives transactions. The Committee believes that the review and recognition (or exemption from recognition) of foreign-based CCPs is a priority to ensure that Canada meets its G20 commitments.

Comments and Submissions

The Committee invites input on the issues outlined in this public consultation paper. You may provide written comments in hard copy or electronic form. The committee understands that some market participants were waiting to read the clearing paper before sending comments on end-user exemptions, the committee will welcome all end-user exemption comments with respect to clearing.

The comment period expires September 21, 2012.

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

Please address your comments to each of the following:

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

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

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318
E-mail: jstevenson@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Fax : 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Questions

Please refer your questions to any of:

Derek West
Chairman, CSA Derivatives Committee
Director, Derivatives Oversight
Autorité des marchés financiers
514-395-0337, ext 4491
derek.west@lautorite.qc.ca

Michael Brady
Senior Legal Counsel
British Columbia Securities Commission
604-899-6561
mbrady@bcsc.bc.ca

Kevin Fine
Director, Derivatives Branch
Ontario Securities Commission
416-593-8109
kfine@osc.gov.on.ca

Debra MacIntyre
Senior Legal Counsel, Market Regulation
Alberta Securities Commission
403-297-2134
debra.macintyre@asc.ca

Doug Brown
General Counsel and Director
Manitoba Securities Commission
204-945-0605
doug.brown@gov.mb.ca

Abel Lazarus
Securities Analyst
Nova Scotia Securities Commission
902-424-6859
lazaruah@gov.ns.ca

Susan Powell
Senior Legal Counsel
New Brunswick Securities Commission
506-643-7697
susan.powell@nbsc-cvmnb.ca

1. INTRODUCTION

In September 2009, the G20 called for the improvement of the global financial markets and its members committed themselves to reforming financial markets and their oversight by the end of 2012 ("G20 Commitments"). As discussed in *Consultation Paper 91-401 on Over-the-Counter Derivatives Regulation in Canada* ("Consultation Paper 91-401"),[3] much international co-operative work has been undertaken through groups such as the Financial Stability Board ("FSB"), the International Organization of Securities Commissions ("IOSCO"), the Committee on Payment and Settlement Systems ("CPSS") and the OTC Derivatives Regulators' Forum ("ODRF").[4]

This paper describes the Committee's proposals relating to CCP clearing of OTC The paper starts by describing mandatory CCP clearing and approaches for determining the derivatives to which the mandatory CCP clearing obligation would apply. As well, the issues of back loading pre-existing trades, timeframes for CCP clearing and the recognition of counterparties. The paper incorporates and requires compliance with CPSS-IOSCO's *Principles for Financial Market Infrastructures* (the "FMI Principles") particularly in the areas of governance, CCPs' fees, access, risk management and systems and technology. Finally, asset protection, trade reporting, regulatory cooperation over foreign based CCPs and infrastructure are highlighted. The Committee encourages market participants and the public to submit comment letters addressing specific questions as well as any other issue or question raised by this consultation paper.

2. MANDATORY CCP CLEARING

In 2009, the G20 leaders agreed that all standardized OTC derivatives should be centrally cleared by the end of 2012. In a CCP model, after a trade is executed, either directly between two counterparties or on an exchange or electronic trading platform, the CCP becomes the counterparty to each of the contract participants. Clearing OTC derivatives through a CCP will result in more effective management of counterparty credit risk, thus mitigating the effects if one of the counterparties does not fulfill its obligations. It is the G20's belief, one that is shared by many market regulators, that CCP clearing can contribute to the stability of our financial markets and reduce market risk. Many derivatives have and will continue to evolve from customized contracts traded in a purely OTC, bilateral market to standardized contracts that are centrally cleared and, perhaps, negotiated on an electronic trading platform.[5] Further incentives to centrally clear will also be created for prudentially regulated entities under the new Basel III regulatory capital framework. This process is not straightforward, however, and competing market interests can affect this progression. Therefore, members of the G20, including the US and the European Union (EU),[6] have required or will require that standardized derivatives be centrally cleared through regulatory requirements.

In response to Consultation Paper 91-401, commenters supported mandatory CCP clearing of OTC derivatives that are eligible for CCP clearing, while expressing concerns with respect to which OTC derivatives contracts should be subject to this requirement.

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3 See http://www.lautorite.qc.ca/files//pdf/consultations/derives/2010nov02-91-401-doc-consultation-en.pdf.

4 Monitoring and coordinating the implementation of OTCD reforms are being carried out by the FSB, in co-operation with IOSCO and the Committee on Payment and Settlement Systems. See *Implementing OTC Derivatives Market Reforms*, October 2010 ("FSB Implementing Reforms") http://www.financialstabilityboard.org/publications/r_101025.pdf and *Overview of Progress in the Implementation of the G20 Recommendations for Strengthening Financial Stability, Report of the Financial Stability Board to G20 Leaders,* November 2011 http://www.financialstabilityboard.org/publications/r_111104.pdf.

5 The Committee will be publishing a consultation paper on trading in the months to come.

6 Australia is proposing to set up legislation to mandate CCP clearing of OTC derivatives, but enact mandates through regulation only if necessary. In the March 2012 report by their council of regulators (*OTC Derivatives Market Reform Considerations*), Australia's council of financial regulators stated that the capital incentives should be sufficient to encourage central clearing, but that they will monitor developments closely to see if mandates are necessary. Other countries such as Argentina have indicated that they do not feel their OTC derivatives markets are significant enough to warrant legislation.

The Canadian Bankers Association ("CBA") "*endorses the CSA's recommended approach to implement mandatory clearing of OTC derivatives that are determined to be appropriate for clearing and capable of being cleared."*[7] The International Swaps and Derivatives Association ("ISDA") "*strongly agree with the approach to implementing mandatory clearing of derivatives trades that are appropriate for clearing*"[8] but also recommend "*an extended period between a CCP being given permission to clear a product and clearing becoming mandatory on that product."*

TMX Group concurred:

> *We agree with the recommendations to implement a mandatory requirement for centralized clearing of OTC derivatives. The micro (or firm) level benefits of central clearing for OTC derivatives, including capital, collateral and operational efficiencies, and the macro (or systemic) level benefits, including systemic risk management, will greatly improve the resilience of the Canadian financial system and improve the overall efficiency of these markets.*[9]

Several commenters agreed that there are benefits to CCP clearing arrangements; however they felt that the additional burdens[10] of posting margin[11] could deter market participants from using derivatives for risk management purposes, particularly for life insurers, managed funds and commercial end users of derivatives.

The Mouvement Desjardins made the following comment regarding hedge accounting:

> *De plus, les organismes de réglementation devraient tenir compte des règles comptables qui réservent des traitements avantageux pour les transactions taillées sur mesure dans un cadre de gestion des risques. La compensation obligatoire et la normalisation des dérivés de gré à gré ne devraient pas se traduire par une volatilité accrue dans les états financiers des utilisateurs.*[12] *(temporary google translation pending official human translation: In addition, regulators should consider the accounting rules which reserve advantageous treatment for transactions in a tailored risk management framework. Mandatory clearing and standardization of OTC derivatives should not result in increased volatility in the financial statements of users)*

Despite the commenters' support of CCP clearing, a variety of valid concerns were expressed. These concerns will be addressed throughout the paper and the Committee will consider them when developing rule and exemption proposals for CSA consideration.[13]

To increase transparency and reduce systemic risk, market regulators and financial market infrastructures will implement requirements that will result in changes to some current practices, changes which may result in increased costs. On the other hand, it is conceivable that savings from netting at a CCP could decrease the margin costs.

2.1 Committee Recommendations

After reviewing comment letters that were submitted in response to Consultation Paper 91-401, the Committee proposes that Canadian market regulators take the necessary steps to make mandatory the CCP clearing of eligible OTC derivatives. The Committee also recommends that the CSA members adopt rules and procedures for:

- the determination of which OTC derivatives contracts are eligible to be centrally cleared and which of these should be subject to mandatory CCP clearing, including a description of the factors relevant to such a determination;

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7 Canadian Bankers Association Comment Letter to the CSA, 2011. ("CBA Comment Letter").

8 ISDA comment letter to the CSA, January 14, 2011 ("ISDA Comment Letter").

9 TMX comment letter to the CSA. Toronto, Ontario, 24 January 24, 2011.

10 In bilateral contracts between a financial institution ("FI") and a non financial institution, the FI may extend credit without collateral arrangements to its client to cover initial margin. The cost associated with obtaining credit will be priced into the derivatives contract, but it may not be transparent to the client that there is a credit arrangement behind their trade. Mandated CCP clearing could result in increased collateral requirements, as the client will now be responsible for meeting initial and variation margin.

11 Initial margin in a CCP clearing environment is typically posted in the form of cash or highly -liquid securities – a narrower range of collateral than that typically accepted in a bilateral clearing environment. This could be a significant issue for participants such as insurers and long-only asset managers who are accustomed to posting collateral in a broader range of securities.

12 Le Mouvement des caisses Desjardins comment letter 13 January 2011 ("Desjardins Comment Letter") .

13 See Section 0 *Exemptions from Central Clearing.*

- the determination of which participants should be required to clear their OTC derivatives contracts;
- the recognition of CCPs; and
- the approval of CCP rules, procedures and policies in relation to the clearing of OTC derivatives contracts.

3. DERIVATIVES SUBJECT TO A MANDATORY CLEARING REQUIREMENT

The Committee believes that the benefits of centralized clearing, including the reduction of counterparty risk and increased regulatory transparency, justify to the extent practical mandatory CCP clearing of the broadest array of OTC derivatives. However, it is evident that some OTC derivatives will continue to be customized, and thus non-standardized, to allow for an effective hedge of a market participant's risks. These derivatives, by their nature, will be so illiquid that to impose a CCP clearing obligation for them would result in either the CCP being subject to unacceptable risk or require the CCP to impose substantial margin requirements, which in turn will cause the transaction to be prohibitively expensive to the counterparties involved. In either case, inefficiencies in the market will result, as a mandate to centrally clear highly customized derivatives would effectively ban their use. A process must therefore be developed to determine which products should be subject to a mandatory CCP clearing obligation.

The Committee is proposing a combination of two approaches: the bottom-up approach, which refers to a process through which OTC derivatives contracts that a CCP clears or proposes to clear are made subject to a mandatory CCP clearing requirement by a market regulator; and the top-down approach, which is the process by which a market regulator has the power to identify OTC derivatives contracts for which mandatory CCP clearing is desirable, irrespective of whether a CCP clears or proposes to clear such contracts. The bottom-up and top-down approaches are discussed in more detail in sections 3.1 and 3.2 below.

One of the key elements of the bottom-up approach is that a market regulator will receive applications for all OTC derivatives contracts that a recognized CCP clears or proposes to clear and will then assess whether a mandatory clearing obligation is suitable for such contracts.[14] In assessing whether an OTC derivatives contract is subject to a mandatory clearing obligation, a market regulator will consider, among other things, whether:

- the contract is or can be sufficiently standardized to be cleared through a CCP,
- the underlying instruments or markets for the underlying instruments provide adequate pricing information,
- there is sufficient liquidity in the contract, and
- the contract would bring undue risk into a CCP.

In determining whether the implementation of a mandatory clearing requirement is appropriate, market regulators will also weigh the risk to the financial system if the OTC derivatives contract continued to be cleared and settled bilaterally against the risk that it would bring into the CCP if the derivatives contract were to be centrally cleared. For example, there may be a derivatives contract for which a CCP cannot manage the risk and is therefore not suitable for a mandatory clearing obligation. Market regulators should endeavour to achieve a net reduction of risk to the entire financial system.

1. Standardization

In its report, *FSB Implementing Reforms*, the FSB recommended that authorities develop incentives for market participants to use standardized OTC derivatives.

> *Standardization is a key condition for central clearing and trading on exchanges or electronic trading platforms, and also helps to facilitate greater market transparency. To promote the G-20's vision for greater use of these safer channels, authorities must ensure that appropriate incentives for market participants to use standardized products are in place. In particular, authorities should counter incentives that market participants may have to use nonstandardized products solely to avoid central clearing and trading requirements.*[15]

[14] As further noted below, this assessment is distinct from the rule adoption procedures for clearing new derivatives products on a CCP. Should the assessment not determine that the submitted derivative should be subject to mandatory clearing, the CCP will nonetheless be able to continue to offer the derivative for clearing on a voluntary basis, subject to the separate rule-adoption procedures.

[15] FSB Implementing Reforms , page 3.

The Committee believes that several factors should be taken into consideration when determining the level of standardization of an OTC derivative contract. It is proposed that a product which uses standardized, widely-accepted and widely-used legal documentation, including standardized features and contractual terms should be reviewed to determine if it should be subject to mandatory clearing.

Consideration should also be given to the level of standardization of an OTC derivative contract's transaction process, i.e., whether the product supports straight-through processing, which is defined as the automation of the entire process from trade initiation to settlement (and often referred to as STP). STP reduces risk from the otherwise manually-intensive nature of post-trade processing and the potential for significant market disruptions in closing out positions following a member default.[16]

Other factors for consideration include:

- whether the contract is traded on an electronic trading platform, and
- whether conventions and standard industry practices are in place to address a contract's lifecycle events.

2. Adequate pricing information

Transparency of transaction prices is required to support the risk management framework of the CCP. Historical pricing information, including pricing in all market conditions, is needed for determination of initial margin calculations. Current pricing information is important to allow the CCP to understand the changing risks related to a derivatives position as a result of market factors. Such information is also a necessary element of establishing variation margin requirements. Furthermore, a CCP should develop alternative pricing methods for instances where there is a disruption in standard pricing channels. Ultimately, the CCP should have access to sufficient data, the ability and the capacity to independently price such instruments.

3. Liquidity

To be centrally cleared, a derivative contract must have sufficient liquidity to allow the CCP to manage its risks in the case of a participant's default. Where a default occurs, sufficient liquidity would give the CCP flexibility to port the participant's positions to another participant, to offset its exposure to the non-defaulting counterparty by entering into a contract with a new offsetting counterparty, or to liquidate the positions.

In response to Consultation Paper 91-401, ISDA commented that the sufficient liquidity criterion should be applied conservatively and recommended certain parameters for determining liquidity in a product:

> *[W]e consider that the "sufficient liquidity" requirement ought to be applied very conservatively. We repeat the importance of this, as a CCP must calculate net margin each day and price availability is required to do this. In addition, since this requirement applies for the whole life of the trade price availability must be guaranteed in all market conditions, including stressed markets.*
>
> *Further study is necessary to determine if there is sufficient liquidity with respect to each derivative asset class. Certain parameters for liquidity for each product are a minimum number of market makers, frequency of trading (daily) and depth of market (daily trading must be in sizes that are not insignificant). Some products may meet these requirements, or not, depending on tenor.*[17]

4. Undue risk to the CCP

The CCP must have the expertise and operational capacity to manage efficiently all the risks associated with the products that it clears. The CCP must have the necessary ability, technology and resources to manage the volume and size of contracts related to each product that will be cleared. The CCP must be able to determine if a derivative would bring undue risk to the CCP and should therefore not be cleared.

In response to Consultation Paper 91-401, one of the issues raised was the approach market regulators should adopt when

[16] For a discussion of Canadian STP initiatives, see CSA Discussion Paper 24-401 on Straight-through Processing and Request for Comments, April 16, 2004 (2004) 27 OSCB 3971 to 4031 (Discussion Paper 24-401); and CSA Notice 24-301 – Responses to Comments Received on Discussion Paper 24-401 on Straight-through Processing, Proposed National Instrument 24-101 Post-trade Matching and Settlement, and Proposed Companion Policy to National Instrument 24-101 Post-trade Matching and Settlement, February 11, 2005 (2005) 28 OSCB 1509 to 1526.

[17] ISDA Comment Letter.

considering which OTC derivatives would be appropriate for clearing. Several responses cited criteria that are broadly similar to those outlined above and in the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank Act");[18] however some commenters raised additional factors to be considered. In its comment letter, the CBA supported the approach presented in Consultation Paper 91-401 but recommended a regulatory regime that is harmonized with international jurisdictions and one which includes consideration of the following additional factors:

> *Given that a large portion of derivatives activity by Canadian financial institutions (except equity linked) occurs with foreign counterparties, coupled with the need to harmonize the Canadian derivatives regulatory regime with international jurisdictions, the evaluation criteria used to identify OTC derivatives eligible for clearing should be broadly consistent with criteria applied, or proposed to be applied, under similar international legislation, including: (i) the reduction of systemic risk; (ii) the liquidity of contracts; (iii) the availability of pricing/valuation information; (iv) the ability of at least one central counterparty clearing house (a "CCP") to handle the volume of contracts; (v) the level of client protection provided by the CCP; and (vi) the clearing costs.*[19]

The Mouvement Desjardins also recommended that the determination of trades that should be subject to mandatory CCP clearing include a review of additional factors:

> *Desjardins approuve l'option recommandée […] Les organismes de réglementation devraient prendre en compte les facteurs suivants :*
>
> - *Le volume du marché de l'instrument dérivé;*
> - *Le nombre de participants du marché de l'instrument dérivé;*
> - *La taille des participants du marché de l'instrument dérivé;*
> - *La liquidité disponible des participants du marché de l'instrument dérivé;*
> - *Les facteurs de l'instrument dérivé, c'est à dire la méthode d'évaluation du calcul de marge quotidien, les dates de paiement et l'échéance;*
> - *La complexité de l'instrument dérivé.*[20] (Temporary google translation Desjardins approves the recommended option [...] Regulators should consider the following factors:
> - *The market volume of the derivative;*
> - *The number of market participants of the derivative;*
> - *The size of the market participants of the derivative;*
> - *The available liquidity of market participants of the derivative;*
> - *The factors of the derivative, i.e. the evaluation method of calculating daily margin, the payment dates and maturity;*
> - *The complexity of the derivative.*

3.1 Bottom-Up Approach

The Committee believes that market regulators should consider using a bottom-up approach where a CCP submits OTC products (or group, category, type or class of OTC products) that it already clears or proposes to clear to its market regulator(s) who would determine whether the products in question are eligible for central clearing and should be subject to mandatory clearing. This bottom-up approach would provide market regulators with information regarding contract design, the markets for the derivative and its underlying, price determination and risk makeup of the product, including any systemic risk it may pose.

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18 Dodd-Frank Act, Section 723 (h)(2)(D).

19 CBA Comment Letter.

20 Desjardns Comment Letter.

In order to facilitate a market regulator's ability to assess effectively whether a product is eligible for central clearing and should be subject to a mandatory clearing obligation, it should clearly set out the information that it expects to receive from a CCP under the bottom-up approach. A CCP's submission would include, among other things, a description of the primary attributes of the product; the type of trading that takes place in the product (such as on an electronic trading platform); details of the CCP's risk management framework; and the timeframe in which the CCP can begin clearing the product.

Further, when market regulators receive a CCP's submission, they should follow transparent and specific procedures for determining whether a mandatory clearing obligation should apply, which generally would include: gathering information about the product and the markets in which the product is traded and any restrictions to which the CCP may be subject; and consultation with stakeholders, including other regulatory authorities, to inform the assessment of the product, as appropriate.

The bottom-up determination process is distinct from the existing rule approval processes that exist currently for clearing agencies.[21] The U.S. Securities and Exchange Commission ("SEC") clarifies the different filing requirements:

> *A clearing agency that plans to accept a security-based swap for clearing must file a Security-Based Swap Submission with the Commission for a determination by the Commission of whether a security-based swap, or a group, category, type or class of security-based swaps, is required to be cleared. As discussed in Section I, in cases where accepting a security-based swap (or group, category, type or class of security-based swaps) for clearing constitutes a change in a ''stated policy, practice, or interpretation'' of the clearing agency, the clearing agency also would be required to file a proposed rule change. In such cases, the Commission must determine (i) whether to approve the clearing agency's proposed rule change to clear the applicable security-based swap and (ii) whether the security-based swap would be subject to the mandatory clearing requirement.*[22]

In response to Consultation Paper 91-401, several commenters, including the Working Group of Commercial Energy Firms, suggested that the bottom-up approach is the most appropriate:

> *The Working Group supports the Committee's recommendation that a central clearing requirement apply only to standardized derivatives contracts. A definition of a "standardized contract" likely always will be elusive. The best solution is for central counterparties ... to identify potential contracts that might fall under the central clearing requirements and, upon application by the CCP, for regulators to determine whether such contract is appropriate for central clearing. Regulators should provide notice and invite public comments as to whether a contract is appropriate for central clearing.*[23]

The U.S. Commodity Futures Trading Commission ("CFTC") has finalized rules under the Dodd-Frank Act that set out criteria for the CFTC to determine which derivatives submitted to the CFTC by CCPs will be subject to mandatory clearing.

The CFTC will make its determination based on information submitted by the CCP, including assurances that the designated clearing organization ("DCO") is eligible to accept a derivative; information regarding the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data; the existence of a rule framework and expertise at the DCO; information on the effect on the mitigation of systemic risk in clearing the derivative; the existence of legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members; product specifications and participant eligibility standards; pricing sources, models and procedures; risk management procedures; rules and procedures; and any other information required by the Commission.[24]

The SEC has proposed guidance to CCPs in demonstrating compliance with the criteria set out in its proposed rules under the Dodd-Frank Act. The guidance includes information that should be provided by a CCP proposing to clear a swap or category of swaps:

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21 In Ontario, clearing agencies must submit rule changes to the OSC; in Quebec, clearinghouses can certify that rule modifications respect the *Derivatives Act* but such self-certification is subject to review at any time by the AMF.

22 Federal Register / Vol. 76, No. 143 / Tuesday, July 26, 2011 / Page 44464 et seq. http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-18663a.pdf.

23 *Working Group of Commercial Energy Firms* comment letter to the CSA, January 14, 2011. http://www.osc.gov.on.ca/documents/en/Securities-Category9-Comments/com_20110114_91-401_mcindoed_menezesm_sweeneyr.pdf, p. 4.

24 Federal Register / Vol. 76, No. 143 / Tuesday, July 26, 2011 / Page 44464 et seq. http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-18663a.pdf.

> *In describing the security-based swap, or any group, category, type or class of security-based swaps, that a clearing agency plans to accept for clearing, the clearing agency could include the relevant product specifications, including copies of any standardized legal documentation, generally accepted contract terms . . . standard practices for managing and communicating any life cycle events associated with the security-based swap and related adjustments, and the manner in which the information contained in the confirmation of the security-based swap trade is transmitted. The clearing agency also could discuss its financial and operational capacity to provide clearing services to all customers subject to the clearing requirements as applicable to the particular security-based swap. Finally, the clearing agency could include an analysis of the effect of a clearing requirement on the market for the group, category, type, or class of security-based swaps, both domestically and globally, including the potential effect on market liquidity, trading activity, use of security-based swaps by direct and indirect market participants and any potential market disruption or benefits. This analysis could include whether the members of the clearing agency are operationally and financially capable of absorbing clearing business (including indirect access market participants) that may result from a determination that the … swap is required to be cleared.*[25]

The European Securities and Markets Authority (ESMA) has also developed an approach for assessing the eligibility of OTC derivatives for clearing.[26] At this time ESMA is developing technical standards that will affect all OTC derivatives entered into by two financial parties, a financial counterparty and a non-financial counterparty and between two non-financial counterparties.[27]

Factors to be considered in determining whether a derivative should be subject to a mandatory clearing obligation include the market, the derivative, the CCP and the counterparties. This analysis will need to take into consideration characteristics that are specific to the Canadian market, such as the size and depth of liquidity or the homogeneity of market participants (where market participants' portfolios have very similar risk profiles). The bottom-up approach can be complemented by the top-down approach, described below.

3.2 Top-Down Approach

Under the top-down approach, market regulators conduct analysis of market data, particularly the information received from trade repositories, for the purpose of identifying derivatives or categories of derivatives that potentially should be subject to an obligation to be centrally cleared. Canadian market regulators would also review the decisions by foreign regulators to mandate the clearing of particular derivatives or categories of derivatives.

If the review of this data leads Canadian market regulators to believe that an instrument is suitable for CCP clearing, we will conduct market analysis, including holding discussions with relevant CCPs, and then make a determination whether the derivative or category of derivatives is clearable and thus must be cleared on a recognized CCP, or that it does not meet the eligibility standard and will not be subject to mandatory clearing. The determination will take into account the factors mentioned above: standardization of the derivative, liquidity of the market, the availability of accurate pricing, the risk the derivative would bring to a CCP, and the costs to the market participants.

The CFTC has set out its draft process for reviewing derivatives that have not been accepted for clearing in new § 39:

> *(1) The Commission, on an ongoing basis, will review swaps that have not been accepted for clearing by a derivatives clearing organization to make a determination as to whether the swaps should be required to be cleared. In undertaking such reviews, the Commission will use information obtained pursuant to Commission regulations from swap data repositories, swap dealers, and major swap participants, and any other available information. . . .*
>
> *If no derivatives clearing organization has accepted for clearing a particular swap, group, category, type, or class of swaps that the Commission finds would otherwise be subject to a clearing requirement, the Commission will:*
>
> *(i) Investigate the relevant facts and circumstances;*

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[25] Federal Register / Vol. 75, No. 250 / Thursday, December 30, 2010 / Proposed Rules p. 82490 et seq. http://www.gpo.gov/fdsys/pkg/FR-2010-12-30/pdf/2010-32085.pdf, p.82495.

[26] It has been proposed that once a CCP receives approval to clear a derivative, it would notify ESMA which would then have six months to determine if the relevant class of derivatives should be subject to a clearing obligation. ESMA must assess: reduction of systemic risk in the financial system; liquidity of contracts; availability of pricing information; ability of the CCP to handle the volume; and level of client protection provided by the CCP. There would be a public consultation.

[27] Council of the European Union, June 6, 2011 *Proposals for a Regulation of the European Parlia*ment and of the Council on OTC derivative transactions, central counterparties and trade repositories ("COE June 6, 2011", p. 31.

> *(ii) Within 30 days of the completion of its investigation, issue a public report containing the results of the investigation; and*
>
> *(iii) Take such actions as the Commission determines to be necessary and in the public interest, which may include requiring the retaining of adequate margin or capital by parties to the swap, group, category, type, or class of swaps.*[28]

A CCP is in the best position to determine if a particular derivative, if cleared, would pose undue risk to the CCP or its members. The FSB notes

> *"Authorities should determine which products should be subject to a mandatory clearing obligation; however, they should not require a particular CCP to clear any product that it cannot risk-manage effectively, and should not mandate CCP clearing in circumstances that are not consistent with the G-20 objectives."*[29]

Market regulators may determine that a derivative is sufficiently standardized and meets the regulatory requirements for CCP clearing; however the determination to clear the derivative or not should be made by the CCP, based on its risk analysis (and not for anti-competitive reasons).

The top-down approach will ensure that market regulators develop and maintain an understanding of the derivatives being traded, the development of the market and the ongoing application of the G20 objectives. In addition it will provide market regulators an opportunity to initiate discussions related to clearing certain categories of derivatives where clearing would provide risk management or other benefits.

The Committee further recognizes that factors used to determine if a derivative can be cleared, such as market depth and liquidity, availability of efficient and accurate prices, and risk an OTC derivative contract brings to a CCP are always evolving and will change over time. Regulators will from time to time analyze these factors and use the top-down approach to determine if an OTC derivative contract is still suitable for mandatory clearing by a CCP. If the result of the analysis shows significant deterioration to the factors, rendering a derivative no longer suitable for CCP clearing, market regulators will publish the findings and request public comment before making a decision on whether to remove the mandatory clearing obligation for such a derivative.

3.3 Committee Recommendations

The Committee proposes that market regulators adopt rules for determining whether a derivative is eligible for CCP clearing which are based on international best practices, including those being developed by the US CFTC and ESMA. The Committee believes that a coordinated approach to determining which derivatives will be subject to mandatory clearing, using both bottom-up and top-down approaches, will provide clarity to the market, and will ensure consistent risk analysis.

Further, the Committee proposes that market regulators maintain a register of those derivatives which have been determined to be eligible for central clearing and subject to mandatory CCP clearing. This registry should be publicly available on Committee members' web sites.

The Committee proposes that market regulators adopt regulations that require CCPs to submit all derivatives or categories of derivatives for regulatory review and a possible determination that the derivative or category of derivatives must be cleared by all market participants who are not exempt from the mandatory clearing requirement. The Committee proposes that regulations should set out the processes which will be followed and the criteria that will be evaluated to make such determinations. The Committee also believes that the evaluation process should include a public comment period.

The Committee believes that a sixty day public comment period, consistent with that proposed by U.S. regulators, is sufficient time for interested participants to provide. The Committee proposes that this comment period would be part of a prescribed regulatory review period to ensure that decisions made in relation to clearing are made within a reasonable timeframe. It is recommended that a communication protocol be established among CSA members to harmonize the review process.

For each approach, the Committee proposes to develop a clear process for publishing determinations which would include a sixty day public comment period and consultations with the CCPs that would clear the instrument. Should a CCP not accept a derivative for clearing that the regulator has determined to be subject to mandatory clearing, its market regulator will conduct further analysis and publish a report of its findings. This analysis may lead to the determination of minimum capital or margin requirements for the derivative where bilaterally cleared, or other trading restrictions.

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[28] Federal Register / Vol. 76, No. 143 / Tuesday, July 26, 2011 / Page 44464 et seq. http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-18663a.pdf, p.44474

[29] FSB Implementing Reforms, p. 4.

The Committee further proposes that the top-down approach be also used to determine if a derivative that is already subjected to mandatory clearing by a CCP continues to be suitable to be centrally cleared. Should such analysis support the removal of a derivative from mandatory clearing obligations, the regulators will publish the findings for public comment period before making the final evaluation and decision.

Further, work will need to continue on the development of international standards for the determination of which derivatives should be subject to mandatory CCP clearing. It is worth noting that due to confidentiality laws in some jurisdictions it may be difficult or impossible to obtain information regarding a derivative or its underlying market, further complicating this process.

4. BACK-LOADING OF PRE-EXISTING TRANSACTIONS

Derivatives that are uncleared or cleared bilaterally and that pre-exist the enactment of a mandatory clearing obligation may benefit from the CCP clearing process. However, there is considerable complexity involved in requiring such transactions to be centrally cleared or "backloaded" into a CCP, including the renegotiation of contract provisions and the unwinding of collateral arrangements.

The EU has proposed that derivatives entered into after the coming into effect of a clearing mandate, or those derivatives that are entered into or novated after the adoption of regulations but before the coming into effect of a clearing mandate, be mandated to be cleared through a recognized CCP if their maturity is beyond a specified date to be determined by ESMA.

The Committee understands that a requirement to clear pre-existing trades would result in substantial costs for market participants without, in some situations, material benefit. This is particularly true in cases where the OTC derivative contract will be concluded in the near future. The Committee believes that the costs of back-loading must be weighed against the benefits to determine what is best for our markets.

4.1 Committee Recommendations

The Committee proposes that participants be required to clear new OTC derivative transactions that have been determined to be subject to a CCP clearing obligation. The backloading of pre-existing trades should be done on a voluntary basis. However, when pre-existing trades in derivatives that are subject to a clearing obligation are novated or assigned (effectively becoming new trades) they will be subject to the clearing obligation. As sufficient data become available in trade repositories and from other sources, the Committee proposes that market regulators review the data to determine whether additional back-loading obligations are appropriate.

Request for Comment

Question 1. Do you consider that product characteristics of any OTC derivative asset classes make them eligible for CCP clearing based on the factors set out herein? If so, what asset classes would you exclude, and for what reasons?

Question 2. For which asset classes do you consider CCP clearing is inappropriate or not currently feasible based on the factors described herein, and for what reasons?

Question 3. What are the costs and risks involved in moving particular derivatives or classes of derivatives transactions to CCP clearing that regulators should consider in determining if a derivative should be subject to a CCP clearing requirement?

5. CLEARING TIMEFRAMES

The prompt reporting of derivatives transactions to a CCP by counterparties to the transaction and the prompt review and acceptance or rejection of the transaction for clearing by the CCP are key elements in managing risk. This will reduce the chance that market risk results in undue losses if a significant change in value or other market event occurs before clearing.

The CFTC proposes:

> *As previously proposed, §39.12(b)(7)(ii) required DCOs to accept immediately upon execution all transactions executed on a [Designated Contract Market] or [Swap Execution Facility]. A number of DCOs and other commenters expressed concern that this requirement could expose DCOs to unwarranted risk because DCOs need to be able to screen trades for compliance with applicable clearinghouse rules related to product and credit filters. The Commission recognizes that while immediate acceptance for clearing upon execution currently occurs in some futures markets, it might not be feasible for all cleared markets at this time. For example, where the same cleared product is traded on multiple execution venues, a DCO needs to be able to aggregate the risk of*

> *trades coming in to ensure that a clearing member or customer has not exceeded its credit limits. Accordingly, the Commission is proposing to modify § 39.12(b)(7)(ii) to permit DCOs to screen trades against applicable product and credit criteria before accepting or rejecting them. Consistent with principles of open access, the proposal would require that such criteria be non-discriminatory with respect to trading venues and clearing participants. The Commission continues to believe that acceptance or rejection for clearing in close to real time is crucial both for effective risk management and for the efficient operation of trading venues. Rather than prescribe a specific length of time, the Commission is proposing as a standard that action be taken ''as quickly as would be technologically practicable if fully automated systems were used.'' The Commission anticipates that this standard would require action in a matter of milliseconds or seconds or, at most, a few minutes, not hours or days.*[30]

5.1 Committee Recommendations

The Committee believes that Canadian counterparties should be required to submit their trades that are subject to a clearing obligation to a recognized CCP as soon as possible, in any case no later than the close of business on the day of execution. The Committee also believes that CCPs should be required to review each submitted transaction to ensure that it complies with CCP rules and does not represent an inappropriate risk to the CCP as quickly as possible. Communication of the CCP's acceptance or rejection of the transaction for clearing should be provided immediately after the CCP's review has been completed, and before the end of the CCP's business day.

For derivatives that are cleared voluntarily – that is, for OTC derivatives trades not executed on an approved trading venue and not subject to the mandatory clearing, the Committee recommends that if such transactions are submitted to a CCP promptly, which would be no later than the close of business on the day of execution, the CCP would be subject to the same requirement to accept or reject the transaction by the end of the CCP's business day.

If a derivative that is subject to a clearing obligation is traded on a recognized trading venue, the counterparties (or the trading venue acting on behalf of the counterparties) must submit the trade as soon as possible. This process would preferably be fully automated, with integration between the trading venues and the CCPs' systems.

5.2 Request for Comment

Question 4. Does a deferred submission, be it measured in minutes, hours or days, engender significant counterparty or other risks that would make the imposition of a strict timeframe for submission to a CCP, and the acceptance by the CCP necessary?

6. EXEMPTIONS FROM CCP CLEARING

Although most derivatives transactions will be mandated to be cleared on a CCP, some transactions involving categories of participants will be exempt from the requirement.

6.1 End-users

The Committee proposes an exemption for certain end-users in CSA Consultation Paper 91-405 - *Derivatives: End-user Exemption*,[31] published on April 13, 2012. This consultation outlined the proposed exemption and invited comments on a number of issues relating to such an exemption.

6.2 Intra-group transactions

The EU has proposed to exempt intra-group transactions from their clearing obligation.[32] Intra-group transactions are defined in the proposal,[33] and are essentially transactions between two related, affiliated or associated entities which, in the case of financial institutions, are included in the same consolidated financial statements on a fully consolidated basis and the counterparties are subject to the same risk evaluation, measurement and control procedures.[34]

Commenters in the U.S. have argued in favour of an exemption for such transactions. They explain that intra-group transactions

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30 Federal Register / Vol. 76, No. 147 / Monday, August 1, 2011 / Proposed Rules, pp. 45732-3 http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-19365a.pdf, p.45732-3

31 See http://www.lautorite.qc.ca/files/pdf/consultations/derives/2012avril13-91-405-cons-en.pdf.

32 COE June 6, 2011, Art. 3(a).

33 Ibid, Art 2(a).

34 The EU also addresses the requirements for exempting counterparties who are part of the same "Institutional Protection Schemes" in Ibid, Section 2a.

as a class of swaps generally serve to consolidate risk into a single book or portfolio. Mandating the clearing of such transactions, they assert, would only serve to multiply the number of cleared transactions without resulting in any reduction in CCP risks. In a comment letter to the SEC and the CFTC, JP Morgan asserted that because of the risk mutualization feature inherent in CCPs the introduction of additional and in effect unnecessary swap transactions to the clearinghouse would result in increased systemic risk not the contrary.[35] Moreover, ISDA has argued that the resulting increased margin requirements would result in an unnecessary consumption of group liquidity.[36] Thus, if the counterparties are controlled by the same entity and the positions essentially net each other out, from an accounting perspective there may be no additional implicit risk in such transactions.

6.3 Request for Comment

The Committee believes that an exemption from a requirement to clear intra-group transactions should be considered in the context of two situations: (i) where the transaction occurs between two related entities that have access to the same capital within one of the entities or a parent; and (ii) where the transaction occurs between two related entities that are separately capitalized such that the transaction will result in a change in the risk exposure that either entity has to third-parties.

The Committee is concerned that a broad exemption from the CCP clearing obligation for intra-group transactions will result in a situation where some intra-group transactions could result in increased risk to the market or to a third-party and, as a result does not propose to provide a broad exemption for intra-group transactions.

Question 5. The Committee asks whether an exemption from mandatory CCP clearing for intra-group transactions is appropriate, including a description of the risks that they could pose to the marketplace and the costs of migrating such transactions to a CCP.

7. RECOGNITION OF CENTRAL COUNTERPARTIES

Due to the importance of CCPs in the fulfillment of Canada's G20 commitments, the Committee recommends that CCPs be recognized in order to operate within Canada.[37] Recognition by a Canadian market regulator will be mandatory where a CCP carries on business or otherwise offers clearing services to a person carrying on business or resident in that regulator's jurisdiction. This is not limited to the CCP's physical presence; a CCP located in one Canadian province or in a foreign country can carry on business in other jurisdictions of Canada where it offers services to persons residing in a jurisdiction or registered to carry on business in that jurisdiction. Some market regulators may provide exemptions from recognition, with conditions and subject to a determination that the CCP is adequately regulated by its home regulator and other factors.

In order to be recognized, a CCP would be required to demonstrate that it complies with the FMI Principles[38] and specified criteria related to governance, fees, access, rules, due process, risk management, systems and technology, financial viability and reporting, operational reliability, protection of assets, outsourcing, information sharing and regulatory co-operation.[39]

7.1 Committee Recommendations

The Committee proposes that market regulators provide for the recognition and regulation of CCPs. The Committee proposes that market regulators should have the ability to apply terms and conditions to the recognition or exemption from recognition of a CCP, approve or reject the CCP's rules and procedures including its risk management model, apply terms and conditions to such rules, receive and review regular CCP filings including the CCP's financial statements, and conduct regular and ad hoc inspections.

8. CPSS – IOSCO

In 2001, the Committee on Payment and Settlement Systems (CPSS) published *Core Principles for Systemically Important Payment Systems.*[40] In November 2004, CPSS and the IOSCO Technical Committee jointly published *Recommendations for Central Counterparties* (the "RCCP").[41] These papers became the global standards for CCP structure and oversight. In January

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35 See comment letter to CFTC and SEC from J.P. Morgan, June 3, 2011.

36 See comment letter to CFTC from ISDA, December 22, 2010, p. 9.

37 Currently, only Alberta, Quebec and Ontario require the recognition, or exemption from recognition, of CCPs (in Quebec, a "clearing house", in Ontario and Alberta, a "clearing agency"). Other jurisdictions have proposed or will propose legislative amendments to require recognition of a CCP.

38 See section 8 *CPSS-IOSCO.*

39 See Ontario Securities Commission Staff Notice 24-702 Regulatory Approach To Recognition and Exemption From Recognition of Clearing Agencies p. (2010) 33 OSCB 2325
http://www.osc.gov.on.ca/documents/en/Securities-Category2/sn_20100319_24-702_clearing-agencies.pdf.

40 See http://www.bis.org/publ/cpss43.pdf.

41 See http://www.bis.org/publ/cpss61.pdf.

2010, a review of these standards was commenced, resulting in the publication for comment in March 2011 of a consultative report and the publication of the final FMI Principles in April 2012.

The FMI Principles describe the risks faced by financial market infrastructures ("FMIs") including CCPs. The FMI Principles are intended as broad but flexible guidance for addressing risks and efficiency. Some principles provide minimum requirements, others are proposed as best practices, while some "reference an important, common theme."[42]

Compared to the current standards, the FMI principles introduce a number of provisions on issues that were not addressed by the previous standards. For example, new principles have been introduced on segregation and portability, tiered participation and general business risk.

The Committee proposes to incorporate the FMI Principles when developing requirements applicable to CCPs recognized in Canada. Further analysis may be required where particularities of the Canadian market, such as transaction volumes, depth of liquidity or limited counterparties, may necessitate a more conservative or restrictive approach.

8.1 Governance

A CCP must ensure that its governance structure addresses any conflicts of interest, access standards, risk management, ownership concentration, management compensation, board representation and transparency while also providing reasonable representation of the public interest and the interests of key stakeholders. The FMI Principles state that:

> *An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.*[43]

CFTC draft rules require specific governance constructs, limit ownership to no more than 20% of a Designated Clearing Organization ("DCO") by an "enumerated entity"[44] (see Dodd-Frank Act s. 726(a)), require 35% independent representation on the board of directors (and no fewer than two independent members), and require that remuneration of board members not be linked to the performance of the CCP. The board is required, annually, to review its performance. As well, the Board should be able to remove a board member if his or her actions could be prejudicial to the board. Where CFTC rules require sufficient expertise in financial services, risk management and clearing services, EU proposed rules[45] also require that a board member be "of sufficiently good repute and experience".

In Canada, National Instrument 52-110 *Audit Committees* ("NI 52-110") defines independence of directors to mean absence of any direct or indirect material relationship between a director and the issuer. A "material relationship" is a relationship which could, in the view of the issuer's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgement. However, certain individuals are considered to have a material relationship with an issuer, such as an individual who is, or has been within the last three years, an employee or executive officer of the issuer.[46]

The Committee also believes that there may be situations where a CCP's directors must be independent from parties that have a material ownership interest in the CCP, particularly where the owners are industry participants.

8.2 Committee Recommendations

The Committee believes that CCPs must adopt corporate governance policies to ensure that an appropriate proportion of board members reflects its diverse stakeholders, including clearing members and persons clearing trades indirectly through clearing members. These independent board members should be:

- independent of the management of the CCP;
- independent of persons that have material ownership of the CCP, particularly in situations where owners of the CCP include financial institutions or other market intermediaries; and
- independent of the clearing members of the CCP.

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42 FMI Principles, p. 12.

43 *Ibid*. p. 26.

44 The "enumerated entities" include: (i) bank holding companies with over $50,000,000,000 in total consolidated assets; (ii) a nonbank financial company supervised by the Board of Governors of the Federal Reserve System; (iii) an affiliate of (i) or (ii); (iv) a swap dealer; (v) a major swap participant; or (vi) an associated person of (iv) or (v).

45 COE June 6, 2011, Art. 25.

46 See http://www.msc.gov.mb.ca/legal_docs/legislation/notices/4_52_110_prop.pdf.

To ensure independence from CCP management, the Committee believes that flexible language, similar to the meaning of independence in NI 52-110, *mutatis mutandis,* should be included in regulations that set out the test for independence of directors of a CCP. This would be consistent with the FMI Principles which state that the "*board should contain suitable members with the appropriate skills and incentives to fulfil its multiple roles. This typically requires the inclusion of non-executive board member(s).*"[47] The Committee agrees that non-executive members are necessary for the governance of a CCP.

The Committee believes that the board of a recognized CCP should consider, in its decision-making, the interests of other relevant stakeholders from different jurisdictions that it serves. This may be achieved by appropriate representation of Canadian users of the CCP on the board of directors or by having processes that require due consideration of unique circumstances/interests of users from different jurisdictions. An appropriate number or percentage of directors should represent Canadian market participants where possible.

8.3 Request for Comment

Question 6. Is it appropriate to ensure that Canadian market participants have meaningful input into operational decisions of a CCP operating in Canada?

Question 7. Do the Committee's proposals relating to corporate governance of a CCP address potential issues relating to conflicts of interest that may arise in the operation of a CCP? If not, what other measures would address such conflicts of interest?

8.4 Board Committees

Committees are a fundamental component of a CCP's governance structure. Through committees, clearing members and other relevant stakeholders of a CCP can influence the CCP's functions such as decisions that affect the risks taken on and managed by the CCP, margins, membership access, and executive remuneration. Committees also serve to mitigate any conflicts of interest, allowing for heterogeneous representation.

8.5 Committee Recommendation

The Committee proposes that regulations require that CCPs provide details regarding the structure and mandate of board committees as part of the recognition process. Committees could include: finance and audit; risk management; compensation or human resources, or other committees where appropriate, such as in relation to governance, product approval, information systems and strategic planning.

In addition to the committee structure and the oversight of the board of directors, a CCP will need to develop and implement procedures regarding the mitigation of conflicts of interest, fair and equitable access to the CCP, the confidentiality of information to which employees and directors have access, as well as the disclosure to regulators and to the public of information regarding governance, including decisions taken that have denied access to the CCP or rejected the clearing of a derivative.

8.6 Advisory Committees

Advisory committees provide an opportunity for persons or entities that are not members of a CCP's board of directors to have meaningful input into the operations of a CCP. An advisory committee will allow key stakeholders to represent additional interests and provide specialized expertise, particularly in relation to operational issues that may have a substantial impact on members and other users of a CCP.

8.7 Committee Recommendations

The Committee proposes that CCPs operating in Canada should establish advisory committees to allow Canadian direct and indirect participants of a CCP and other stakeholders to provide input into operational decisions, as appropriate. Such committees should have a transparent mandate which outlines the rights and obligations of the committee and thus provide Canadian users with a way of providing meaningful input into operational decisions made by a CCP that could materially impact those users.

The Committee believes that such advisory committees should have members representing a broad range of interests including CCP members, end-users and other relevant stakeholders, as appropriate.

8.8 Fees

The FMI Principles propose that fees be disclosed publicly, both by a CCP and its clearing members. It requires the disclosure of prices and fees of each service and function provided separately. The FMI Principles state that an "FMI should publicly

[47] FMI Principles. p. 26.

disclose its fees at the level of individual services it offers, as well as its policies on any available discounts. The FMI should provide clear descriptions of priced services for comparability purposes." [48]

The CFTC has proposed that CCPs shall be "required to make available to market participants information concerning ... each clearing and other fee charged to members." [49]

EU proposed regulations would also require that:

> *A CCP and its clearing members shall publicly disclose the prices and fees associated with the services provided. They shall disclose the prices and fees of each service and function provided separately, including discounts and rebates and the conditions to benefit from those reductions. A CCP shall allow its clearing members and, where relevant, their clients, separate access to the specific services provided. A CCP shall account separately for costs and revenues of the services provided and shall disclose that information to the competent authority.*[50]

The disclosure of all fees (including direct costs that will be incurred by users of a CCP) ensures that fair and equitable access is afforded to all participants, and CCP users understand the business model of the CCP.

8.9 Committee Recommendations

The Committee recommends that a CCP's fees must be disclosed to clearing members, their customers and regulators as well as to the public, as described in the FMI Principles.

8.10 Participant Access

Without limiting the ability and responsibility of a CCP to develop robust access requirements to ensure that a clearing member does not bring undue risk to the CCP and is able to fulfill its obligations both to the CCP and its customers, a CCP must not impose access restrictions for non-competitive ends. In this respect the CFTC's Core Principle C:

> *... mandates that participation requirements must "permit fair and open access." It also mandates that clearing members must have "sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization."*
>
> *... Proposed § 39.12 is designed to ensure that participation requirements do not unreasonably restrict any entity from becoming a clearing member while, at the same time, limiting risk to the DCO and its clearing members. The Commission believes that more widespread participation could reduce the concentration of clearing member portfolios and diversify risk. It could also increase competition by allowing more entities to become clearing members. ... Proposed § 39.12(a)(1)(iii) would prohibit participation requirements that have the effect of excluding or limiting clearing membership of certain types of market participants unless the DCO can demonstrate that the restriction is necessary to address credit risk or deficiencies in the participants' operational capabilities that would prevent them from fulfilling their obligations as clearing members.*[51]

The CFTC has set out other concerns regarding impediments to indirect access to the CCP in commentary to the proposed rulemaking, noting:

> *Some clearinghouses have indicated that they intend to require that, for a transaction to be eligible for clearing, one of the executing parties must be a clearing member. This has the effect of preventing trades between two parties who are not clearing members from being cleared. Such a restriction of open access serves no apparent risk management purpose and operates to keep certain trades out of the clearing process and to constrain liquidity for cleared trades.*[52]

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48 FMI Principles p. 121.

49 Federal Register/Vol.75, No. 240/ Wednesday, Dec. 15, 2010/Proposed Rules p. 78192. http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2010-31131a.pdf.

50 COE June 6, 2011, Art. 36.

51 Federal Register / Vol. 76, No. 216 / Tuesday, November 8, 2011 http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-27536a.pdf.

52 Section§ 39 (b)(4) " would prohibit a DCO from requiring one of the original executing parties to be a clearing member in order for a contract, agreement, or transaction to be eligible for clearing." This provision was adopted on November 8, 2011. Federal Register / Vol. 76, No. 216 / Tuesday, November 8, 2011, p. 69360.
http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-27536a.pdf.

The SEC has proposed rule 17Ad-22(b)(5), which would prohibit membership restrictions based on dealer status.[53]

> *As a way to promote greater access to clearing, the SEC is proposing to prohibit denial of CCP membership based on whether a person offers OTC derivative dealer services. Through this rule the SEC is attempting to ensure access to client clearing (correspondent clearing) firms who are non-dealers and could be discriminated against through a CCP's access criteria. For example, a client clearing firm not offering dealer services might not have the certain operational capabilities and could have significantly less financial resources given the nature of their operations.*[54]

As well, the SEC proposes to prohibit access limitations based on minimum volume or transaction thresholds:

> *The proposed rule would prohibit the establishment of minimum portfolio sizes or transaction volumes that by themselves would act as barriers to participation by new participants in clearing. This speaks to the relevant size of market participants and whether or not the membership criteria should reflect the amount of risk they bring to the CCP instead of establishing large arbitrary values such as minimum volume and transaction thresholds.*[55]

The SEC further proposes that access should not be denied based on minimum net capital requirements of $50 million or more:

> *The SEC proposed rule limits the ability for CCPs clearing OTC derivatives to deny membership access to participants with 50 million or more in net capital. Under the proposed rule, a CCP wishing to raise the net capital above 50 million minimum would have to demonstrate to the commission through a rule filing or in its application, that any other measures would be unable to effectively mitigate the risks to the CCP.*[56]

The FMI Principles acknowledge the importance of risk-based and equitable access requirements:

> *An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.*[57]

These proposals underscore the concerns regulators have regarding CCP access and governance, and the Committee shares such concerns. The Committee feels, however, that prescriptive rules that limit a CCP's ability to determine access rules and thresholds that are appropriate within its risk management policy can serve to increase rather than reduce systemic risk.

A published access policy, and compliance therewith, can provide assurance that a CCP is not unduly limiting access.

8.11 Committee Recommendation

The Committee proposes that regulations include an obligation for a CCP to develop and comply with published access rules that are objective, risk-based and justified in terms of the safety and efficiency of the CCP and the market it serves. The access policy should consider a potential clearing member's ability to meet its financial and operational responsibilities arising from its participation in the central counterparty but should not unduly discriminate against certain classes of participants or introduce competitive distortions. These policies will be subject to regulatory approval during the recognition or approval process of a CCP and ongoing review by market regulators.

In addition, CCPs will be required to maintain records of all applications for access including records relating to each grant of access and denial of access.

8.12 Open Access to Trading Platforms

A vertical silo structure, where a trading venue feeds directly into the CCP, may force market participants who wish to transact and clear a particular derivative to use the captive trading venue. Open access to the CCP from multiple trading venues could remove this potential monopoly.

In this regard, the EU proposes the following:

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53 This proposal is not universally supported. Concerns have been expressed regarding non-dealers' ability to fully participate in a default auction, for example.

54 Federal Register / Vol. 76, No. 51 / Wednesday, March 16, 2011 / Proposed Rules http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-20337a.pdf.

55 *Ibid.*

56 *Ibid*.

57 FMI Principles, p. 101.

> *A CCP that has been authorized to clear [OTC] derivative contracts shall accept clearing such contracts on a non-discriminatory and transparent basis, regardless of the venue of execution. Without prejudice to Article 32a, a CCP may require that those venues of execution comply with the operational and technical requirements established by the CCP. ... A venue of execution shall provide trade feeds on a non-discriminatory and transparent basis to any CCP that has been authorised to clear [OTC] derivative contracts traded on the venue of execution upon request by the CCP.*[58]

Some commenters in Europe have suggested that the ability of a CCP to require compliance with their technical requirements "could allow exchanges to monopolise trading of derivatives by restricting access to the clearing houses they operate."[59]

The CFTC states:

> *Proposed §39.12(b)(7)(i) would establish general standards for the adoption of rules that establish a time frame for clearing. The DCO would have to coordinate with each [Swap Execution Facility] and [Designated Contract Market] that lists for trading a product that is cleared by the DCO, in developing rules and procedures to facilitate prompt and efficient processing of all contracts, agreements, and transactions submitted to the DCO for clearing. For prompt and efficient clearing to occur, the rules, procedures, and operational systems of the trading platform and the clearinghouse must mesh. Vertically integrated trading and clearing systems currently process high volumes of transactions quickly and efficiently. The Commission believes that trading platforms and DCOs under separate control should be able to coordinate with one another to achieve similar results. The Commission also recognizes that there may be issues of connectivity between and among trading platforms and clearinghouses.*[60]

As the markets evolve to comply with clearing and trading obligations, models may develop that differ considerably from the traditional vertical silo. For the present, the development of trading venues and their relationships with CCPs remains speculative.

8.13 Committee Recommendations

The Committee proposes that regulations be adopted that require CCPs develop access policies that facilitate fair and open access and which do not unreasonably prohibit or limit access to its services regardless of how the derivatives transaction is executed. The access requirements established by a CCP or services offered by a CCP should not create a competitive advantage for any trading facility.

8.14 Request for Comment

Question 8. The Committee seeks public comment on the relevance of developing rules allowing for access to CCPs regardless of trading venue. Is this of concern in the Canadian marketplace at this time or in the future?

8.15 CCP Rules

As a regulated entity, a CCP's rules,[61] operating procedures and by-laws (collectively, rules) should be subject to regulatory review and approval. It is through its rules that a CCP builds its clearing framework. Rules govern how the CCP staff and management perform their duties, how the CCP's governance structure operates and how clearing members and their customers fulfil their obligations.

The Dodd-Frank Act states:

> *A designated financial market utility shall provide 60 days advance notice to its Supervisory Agency of any proposed change to its rules, procedures, or operations that could, as defined in rules of each Supervisory Agency, materially affect, the nature or level of risks presented by the designated financial market utility.* [62]

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58 COE June 6, 2011 , Art. 8.

59 Price, Michelle. "Fresh clash looms over new OTC rules." *Financial News*, November 29, 2010.

60 Federal Register / Vol. 76, No. 47 / Thursday, March 10, 2011 / Proposed Rules 13105 http://www.cftc.gov/LawRegulation/FederalRegister/FinalRules/2011-27536.

61 This may consist of participant obligations and rights.

62 *See Dodd-Frank*, § 806(e)(1).

The FMI Principles explain:

> *An FMI should adopt clear and comprehensive rules and procedures that are fully disclosed to participants and relevant rules and key procedures should be publicly disclosed. An FMI's rules and procedures are typically the foundation of the FMI and provide the basis for participants' understanding of the risks they incur by participating in the FMI. As such, these rules and procedures should include clear descriptions of the system's design and operations, as well as the rights, obligations, and risks participants incur by participating in the FMI. They should clearly outline the respective roles of participants and the FMI, as well as the procedures that will be followed in routine and non-routine circumstances. In particular, an FMI should have clear and comprehensive rules and procedures for addressing financial and operational problems within the system. An FMI should publicly disclose all relevant rules and key procedures, including key aspects of its participant-default rules and procedures (principle 13), so that all market participants and relevant authorities can quickly assess potential risks in periods of market stress.*[63]

CCPs should have comprehensive and transparent policies outlining their operations that relate to clearing and risk management. It is expected that these policies would identify risks related to the operation of the CCP and describe how the CCP proposes to manage such risks both during the ordinary course of business and in stress situations.

It is important that, in the event of a crisis, trades or positions cleared by the CCP not revert to bilateral exposures without prior consent of market regulators and non-defaulting participants. The use of emergency powers should be restrictive and should not allow the CCP to void or refuse to perform previously cleared contracts on the grounds that market events or industry protocols have made the managing of associated risk exposures difficult for the CCP. A CCP's policies and procedures should clearly specify the scope of such emergency powers and under what circumstances they would be exercised.[64]

CCP rules should also cover the obligations of its clearing members to maintain sufficient capital, specify margin requirements and how margin is to be managed operationally and ensure that clearing members' operational capacity and capability is sufficient to meet customer and CCP needs. The CFTC requires in rule §39.12(a)(3) that:

> *a DCO establish participation requirements that ensure that clearing members have adequate operational capacity to meet obligations arising from participation in the DCO. The requirements would have to include, at a minimum, the ability to process expected volumes and values of transactions cleared by the clearing member within required time frames, including at peak times and on peak days; the ability to fulfill collateral, payment, and delivery obligations imposed by the DCO; and the ability to participate in default management activities under the rules of the DCO. ...*[65]

A CCP's rules provide a legal, predictable framework for the operations of the CCP, the obligations of its members and the adjudication of disputes, the orderly treatment of a default and, in the extreme, the orderly winding-down of its operations. For the rules to have merit, they must be enforced by the CCP, which should have the authority to sanction or otherwise discipline its members and maintain resources to monitor and apply the rules.

8.16 Committee Recommendations

The rules and procedures of a CCP, including its default procedures, must be clear and comprehensive. Market regulators, clearing members and other market participants must have certainty that such rules will be followed during a period of market stress. Accordingly, a CCP's rules should clearly define and limit the range of circumstances in which the CCP has the ability to invoke emergency powers so that participants understand and manage the risk associated with their participation in the CCP as well as their contingent liabilities. CCPs should ensure compliance with published default procedures in all situations except as directed by regulators in accordance with protocols accepted by all regulators of the CCP.

Although it should be each clearing member's responsibility to ensure that it complies with the rules of a CCP, the Committee believes the CCP should have processes in place to monitor compliance and deal with situations where a member does not or cannot comply. These processes should include a mechanism for appeal from the decisions of the CCP, where appropriate.

The Committee further recommends that a CCP must put in place a process for the adoption of rule modifications. This process must be in accordance with the legislation under which it operates, including any requirements for obtaining regulatory approval from all applicable regulators, as well as appropriate board and clearing member approvals.

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63 FMI Principles, page 122.

64 Forthcoming CPSS-IOSCO work will focus specifically on the resolution of FMIs.

65 Federal Register Vol. 76, No. 13/Thursday, January 20, 2011/Proposed Rules, p. 3701 et seq. http://www.cftc.gov/LawRegulation/FederalRegister/ProposedRules/2011-690.

9. RISK MANAGEMENT

Risk management is at the core of the CCP's operations. Every aspect of its business must take into account risk management and risk mitigation. The FMI Principles set out the major sources of risk to a CCP: systemic risk, legal risk, credit and counterparty risk, liquidity risk, and general business and operational risk. A CCP should establish and ensure compliance with decision-making processes for its board of directors, committees and management. A CCP should recognize that its actions could have adverse economic circumstances for participants and for the broader markets and that conflicts of interest among CCP owners, operators, participants and the broader market may arise, and must be considered, when making such decisions. In general, the CCP should be following the policies and procedures described in their published documents; however CCPs may be required to depart from standard procedures, in extraordinary circumstances. In all such circumstances, the CCP must seek and comply with the directions of the CCP's regulators. The default rules and procedures of a CCP should be clear as to when the CCP can exercise its discretion to declare a clearing member in default.

In applying for recognition or exemption of a CCP, the Committee expects that a CCP will provide a detailed analysis of risks relating to its operations and a description of how they are mitigated. For example, CCPs must address the risk of default by one or more of its key clearing members and undertake appropriate stress testing of the adequacy of its total financial resources. The FMI Principles suggest that stress tests should involve the analysis of the impact of a concurrent default of a CCP's two largest participants and their affiliates if the CCP is involved in activities with a more-complex risk profile or is systemically important in multiple jurisdictions.[66]

In addition, a CCP operating in Canada should be required to implement accurate, ongoing risk analysis in relation to the CCP's obligations. The CCP should impose margining obligations on its members to appropriately manage all types of risks to the CCP with the objective of avoiding recourse to default funds. Should a defaulting participant's margin not meet the obligations of the CCP for closing out that participant's default positions, the CCP's fully-transparent default process should clearly identify the resources that will be made available to satisfy the defaulting participant's obligations and the order in which these resources will be used – the default waterfall.

9.1 Default Management

As each level of resources is exhausted in the case of a default of a member or members, the next level in the waterfall is tapped until the obligations have been fulfilled and positions are balanced. Rules pertaining to the differing sources of assets in the default waterfall which clearly outline who will have to contribute to the waterfall (in what order and under what circumstances) and include details of any auction process, at what point a default fund and other backstops will be accessed and what will occur should all resources be exhausted will provide certainty to clearing members as to their obligations and clarity to market regulators.

In Rule 39.11(b)(1), the CFTC enumerates a list of the types of financial resources that would be available to a Designated Clearing Organization ("DCO") to satisfy financial requirements: "*(1) The margin of the defaulting clearing member; (2) The DCO's own capital; (3) the guaranty fund deposits of the defaulting clearing member and non-defaulting clearing members; (4) default insurance; (5) if permitted by the DCO's rules, potential assessments for additional guaranty fund contributions on non-defaulting clearing members; and (6) any other financial resource deemed acceptable by the Commission.*"[67]

The CFTC will require that a "*derivatives clearing organization shall maintain cash, U.S. Treasury obligations, or high quality, liquid, general obligations of a sovereign nation, in an amount greater than or equal to an amount calculated as follows: (A) Calculate the average daily settlement pay for each clearing member over the last fiscal quarter; (B) Calculate the sum of those average daily settlement pays; and (C) Using that sum, calculate the average of its clearing members' average pays.*"[68] The CFTC indicated that it may revisit this issue after it is determined what international standard will be adopted.

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66 FMI Principles; Principle 4 " *An FMI should effectively measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. An FMI should maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, a CCP that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions. All other CCPs should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions*."

67 Federal Register / Vol. 76, No. 216 / Tuesday, November 8, 2011, p. 69346 www.cftc.gov/LawRegulation/FederalRegister/FinalRules/2011-27536.

68 Ibid, p. 69351.

9.2 Framework for Comprehensive Management of Risks

The EU proposals require that:

> *A CCP shall have procedures in place to be followed where a clearing member does not comply with the participation requirements of the CCP within the time limit and according to the procedures established by the CCP. The CCP shall outline the procedures to be followed in the event the default of a clearing member is not declared by the CCP.*
>
> *A CCP shall take prompt action to contain losses and liquidity pressures resulting from defaults and shall ensure that the closing out of any clearing member's positions does not disrupt its operations or expose the non-defaulting clearing members to losses that they cannot anticipate or control. The CCP shall promptly inform the competent authority where it considers that the clearing member will not be able to meet its future obligations and before it declares its default.*[69]

Ensuring novel derivatives do not bring undue risk to the CCP should be a fundamental part of a CCP's risk management. The CFTC in its proposed rule §39.12(b)(1)

> *would require a DCO to establish appropriate requirements for determining the eligibility of agreements, contracts, or transactions submitted to the DCO for clearing, taking into account the DCO's ability to manage the risks associated with such agreements, contracts, or transactions. Factors to be considered in determining product eligibility would include, but would not be limited to: (i) trading volume; (ii) liquidity; (iii) availability of reliable prices; (iv) ability of market participants to use portfolio compression with respect to a particular swap product; (v) ability of the DCO and clearing members to gain access to the relevant market for purposes of creating and liquidating positions; (vi) ability of the DCO to measure risk for purposes of setting margin requirements; and (vii) operational capacity of the DCO and clearing members to address any unique risk characteristics of a product.*[70]

The CFTC has also proposed that a DCO have both a Chief Risk Officer ("CRO") and a Chief Compliance Officer ("CCO"), and that these be two different individuals. The CRO would report to the risk committee or board of directors and would be responsible for the implementation of the risk management framework and for making appropriate recommendations regarding the CCP's risk management functions.

The CFTC further proposes that:

> *... a DCO [would] impose risk limits on each clearing member, by customer origin and house origin, in order to prevent a clearing member from carrying positions where the risk exposure of those positions exceeds a threshold set by the DCO relative to the clearing member's financial resources, the DCO's financial resources, or both. The DCO would have reasonable discretion in determining: (A) the method of computing risk exposure; (B) the applicable threshold(s); and (C) the applicable financial resources, provided however, that the ratio of exposure to capital would have to remain the same across all capital levels. The Commission could review any of these determinations and require different methods, thresholds, or financial resources, as appropriate.*[71]

The EU proposes that CCPs undertake regular reviews and perform stress testing:

> *A CCP shall regularly review the models and parameters adopted to calculate its margin requirements, default fund contributions, collateral requirements and other risk control mechanisms. It shall subject the models to rigorous and frequent stress tests to assess their resilience in extreme but plausible market conditions and shall perform back tests to assess the reliability of the methodology adopted.*
>
> *… A CCP shall regularly test the key aspects of its default procedures and take all the reasonable steps to ensure that all clearing members understand them and have appropriate arrangements in place to respond to a default event. A CCP shall publicly disclose key information on its risk management model and assumptions adopted to perform the stress tests referred to in paragraph 1.*

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69 COE June 6, 2011, Art. 45.

70 Federal Register / Vol. 76, No. 13 / Thursday, January 20, 2011, p. 3702 http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-690a.pdf.

71 Federal Register/ Vol. 76, No. 13/ Thursday, January 20, 2011, p. 3707 http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-690a.pdf.

Powers are delegated to the Commission to adopt regulatory technical standards specifying the following:

(a) the type of tests to be undertaken for different classes of financial instruments and portfolios;

(b) the involvement of clearing members or other parties in the tests;

(c) the frequency of tests;

(d) the time horizons of tests;

(e) the key information referred to in paragraph 3.[72]

FMI Principle 3 requires that an FMI should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.

The CFTC's proposed regulation §39.13(a) would require a CCP to ensure that it possesses the ability to manage the risks associated with discharging its responsibilities through the use of appropriate tools and procedures.

The CFTC proposed rules would require a DCO to establish and maintain written policies, procedures, and controls, approved by its board of directors, which establish an appropriate risk management framework that, at a minimum, clearly identifies and documents the range of risks to which the DCO is exposed, addresses the monitoring and management of the entirety of those risks, and provides a mechanism for internal audit. Those risks may include, but are not limited to, legal risk, credit risk, liquidity risk, custody and investment risk, concentration risk, default risk, operational risk, market risk, and business risk. The entity would be required to regularly review its risk management framework and update it as necessary.

Other tools enumerated by the CFTC in its proposed rulemaking include: measurement and monitoring of current and potential credit exposures to clearing members; models for determining initial margin that are risk-based and regularly reviewed; independent review and validation of the CCP's systems for generating initial margin requirements, including the CCP's theoretical models; regular review of spread margins that permit a CCP to allow reductions in initial margin requirements for related positions; having a reliable source of timely price data to support both initial margin and variation margin calculations, and having written procedures and sound valuation models for addressing circumstances where pricing data is not readily available or reliable because there is no continuous liquid market or if bid-ask spreads are volatile; and daily review and periodic back testing to enable a CCP to ensure that its margin models continue to provide adequate coverage of the CCP's risk exposures to its clearing members.[73]

9.3 Committee Recommendation

The Committee proposes that regulations be developed to require that a CCP develop and implement a robust risk management program, in accordance with international best practices such as the FMI Principles. The Committee proposes that the regulations set out specific requirements, including that:

1. a CCP have in place an effective, multi-level contingency structure that includes accurate risk analysis and member margining, a default waterfall that sets out clearly the funding events that will occur in the case of a member default and the contributions that will be required of members and the CCP's own capital (if any) and any further financial backstops or insurance that can be accessed;

2. a CCP conduct a full analysis of all relevant risks and has in place appropriate risk management procedures, such as margin and haircut adjustments and provide the result of such analysis to its market regulator(s);

3. a CCP impose transparent risk limits on individual clearing members;

4. a CCP inform its regulator or regulators when a clearing member is at risk of default and when any default procedures are triggered;

5. a CCP undertake regular stress testing of the adequacy of the CCP's financial resources, including risk and pricing models and default procedures, and of clearing member procedures and systems, and provide the results of such tests to its market regulator(s). These stress tests should involve extreme but plausible as well as hypothetical stress situations;

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[72] COE June 6, 2011, Art.46.

[73] See Federal Register / Vol. 76, No. 13 / Thursday, January 20, 2011 / Proposed Rules, p. 3698 et seq. http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-690a.pdf.

6. a CCP maintain and utilize accurate pricing and valuation procedures;

7. a CCP maintain and utilize product approval procedures to ensure that new clearing products do not bring undue risk to the CCP and its members;

8. a CCP have a chief risk officer who is responsible for the implementation of risk management procedures and who reports to the CCP's board of directors or risk committee, as appropriate;

9. a CCP's models, including those for valuation and margin calculations, be subject to independent review and validation;

10. all CCPs provide the applicable Canadian regulators with periodic and ad hoc reports relating to the risks applicable to the CCP and a description of how such risks are managed; and

11. regular financial reports relating to the CCP, which should include aggregated risk exposures, be provided to the market regulator of the CCP.

10. SYSTEMS AND TECHNOLOGY

A stable, robust and scalable technological infrastructure is a prerequisite for any CCP seeking recognition or exemption of recognition in Canada. The proposed FMI Principles provide that:

> *A critical service provider should have a robust information security framework that appropriately manages its information security risks. The framework should include sound policies and procedures to protect information from unauthorized disclosure, ensure data integrity, and guarantee the availability of its services. In addition, a critical service provider should have policies and procedures for monitoring its compliance with its information security framework. This framework should also include capacity planning policies and change-management practices.*[74]

The CFTC proposes that a CCP implement a risk analysis and oversight program with respect to its operations and automated systems. Adequate maintenance of resources that would allow the CCP to fulfill its obligations in this respect is also required. Risk analysis would be required in six categories: information security, business continuity and disaster recovery, capacity and performance planning, systems operations, systems development and quality assurance, and physical security and environmental controls. This last category would include the maintenance of buildings and generators as well as technological infrastructure and personnel resources sufficient to enable timely recovery and resumption of operations in the event of disruption.[75]

The FMI Principles require a CCP to:

> *identify all plausible sources of operational risk, both internal and external, and mitigate their impact through the deployment of appropriate systems, policies, procedures and controls. Systems should be designed to ensure a high degree of security and operational reliability, and should have adequate, scalable capacity. Business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale or major disruption.*[76]

The EU similarly proposes that:

> *A CCP shall maintain information technology systems adequate to deal with the complexity, variety and type of services and activities performed so as to ensure high standards of security and the integrity and confidentiality of the information maintained.*[77]

10.1 Committee Recommendations

The Committee believes that regulations for CCPs in Canada should require a program of risk analysis and oversight in order to identify and minimize sources of operational risk, particularly systems and technology. This would be achieved through the development of appropriate controls and procedures to ensure that technological systems are reliable, secure, and have adequate scalability.

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74 FMI Principles, p. 170-71.

75 See Federal register/Vol. 76, No. 13/Thursday, January 20, 2011/ Proposed Rules, 39.18(b)(c)(e), p. 3713 http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2011-690a.pdf.

76 FMI Principles, p. 94.

77 COE June 6, 2011, Art.24 (6).

The Committee acknowledges that National Instrument 21-101 *Marketplace Operation* ("NI 21-101") addresses systems requirements for marketplaces, and recommends that comparable regulations be developed for CCPs. In particular, the Committee proposes that a CCP be required to "develop and maintain reasonable business continuity and disaster recovery plans; an adequate system of internal control over those systems; and adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support."[78]

The Committee also proposes that CCPs be required to test their system requirements regularly in accordance with regulation standards that will be substantially similar to those in NI 21-101 which requires testing "in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually, make reasonable current and future capacity estimates; conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and test its business continuity and disaster recovery plans."[79] Further, any failure would have to be immediately reported to the market regulator.

Finally the Committee proposes that the CCP be required to publish system specifications which will allow its users, including clearing members and their clients, to develop their technology systems to allow them to efficiently access the CCP's systems. In addition, the CCP will allow all such users with reasonable access to a test environment provided by the CCP which will allow the users to undertake testing of their systems.

11. PROTECTION OF ASSETS

The clearing of OTC derivative transactions will cause certain market participants who are not clearing members at CCP to indirectly clear their OTC derivatives transactions through intermediaries. Effective segregation and portability mechanisms at CCPs will help to ensure that indirect clearing is done in a manner that protects customer positions and collateral and potentially improves a CCP's resilience to a clearing member default. This issue is specifically discussed in Consultation Paper 91-404 – *Derivatives: Segregation and Portability in OTC Derivatives Clearing*[80] which was published on February 10, 2012.

12. REPORTING

Although information related to derivatives transactions will be collected in a trade repository or trade repositories, CCPs will improve market transparency by allowing the central collection of information on general market characteristics and activity with respect to transactions cleared by CCP, and aggregate information on the types of participants and concentration of participants' exposures within CCPs.

The information disclosed to regulators will help them to evaluate risks, including risks particular to a CCP and broader systemic risks. The FMI Principles state that:

> *Authorities should have appropriate powers or other authority consistent with their relevant responsibilities to obtain timely information necessary for effective regulation, supervision, and oversight. In particular, authorities should use these powers to access information that enables them to understand and assess (a) an FMI's various functions, activities, and overall financial condition; (b) the risks borne or created by an FMI and, where appropriate, the participants; (c) an FMI's impact on its participants and the broader economy; and (d) an FMI's adherence to relevant regulations and policies. Key sources of information include official system documents and records, regular or ad-hoc reporting, internal reports from board meetings and internal auditors, on-site visits and inspections, information on operations outsourced to third parties, and dialogue with an FMI's board, management, or participants. Authorities should have appropriate legal safeguards to protect all confidential and non-public information obtained from an FMI. Authorities, however, should be able to share relevant confidential or non-public information with other authorities, as appropriate, to minimise gaps and reduce duplication in regulation, supervision, and oversight.*[81]

CCPs should also divulge detailed information for market participants to evaluate the risks, costs and benefits associated with their participation in CCPs. As such, complete information on margin-setting methodologies, risk management arrangements and fee structure should be disclosed to actual and prospective users of a CCP.

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78 National Instrument 21-101, §12.1(a) http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20101210_21-101_unofficial-consolidated.htm.

79 Ibid, §12.1(b).

80 http://www.lautorite.qc.ca/files//pdf/consultations/derives/2012fev10-91-404-cons-en.pdf.

81 FMI Principles, p.128.

The CFTC proposes details regarding reports that must be made regularly, because of a determined event or on request:

> *Proposed §39.19 would require certain reports to be made by the DCO to the Commission: (1) On a periodic basis (daily, quarterly or annually), (2) where the reporting requirement is triggered by the occurrence of a significant event; and (3) upon request by the Commission. Unless otherwise specified by the Commission or its designee, each DCO would have to submit the information required by this section to the Commission electronically and in a form and manner prescribed by the Commission.*
>
> *Currently, the Commission receives initial margin data from several, but not all DCOs and not necessarily on a daily basis. . . . The Commission is therefore proposing regulations that would require reporting by all DCOs on a daily basis. By requiring both sets of data as well as intraday initial margin calls to be reported directly to the Commission, the Commission would be better positioned to conduct risk surveillance activities efficiently, to monitor the financial health of the DCO, and to detect any unusual activity in a timely manner.*
>
> *Proposed §39.19(c)(1)(i) would require a DCO to report both the initial margin requirement for each clearing member, by customer origin and house origin, and the initial margin on deposit for each clearing member, by origin. Proposed §39.19(c)(1)(ii) would require a DCO to report the daily variation margin collected and paid by the DCO. The report would separately list the mark-to-market amount collected from or paid to each clearing member, by origin.*[82]

The SEC has proposed rule 17Ad-22(c)(1) which would require a CCP to calculate and maintain a record of the financial resources necessary to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme, but plausible, market conditions, and sufficient documentation to explain the methodology it uses to compute such financial resource requirement.[83]

As well, the SEC addresses public dissemination of information to aid market participants in their risk evaluations:

> *The proposed rule would require dissemination of pricing and valuation information by CCPs . . . to the public on terms that are fair, reasonable, and not unreasonably discriminatory,[including] all end of day settlement prices and any other prices for OTC derivatives that the CCP may establish to calculate its participants' mark-to-market margin requirements.*

12.1 Committee Recommendations

The Committee recommends that each CSA jurisdiction seek the legislative authority to require the transmission to its market regulator by a CCP of the information required for oversight purposes. This information will be set out in regulations that will also specify the frequency and format of the information. Such information may include, but not be limited to, transaction level details, margin requirements, guarantee fund contributions, financial statements, risk models, financial resources that must be available for a market stress situation, board decisions and reports, rule and procedural modifications, information regarding outsourcing arrangements, including any agreements and oversight programs, and details of any emergency or disciplinary actions.

12.2 Request for Comment

Question 9. The Committee asks for comment on the type of information that a CCP should provide and that should be made publicly available.

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82 Federal Register / Volume 75, Number 240 / December 15, 2010 http://www.cftc.gov/LawRegulation/FederalRegister/ProposedRules/2010-31130.

83 See Federal Register / Vol. 76, No. 51 / Wednesday, March 16, 2011 / Proposed Rules, p. 14476 http://www.gpo.gov/fdsys/pkg/FR-2011-03-16/pdf/2011-5182.pdf.

13. FOREIGN-BASED CCPS AND REGULATORY COOPERATION

As stated earlier, the Committee proposes that each CSA jurisdiction enact legislation that will require all CCPs that perform CCP clearing of OTC derivatives in its jurisdiction to be recognized as a clearing agency, or exempted from recognition. This obligation is already in force in Quebec,[84] Ontario[85] and Alberta.[86] This obligation would apply not only to local CCPs, but CCPs from outside a CSA jurisdiction that wish to exercise clearing activity with an entity from a CSA jurisdiction.

In this respect, the FMI Principles state that:

> *Central banks, market regulators, and other relevant authorities should cooperate with each other, domestically and internationally (that is, on a cross border basis), in order to support each other in fulfilling their respective regulatory, supervisory, or oversight mandates with respect to FMIs. Relevant authorities should explore, and where appropriate, develop cooperative arrangements that take into consideration (a) their statutory responsibilities, (b) the systemic importance of the FMI to their respective jurisdictions, (c) the FMI's comprehensive risk profile (including consideration of risks that may arise from interdependent entities), and (d) the FMI's participants. The objective of such arrangements is to facilitate comprehensive regulation, supervision, and oversight and provide a mechanism whereby the responsibilities of multiple authorities can be fulfilled efficiently and effectively. Authorities are encouraged to cooperate with each other to reduce the probability of gaps in regulation, supervision, and oversight that could arise if they did not coordinate and to minimise the potential duplication of effort and the burden on the FMIs or the cooperating authorities. Relevant authorities should also cooperate with resolution authorities and the supervisors of direct participants, as appropriate and necessary, to enable each to fulfil its respective responsibilities*[87].

The importance of cooperative arrangements is underscored in IOSCO's *Principles Regarding Cross-Border Supervision*:

> *While regulators often respond by mandating that a regulated entity's overseas operations must comply with domestic standards and oversight requirements prior to being permitted to engage in domestic business, confirmation and enforcement of these requirements can prove challenging. Even where securities regulators have in place enforcement cooperation mechanisms such as the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMOU), the day-to-day information outside of an enforcement context that a regulator needs in order to exercise effective oversight may be difficult to access without the assistance and cooperation of the relevant counterpart. While regulators have different supervisory approaches, each has a common interest in information-sharing and cooperation based on earned trust in each other's regulatory and supervisory systems.*[88]

The EU proposes that:

> *A CCP established in a third country can be used by clearing members established within the Union for the purpose of clearing OTC derivatives including for the purpose of the clearing obligation … provided that the CCP is recognised by ESMA in accordance with the procedure laid down in the following paragraphs.*
>
> *(ESMA or the local regulator) may recognise a CCP established in a third country that has applied for recognition to provide certain clearing services or activities only where the following conditions are met:*
>
> *(a) the Commission has adopted a Decision in accordance with paragraph 3;*
>
> *(b) the CCP is authorised in, and is subject to, effective supervision ensuring a full compliance with the prudential requirements applicable in that third country;*

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84 *Derivatives Act* (Québec), R.S.Q., c. I-14.01, s. 12 http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/I_14_01/I14_01_A.html.

85 *Securities Act* (Ontario), R.S.O. 1990, c. S.5, s. 21.2 (0.1) http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s05_e.htm.

86 *Securities Act* (Alberta), RSA 2000, C S-4, s. 67(1) http://www.qp.alberta.ca/documents/Acts/s04.pdf.

87 FMI Principles, p.134.

88 http://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf.

> *(c) co-operation arrangements have been established pursuant to paragraph 4.*[89]

The FMI Principles state that the conflicts of law issues that can arise in a multinational scenario should be addressed by a CCP:

> *Legal risk due to conflicts of law may arise if an FMI is, or reasonably may become, subject to the laws of various other jurisdictions (for example, when it accepts participants established in those jurisdictions, when assets are held in multiple jurisdictions, or when business is conducted in multiple jurisdictions). In such cases, an FMI should identify and analyse potential conflict-of-laws issues and develop rules and procedures to mitigate this risk. For example, the rules governing its activities should clearly indicate the law that is intended to apply to each aspect of an FMI's operations. The FMI and its participants should be aware of applicable constraints on their abilities to choose the law that will govern the FMI's activities when there is a difference in the substantive laws of the relevant jurisdictions. A jurisdiction ordinarily does not permit contractual choices of law that would circumvent that jurisdiction's fundamental public policy. Thus, when uncertainty exists regarding the enforceability of an FMI's choice of law in relevant jurisdictions, the FMI should obtain reasoned and independent legal opinions and analysis in order to address properly such uncertainty.*[90]

As a majority of counterparties to derivatives trades entered into by Canadian participants are resident outside of Canada, it is clear that Canadian market participants will require access to foreign CCPs to clear at least some OTC derivatives transactions. The Committee believes that the review and recognition (or exemption from recognition) of foreign-based CCPs is a priority to ensure that Canada meets its G20 commitments. Recognition of non-Canadian CCPs will require that Canadian regulators be comfortable that they can exert appropriate and effective regulatory powers over the foreign CCP, which in many cases will require Canadian regulators to develop cooperative regulation regimes with regulators outside of Canada. Work on developing memoranda of understanding with these non-Canadian regulators needs to be undertaken immediately to ensure that Canadian regulators receive the information and co-operation required to oversee the non-Canadian CCPs that they have recognized or exempted from recognition. As well, ongoing work with international bodies to set data standards and continue to develop best practices must continue apace.

The Committee believes that regulators of a CCP, both domestic and foreign, should develop and commit to a clear, co-operative oversight framework that deals with the regulation of CCPs that are subject to multi-jurisdictional regulation. This framework should clarify the role of regulators in monitoring and directing the governance model, the rule-making process and the operations of a CCP during the ordinary course of a CCPs business and during periods of stress. The framework should clarify the rights and responsibilities of all relevant regulators and outline the ability of the regulators to take steps to address issues of local public interest while not prejudicing the rights of other regulators.

The recognition process for a foreign CCP will include the additional review of its home regulatory structure, to ensure it is comparable to Canadian CCP oversight, as well as a review of legal issues that are particular to cross-border clearing. Examples would include bankruptcy regimes, collateral requirements, ongoing information sharing, oversight and enforcement co-operation and mutual reliance. Canadian market regulators would seek to enter into appropriate memoranda of understanding with foreign regulatory agencies to deal with matters such as information sharing, cooperation in enforcement actions and investigations, consultation on rule modifications at the CCP, notice of regulatory or legislative changes, dedicated contact persons and communications procedures during periods of stress.

13.1 CCP Infrastructure

In Consultation Paper 91-401, the Committee presented three possibilities for clearing OTC derivatives for Canadian market participants: a foreign access model, a domestic stand-alone solution, and a domestic solution with international links or interoperability.

Regardless of the infrastructure that emerges, and noting that such infrastructure can evolve over time, the Committee believes that regulatory oversight requirements must be developed that ensure that Canadian market regulators are comfortable that there will be adequate oversight over the operations of the CCP. This report and its recommendations should be read to apply to each or any possible infrastructure, and rule drafting will need to provide such flexibility as the determination of the most appropriate infrastructure is beyond the scope of this document.

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89 COE June 6, 2011, Art.23 ¶1-2.

90 FMI Principles, p. 25.

14. FURTHER QUESTIONS FOR PUBLIC COMMENT

Question 10. Generally, the Committee has endeavoured to follow international recommendations in the development of the recommendations for Canada in this paper. Are there recommendations that are inappropriate for the Canadian market?

Question 11. Are there changes to the existing regulatory framework that would be desirable to accommodate a move to CCP clearing?

Question 12. Do you consider that any changes need to be made to Canadian law to facilitate the efficiency of OTC derivatives clearing, either through a domestic or a foreign CCP? If so, what changes and for what reasons?

Appendix: Principles for Financial Markets Infrastructures: Summary of Principles[91]

Principle 1: Legal basis

An FMI should have a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

Key considerations

1. *The legal basis should provide a high degree of certainty for each material aspect of an FMI's activities in all relevant jurisdictions.*

2. *An FMI should have rules, procedures, and contracts that are clear, understandable, and consistent with relevant laws and regulations.*

3. *An FMI should be able to articulate the legal basis for its activities to relevant authorities, participants, and, where relevant, participants' customers, in a clear and understandable way.*

4. *An FMI should have rules, procedures, and contracts that are enforceable in all relevant jurisdictions. There should be a high degree of certainty that actions taken by the FMI under such rules and procedures will not be voided, reversed, or subject to stays.*

5. *An FMI conducting business in multiple jurisdictions should identify and mitigate the risks arising from any potential conflict of laws across jurisdictions.*

Principle 2: Governance

An FMI should have governance arrangements that are clear and transparent, promote the safety and efficiency of the FMI, and support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

Key considerations

1. *An FMI should have objectives that place a high priority on the safety and efficiency of the FMI and explicitly support financial stability and other relevant public interest considerations.*

2. *An FMI should have documented governance arrangements that provide clear and direct lines of responsibility and accountability. These arrangements should be disclosed to owners, relevant authorities, participants, and, at a more general level, the public.*

3. *The roles and responsibilities of an FMI's board of directors (or equivalent) should be clearly specified, and there should be documented procedures for its functioning, including procedures to identify, address, and manage member conflicts of interest. The board should review both its overall performance and the performance of its individual board members regularly.*

4. *The board should contain suitable members with the appropriate skills and incentives to fulfil its multiple roles. This typically requires the inclusion of non-executive board member(s).*

5. *The roles and responsibilities of management should be clearly specified. An FMI's management should have the appropriate experience, a mix of skills, and the integrity necessary to discharge their responsibilities for the operation and risk management of the FMI.*

6. *The board should establish a clear, documented risk-management framework that includes the FMI's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies. Governance arrangements should ensure that the risk-management and internal control functions have sufficient authority, independence, resources, and access to the board.*

7. *The board should ensure that the FMI's design, rules, overall strategy, and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Major decisions should be clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.*

[91] http://www.bis.org/publ/cpss101a.pdf.

Principle 3: Framework for the comprehensive management of risks

An FMI should have a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.

Key considerations

1. *An FMI should have risk-management policies, procedures, and systems that enable it to identify, measure, monitor, and manage the range of risks that arise in or are borne by the FMI. Risk-management frameworks should be subject to periodic review.*

2. *An FMI should provide incentives to participants and, where relevant, their customers to manage and contain the risks they pose to the FMI.*

3. *An FMI should regularly review the material risks it bears from and poses to other entities (such as other FMIs, settlement banks, liquidity providers, and service providers) as a result of interdependencies and develop appropriate risk-management tools to address these risks.*

4. *An FMI should identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assess the effectiveness of a full range of options for recovery or orderly wind-down. An FMI should prepare appropriate plans for its recovery or orderly wind-down based on the results of that assessment. Where applicable, an FMI should also provide relevant authorities with the information needed for purposes of resolution planning.*

Principle 4: Credit risk

An FMI should effectively measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. An FMI should maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, a CCP that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions. All other CCPs should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the CCP in extreme but plausible market conditions.

Key considerations

1. *An FMI should establish a robust framework to manage its credit exposures to its participants and the credit risks arising from its payment, clearing, and settlement processes. Credit exposure may arise from current exposures, potential future exposures, or both. An FMI should identify sources of credit risk, routinely measure and monitor credit exposures, and use appropriate risk-management tools to control these risks.*

2. *A payment system or SSS should cover its current and, where they exist, potential future exposures to each participant fully with a high degree of confidence using collateral and other equivalent financial resources (see Principle 5 on collateral). In the case of a DNS payment system or DNS SSS in which there is no settlement guarantee but where its participants face credit exposures arising from its payment, clearing, and settlement processes, such an FMI should maintain, at a minimum, sufficient resources to cover the exposures of the two participants and their affiliates that would create the largest aggregate credit exposure in the system.*

3. *A CCP should cover its current and potential future exposures to each participant fully with a high degree of confidence using margin and other prefunded financial resources (see Principle 5 on collateral and Principle 6 on margin). In addition, a CCP that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should maintain additional financial resources to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure for the CCP in extreme but plausible market conditions. All other CCPs should maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure for the CCP in extreme but plausible market conditions. In all cases, a CCP should document its supporting rationale for, and should have appropriate governance arrangements relating to, the amount of total financial resources it maintains.*

4. *A CCP should determine the amount and regularly test the sufficiency of its total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions through rigorous stress testing. A CCP should have clear procedures to report the results of its stress tests to appropriate decision makers at the CCP and to use these results to evaluate the adequacy of and adjust its total financial resources. Stress tests should be performed daily using standard and predetermined parameters and assumptions. On at least a monthly basis, a CCP should perform a comprehensive and thorough analysis of stress testing scenarios, models, and underlying parameters and assumptions used to ensure they are appropriate for determining the CCP's required level of default protection in light of current and evolving market conditions. A CCP should perform this analysis of stress testing more frequently when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by a CCP's participants increases significantly. A full validation of a CCP's risk-management model should be performed at least annually.*

5. *In conducting stress testing, a CCP should consider the effect of a wide range of relevant stress scenarios in terms of both defaulters' positions and possible price changes in liquidation periods. Scenarios should include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions.*

6. *An FMI should establish explicit rules and procedures that address fully any credit losses it may face as a result of any individual or combined default among its participants with respect to any of their obligations to the FMI. These rules and procedures should address how potentially uncovered credit losses would be allocated, including the repayment of any funds an FMI may borrow from liquidity providers. These rules and procedures should also indicate the FMI's process to replenish any financial resources that the FMI may employ during a stress event, so that the FMI can continue to operate in a safe and sound manner.*

Principle 5: Collateral

An FMI that requires collateral to manage its or its participants' credit exposure should accept collateral with low credit, liquidity, and market risks. An FMI should also set and enforce appropriately conservative haircuts and concentration limits.

Key considerations

1. *An FMI should generally limit the assets it (routinely) accepts as collateral to those with low credit, liquidity, and market risks.*

2. *An FMI should establish prudent valuation practices and develop haircuts that are regularly tested and take into account stressed market conditions.*

3. *In order to reduce the need for procyclical adjustments, an FMI should establish stable and conservative haircuts that are calibrated to include periods of stressed market conditions, to the extent practicable and prudent.*

4. *An FMI should avoid concentrated holdings of certain assets where this would significantly impair the ability to liquidate such assets quickly without significant adverse price effects.*

5. *An FMI that accepts cross-border collateral should mitigate the risks associated with its use and ensure that the collateral can be used in a timely manner.*

6. *An FMI should use a collateral management system that is well-designed and operationally flexible.*

Principle 6: Margin

A CCP should cover its credit exposures to its participants for all products through an effective margin system that is risk-based and regularly reviewed.

Key considerations

1. *A CCP should have a margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves.*

2. *A CCP should have a reliable source of timely price data for its margin system. A CCP should also have procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.*

3. *A CCP should adopt initial margin models and parameters that are risk-based and generate margin requirements sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. Initial margin should meet an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure. For a CCP that calculates margin at the portfolio level, this requirement applies to each portfolio's distribution of future exposure. For a CCP that calculates margin at more-granular levels, such as at the subportfolio level or by product, the requirement must be met for the corresponding distributions of future exposure. The model should (a) use a conservative estimate of the time horizons for the effective hedging or close out of the particular types of products cleared by the CCP (including in stressed market conditions), (b) have an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products, and (c) to the extent practicable and prudent, limit the need for destabilising, procyclical changes.*

4. *A CCP should mark participant positions to market and collect variation margin at least daily to limit the build-up of current exposures. A CCP should have the authority and operational capacity to make intraday margin calls and payments, both scheduled and unscheduled, to participants.*

5. *In calculating margin requirements, a CCP may allow offsets or reductions in required margin across products that it clears or between products that it and another CCP clear, if the risk of one product is significantly and reliably correlated with the risk of the other product. Where two or more CCPs are authorised to offer cross-margining, they must have appropriate safeguards and harmonised overall risk-management systems.*

6. *A CCP should analyse and monitor its model performance and overall margin coverage by conducting rigorous daily backtesting and at least monthly, and more-frequent where appropriate, sensitivity analysis. A CCP should regularly conduct an assessment of the theoretical and empirical properties of its margin model for all products it clears. In conducting sensitivity analysis of the model's coverage, a CCP should take into account a wide range of parameters and assumptions that reflect possible market conditions, including the most-volatile periods that have been experienced by the markets it serves and extreme changes in the correlations between prices.*

7. *A CCP should regularly review and validate its margin system.*

Principle 7: Liquidity risk

An FMI should effectively measure, monitor, and manage its liquidity risk. An FMI should maintain sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the FMI in extreme but plausible market conditions.

Key considerations

1. *An FMI should have a robust framework to manage its liquidity risks from its participants, settlement banks, nostro agents, custodian banks, liquidity providers, and other entities.*

2. *An FMI should have effective operational and analytical tools to identify, measure, and monitor its settlement and funding flows on an ongoing and timely basis, including its use of intraday liquidity.*

3. *A payment system or SSS, including one employing a DNS mechanism, should maintain sufficient liquid resources in all relevant currencies to effect same-day settlement, and where appropriate intraday or multiday settlement, of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate payment obligation in extreme but plausible market conditions.*

4. *A CCP should maintain sufficient liquid resources in all relevant currencies to settle securities-related payments, make required variation margin payments, and meet other payment obligations on time with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate payment obligation to the CCP in extreme but plausible market conditions. In addition, a CCP that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should consider maintaining additional liquidity resources sufficient to cover a wider range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would generate the largest aggregate payment obligation to the CCP in extreme but plausible market conditions.*

5. *For the purpose of meeting its minimum liquid resource requirement, an FMI's qualifying liquid resources in each currency include cash at the central bank of issue and at creditworthy commercial banks, committed lines of credit, committed foreign exchange swaps, and committed repos, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions. If an FMI has access to routine credit at the central bank of issue, the FMI may count such access as part of the minimum requirement to the extent it has collateral that is eligible for pledging to (or for conducting other appropriate forms of transactions with) the relevant central bank. All such resources should be available when needed.*

6. *An FMI may supplement its qualifying liquid resources with other forms of liquid resources. If the FMI does so, then these liquid resources should be in the form of assets that are likely to be saleable or acceptable as collateral for lines of credit, swaps, or repos on an ad hoc basis following a default, even if this cannot be reliably prearranged or guaranteed in extreme market conditions. Even if an FMI does not have access to routine central bank credit, it should still take account of what collateral is typically accepted by the relevant central bank, as such assets may be more likely to be liquid in stressed circumstances. An FMI should not assume the availability of emergency central bank credit as a part of its liquidity plan.*

7. *An FMI should obtain a high degree of confidence, through rigorous due diligence, that each provider of its minimum required qualifying liquid resources, whether a participant of the FMI or an external party, has sufficient information to understand and to manage its associated liquidity risks, and that it has the capacity to perform as required under its commitment. Where relevant to assessing a liquidity provider's performance reliability with respect to a particular currency, a liquidity provider's potential access to credit from the central bank of issue may be taken into account. An FMI should regularly test its procedures for accessing its liquid resources at a liquidity provider.*

8. *An FMI with access to central bank accounts, payment services, or securities services should use these services, where practical, to enhance its management of liquidity risk.*

9. *An FMI should determine the amount and regularly test the sufficiency of its liquid resources through rigorous stress testing. An FMI should have clear procedures to report the results of its stress tests to appropriate decision makers at the FMI and to use these results to evaluate the adequacy of and adjust its liquidity risk-management framework. In conducting stress testing, an FMI should consider a wide range of relevant scenarios. Scenarios should include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions. Scenarios should also take into account the design and operation of the FMI, include all entities that might pose material liquidity risks to the FMI (such as settlement banks, nostro agents, custodian banks, liquidity providers, and linked FMIs), and where appropriate, cover a multiday period. In all cases, an FMI should document its supporting rationale for, and should have appropriate governance arrangements relating to, the amount and form of total liquid resources it maintains.*

10. *An FMI should establish explicit rules and procedures that enable the FMI to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations on time following any individual or combined default among its participants. These rules and procedures should address unforeseen and potentially uncovered liquidity shortfalls and should aim to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations. These rules and procedures should also indicate the FMI's process to replenish any liquidity resources it may employ during a stress event, so that it can continue to operate in a safe and sound manner.*

Principle 8: Settlement finality

An FMI should provide clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, an FMI should provide final settlement intraday or in real time.

Key considerations

1. *An FMI's rules and procedures should clearly define the point at which settlement is final.*

2. *An FMI should complete final settlement no later than the end of the value date, and preferably intraday or in real time, to reduce settlement risk. An LVPS or SSS should consider adopting RTGS or multiple-batch processing during the settlement day.*

3. *An FMI should clearly define the point after which unsettled payments, transfer instructions, or other obligations may not be revoked by a participant.*

Principle 9: Money settlements

An FMI should conduct its money settlements in central bank money where practical and available. If central bank money is not used, an FMI should minimise and strictly control the credit and liquidity risk arising from the use of commercial bank money.

Key considerations

1. *An FMI should conduct its money settlements in central bank money, where practical and available, to avoid credit and liquidity risks.*

2. *If central bank money is not used, an FMI should conduct its money settlements using a settlement asset with little or no credit or liquidity risk.*

3. *If an FMI settles in commercial bank money, it should monitor, manage, and limit its credit and liquidity risks arising from the commercial settlement banks. In particular, an FMI should establish and monitor adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalisation, access to liquidity, and operational reliability. An FMI should also monitor and manage the concentration of credit and liquidity exposures to its commercial settlement banks.*

4. *If an FMI conducts money settlements on its own books, it should minimise and strictly control its credit and liquidity risks.*

5. *An FMI's legal agreements with any settlement banks should state clearly when transfers on the books of individual settlement banks are expected to occur, that transfers are to be final when effected, and that funds received should be transferable as soon as possible, at a minimum by the end of the day and ideally intraday, in order to enable the FMI and its participants to manage credit and liquidity risks.*

Principle 10: Physical deliveries

An FMI should clearly state its obligations with respect to the delivery of physical instruments or commodities and should identify, monitor, and manage the risks associated with such physical deliveries.

Key considerations

1. *An FMI's rules should clearly state its obligations with respect to the delivery of physical instruments or commodities.*

2. *An FMI should identify, monitor, and manage the risks and costs associated with the storage and delivery of physical instruments or commodities.*

(Principle 11: Central Securities Depositories is not applicable to OTC Derivatives)

Principle 12: Exchange-of-value settlement systems

If an FMI settles transactions that involve the settlement of two linked obligations (for example, securities or foreign exchange transactions), it should eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other.

Key consideration

1. *An FMI that is an exchange-of-value settlement system should eliminate principal risk by ensuring that the final settlement of one obligation occurs if and only if the final settlement of the linked obligation also occurs, regardless of whether the FMI settles on a gross or net basis and when finality occurs.*

Principle 13: Participant-default rules and procedures

An FMI should have effective and clearly defined rules and procedures to manage a participant default. These rules and procedures should be designed to ensure that the FMI can take timely action to contain losses and liquidity pressures and continue to meet its obligations.

Key considerations

1. *An FMI should have default rules and procedures that enable the FMI to continue to meet its obligations in the event of a participant default and that address the replenishment of resources following a default.*

2. *An FMI should be well prepared to implement its default rules and procedures, including any appropriate discretionary procedures provided for in its rules.*

3. *An FMI should publicly disclose key aspects of its default rules and procedures.*

4. *An FMI should involve its participants and other stakeholders in the testing and review of the FMI's default procedures, including any close-out procedures. Such testing and review should be conducted at least annually or following material changes to the rules and procedures to ensure that they are practical and effective.*

Principle 14: Segregation and portability

A CCP should have rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the CCP with respect to those positions.

Key considerations

1. *A CCP should, at a minimum, have segregation and portability arrangements that effectively protect a participant's customers' positions and related collateral from the default or insolvency of that participant. If the CCP additionally offers protection of such customer positions and collateral against the concurrent default of the participant and a fellow customer, the CCP should take steps to ensure that such protection is effective.*

2. *A CCP should employ an account structure that enables it readily to identify positions of a participant's customers and to segregate related collateral. A CCP should maintain customer positions and collateral in individual customer accounts or in omnibus customer accounts.*

3. *A CCP should structure its portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting participant's customers will be transferred to one or more other participants.*

4. *A CCP should disclose its rules, policies, and procedures relating to the segregation and portability of a participant's customers' positions and related collateral. In particular, the CCP should disclose whether customer collateral is protected on an individual or omnibus basis. In addition, a CCP should disclose any constraints, such as legal or operational constraints, that may impair its ability to segregate or port a participant's customers' positions and related collateral.*

Principle 15: General business risk

An FMI should identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets should at all times be sufficient to ensure a recovery or orderly wind-down of critical operations and services.

Key considerations

1. *An FMI should have robust management and control systems to identify, monitor, and manage general business risks, including losses from poor execution of business strategy, negative cash flows, or unexpected and excessively large operating expenses.*

2. *An FMI should hold liquid net assets funded by equity (such as common stock, disclosed reserves, or other retained earnings) so that it can continue operations and services as a going concern if it incurs general business losses. The amount of liquid net assets funded by equity an FMI should hold should be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.*

3. *An FMI should maintain a viable recovery or orderly wind-down plan and should hold sufficient liquid net assets funded by equity to implement this plan. At a minimum, an FMI should hold liquid net assets funded by equity equal to at least six months of current operating expenses. These assets are in addition to resources held to cover participant defaults or other risks covered under the financial resources principles. However, equity held under international risk-based capital standards can be included where relevant and appropriate to avoid duplicate capital requirements.*

4. *Assets held to cover general business risk should be of high quality and sufficiently liquid in order to allow the FMI to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.*

5. *An FMI should maintain a viable plan for raising additional equity should its equity fall close to or below the amount needed. This plan should be approved by the board of directors and updated regularly.*

Principle 16: Custody and investment risks

An FMI should safeguard its own and its participants' assets and minimise the risk of loss on and delay in access to these assets. An FMI's investments should be in instruments with minimal credit, market, and liquidity risks.

Key considerations

1. *An FMI should hold its own and its participants' assets at supervised and regulated entities that have robust accounting practices, safekeeping procedures, and internal controls that fully protect these assets.*

2. *An FMI should have prompt access to its assets and the assets provided by participants, when required.*

3. *An FMI should evaluate and understand its exposures to its custodian banks, taking into account the full scope of its relationships with each.*

4. *An FMI's investment strategy should be consistent with its overall risk-management strategy and fully disclosed to its participants, and investments should be secured by, or be claims on, high-quality obligors. These investments should allow for quick liquidation with little, if any, adverse price effect.*

Principle 17: Operational risk

An FMI should identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. Systems should be designed to ensure a high degree of security and operational reliability and should have adequate, scalable capacity. Business continuity management should aim for timely recovery of operations and fulfilment of the FMI's obligations, including in the event of a wide-scale or major disruption.

Key considerations

1. *An FMI should establish a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks.*

2. *An FMI's board of directors should clearly define the roles and responsibilities for addressing operational risk and should endorse the FMI's operational risk-management framework. Systems, operational policies, procedures, and controls should be reviewed, audited, and tested periodically and after significant changes.*

3. *An FMI should have clearly defined operational reliability objectives and should have policies in place that are designed to achieve those objectives.*

4. *An FMI should ensure that it has scalable capacity adequate to handle increasing stress volumes and to achieve its service-level objectives.*

5. *An FMI should have comprehensive physical and information security policies that address all potential vulnerabilities and threats.*

6. *An FMI should have a business continuity plan that addresses events posing a significant risk of disrupting operations, including events that could cause a wide-scale or major disruption. The plan should incorporate the use of a secondary site and should be designed to ensure that critical information technology (IT) systems can resume operations within two hours following disruptive events. The plan should be designed to enable the FMI to complete settlement by the end of the day of the disruption, even in case of extreme circumstances. The FMI should regularly test these arrangements.*

7. *An FMI should identify, monitor, and manage the risks that key participants, other FMIs, and service and utility providers might pose to its operations. In addition, an FMI should identify, monitor, and manage the risks its operations might pose to other FMIs.*

Principle 18: Access and participation requirements

An FMI should have objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

Key considerations

1. *An FMI should allow for fair and open access to its services, including by direct and, where relevant, indirect participants and other FMIs, based on reasonable risk-related participation requirements.*

2. *An FMI's participation requirements should be justified in terms of the safety and efficiency of the FMI and the markets it serves, be tailored to and commensurate with the FMI's specific risks, and be publicly disclosed. Subject to maintaining acceptable risk control standards, an FMI should endeavour to set requirements that have the least-restrictive impact on access that circumstances permit.*

3. *An FMI should monitor compliance with its participation requirements on an ongoing basis and have clearly defined and publicly disclosed procedures for facilitating the suspension and orderly exit of a participant that breaches, or no longer meets, the participation requirements.*

Principle 19: Tiered participation arrangements

An FMI should identify, monitor, and manage the material risks to the FMI arising from tiered participation arrangements.

Key considerations

1. *An FMI should ensure that its rules, procedures, and agreements allow it to gather basic information about indirect participation in order to identify, monitor, and manage any material risks to the FMI arising from such tiered participation arrangements.*

2. *An FMI should identify material dependencies between direct and indirect participants that might affect the FMI.*

3. *An FMI should identify indirect participants responsible for a significant proportion of transactions processed by the FMI and indirect participants whose transaction volumes or values are large relative to the capacity of the direct participants through which they access the FMI in order to manage the risks arising from these transactions.*

4. *An FMI should regularly review risks arising from tiered participation arrangements and should take mitigating action when appropriate.*

Principle 20: FMI links

An FMI that establishes a link with one or more FMIs should identify, monitor, and manage link-related risks.

Key considerations

1. *Before entering into a link arrangement and on an ongoing basis once the link is established, an FMI should identify, monitor, and manage all potential sources of risk arising from the link arrangement. Link arrangements should be designed such that each FMI is able to observe the other principles in this report.*

2. *A link should have a well-founded legal basis, in all relevant jurisdictions, that supports its design and provides adequate protection to the FMIs involved in the link.*

3. *Linked CSDs should measure, monitor, and manage the credit and liquidity risks arising from each other. Any credit extensions between CSDs should be covered fully with high-quality collateral and be subject to limits.*

4. *Provisional transfers of securities between linked CSDs should be prohibited or, at a minimum, the retransfer of provisionally transferred securities should be prohibited prior to the transfer becoming final.*

5. *An investor CSD should only establish a link with an issuer CSD if the arrangement provides a high level of protection for the rights of the investor CSD's participants.*

6. *An investor CSD that uses an intermediary to operate a link with an issuer CSD should measure, monitor, and manage the additional risks (including custody, credit, legal, and operational risks) arising from the use of the intermediary.*

7. *Before entering into a link with another CCP, a CCP should identify and manage the potential spill-over effects from the default of the linked CCP. If a link has three or more CCPs, each CCP should identify, assess, and manage the risks of the collective link arrangement.*

8. *Each CCP in a CCP link arrangement should be able to cover, at least on a daily basis, its current and potential future exposures to the linked CCP and its participants, if any, fully with a high degree of confidence without reducing the CCP's ability to fulfil its obligations to its own participants at any time.*

9. *A TR should carefully assess the additional operational risks related to its links to ensure the scalability and reliability of IT and related resources.*

Principle 21: Efficiency and effectiveness

An FMI should be efficient and effective in meeting the requirements of its participants and the markets it serves.

Key considerations

1. *An FMI should be designed to meet the needs of its participants and the markets it serves, in particular, with regard to choice of a clearing and settlement arrangement; operating structure; scope of products cleared, settled, or recorded; and use of technology and procedures.*

2. *An FMI should have clearly defined goals and objectives that are measurable and achievable, such as in the areas of minimum service levels, risk-management expectations, and business priorities.*

3. *An FMI should have established mechanisms for the regular review of its efficiency and effectiveness.*

Principle 22: Communication procedures and standards

An FMI should use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, and recording.

Key consideration

1. *An FMI should use, or at a minimum accommodate, internationally accepted communication procedures and standards.*

Principle 23: Disclosure of rules, key procedures, and market data

An FMI should have clear and comprehensive rules and procedures and should provide sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the FMI. All relevant rules and key procedures should be publicly disclosed.

Key considerations

1. *An FMI should adopt clear and comprehensive rules and procedures that are fully disclosed to participants. Relevant rules and key procedures should also be publicly disclosed.*

2. *An FMI should disclose clear descriptions of the system's design and operations, as well as the FMI's and participants' rights and obligations, so that participants can assess the risks they would incur by participating in the FMI.*

3. *An FMI should provide all necessary and appropriate documentation and training to facilitate participants' understanding of the FMI's rules and procedures and the risks they face from participating in the FMI.*

4. *An FMI should publicly disclose its fees at the level of individual services it offers as well as its policies on any available discounts. The FMI should provide clear descriptions of priced services for comparability purposes.*

5. *An FMI should complete regularly and disclose publicly responses to the CPSS-IOSCO Disclosure framework for financial market infrastructures. An FMI also should, at a minimum, disclose basic data on transaction volumes and values.*

1.1.3 CSA Staff Notice 11-317 – Withdrawal of Notices

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 11-317
Withdrawal of Notices

June 21, 2012

This notice formally withdraws a number of CSA and local notices. In general, the withdrawn material will remain available for historical research purposes in the CSA members' websites that permit comprehensive access to CSA notices.

CSA Notices

Staff of the members of the CSA have reviewed a number of CSA Notices. They have determined that some are outdated, no longer relevant or no longer required. The following CSA Notices are therefore withdrawn, effective immediately.

23-307	*Order Protection Rule – Implementation Milestones*
31-311	*Proposed National Instrument 31-103 Registration Requirements and Exemptions – Transition into the New Registration Regime*
31-321	*Further Omnibus/Blanket Orders Exempting Registrants from Certain Provisions of National Instrument 31-103 Registration Requirements and Exemptions*
44-303	*Filing of Notice of Intention to be Qualified to File a Short Form Prospectus under National Instrument 44-101 Short Form Prospectus Distributions*
52-314	*Securities Regulators Want Your Feedback on XBRL*

ASC Notices

Staff of the Alberta Securities Commission have reviewed a number of ASC Notices. They have determined that one is outdated, no longer relevant, or no longer required. The following ASC Notice is therefore withdrawn, effective immediately.

51-701	*National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities Disclosure of Estimates by Income Trusts and Other Flow-Through Entities in Light of Proposed Amendments to the Income Tax Act (Canada)*

NBSC Notices

Staff of the New Brunswick Securities Commission have reviewed a number of NBSC Notices. They have determined that one is outdated, no longer relevant, or no longer required. The following NBSC Notice is there withdrawn, effective immediately.

21-702	*Business Continuity Planning – Industry Testing Exercise*

OSC Notices

Staff of the Ontario Securities Commission have reviewed a number of OSC Notices. They have determined that some are outdated, no longer relevant, or no longer required. The following OSC Notices are therefore withdrawn, effective immediately.

13-701	*SEDAR Filings and Year 2000 Contingency Plans*
35-701	*Residency Requirements for Advisers and Their Partners and Officers*
35-702	*Residency Requirements for Certain Non-Resident Salespersons and Supervisors*
35-703	*Registration Residency Requirements for Certain Canadian Resident Dealers*
52-708	*Initial Offering Costs of Closed-End Funds*
62-702	*OSC Staff Concludes Pre-Bid Integration Rules Applicable to Proposed Stock Exchange by Noranda, Inc.*
71-701	*Multijurisdictional Disclosure System*

Questions

Please refer your questions to any of the following people:

Sheryl Thomson
British Columbia Securities Commission
Tel: (604) 899-6778
SThomson@bcsc.bc.ca

Simon Thompson
Ontario Securities Commission
Tel: (416) 593-8261
sthompson@osc.gov.on.ca

Kari Horn
Alberta Securities Commission
Tel: (403) 297-4698
kari.horn@asc.ca

Sylvia Pateras
Autorité des marchés financiers
Tel: (514) 395-0337, extension 2536
sylvia.pateras@lautorite.qc.ca

Manon Losier
New Brunswick Securities Commission
Tel: (506) 643-7690
manon.losier@nbsc-cvmnb.ca

Dean Murrison
Saskatchewan Financial Services Commission
Tel: (306) 787-5879
dean.murrison@gov.sk.ca

Chris Besko
The Manitoba Securities Commission
Tel: (204) 945-2561
Chris.Besko@gov.mb.ca

Shirley Lee
Nova Scotia Securities Commission
Tel: (902) 424-5441
leesp@gov.ns.ca

1.1.4 CSA Consultation Paper 25-401 – Potential Regulation of Proxy Advisory Firms

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CANADIAN SECURITIES ADMINISTRATORS

CONSULTATION PAPER 25-401:

POTENTIAL REGULATION OF PROXY ADVISORY FIRMS

June 21, 2012

Table of Contents

APPENDIX A

1. France
2. European Commission
3. ESMA Discussion Paper

INTRODUCTION

The purpose of this consultation paper (the Consultation Paper) is to provide a forum for discussion of certain concerns raised about the services provided by proxy advisory firms and their potential impact on Canadian capital markets and to determine if, and how, these concerns should be addressed by Canadian securities regulators.

The specific concerns about proxy advisory firms that have been raised by market participants, primarily issuers and their advisors, fall into the following broad categories: (i) potential conflicts of interest, (ii) perceived lack of transparency, (iii) potential inaccuracies and limited engagement with issuers, (iv) potential corporate governance implications, and (v) the extent of reliance by institutional investors on the recommendations provided by proxy advisory firms.

While we acknowledge these concerns, we also recognize that the relationships between proxy advisors and their clients are commercial (i.e., contractual), that there are legitimate reasons why institutional investors make use of the various services provided by proxy advisory firms and that these services are not currently subject to regulatory oversight. However, in the Canadian context, limited information is available about the ways in which institutional investors use the services of proxy advisory firms, the extent of reliance on the services provided by proxy advisory firms and whether institutional investors share any of the concerns identified above. Also, the extent of the impact of the concerns on the integrity of our markets is unclear.

Given these competing factors, the objectives of this consultation are two-fold. First, we would like to obtain information and views about the concerns raised by market participants to further inform our analysis before we conclude if there is a need to regulate proxy advisory firms. While the Consultation Paper discusses our understanding of the concerns raised, we are also soliciting additional feedback from interested market participants on specific questions, which are set out at the end of the Consultation Paper.

The second objective is to outline possible securities regulatory responses to the concerns raised and possible regulatory frameworks to implement these responses, and to request your feedback on such regulatory responses and frameworks. Although we consider a range of possible securities regulatory options in the Consultation Paper, we may decide based on the comments received and the impact of the specific concerns on the integrity of our markets, that other alternatives are preferable or that a securities regulatory response is not warranted.

Part 1 of the Consultation Paper sets out broadly our understanding of the proxy advisory industry, the various services proxy advisory firms provide to their clients and the role these firms and their clients play in our capital markets. Part 2 briefly identifies the nature of the concerns raised by certain market participants. Part 3 describes the Canadian and international regulatory landscape. Part 4 discusses our analysis of the concerns and also possible regulatory responses. In Part 5, we consider securities law frameworks, including existing and new frameworks, that could be used to implement a potential regulatory response should a response be warranted.

We welcome comments or clarifications on any of the concerns raised and the possible responses.

1. BACKGROUND

1.1. Services provided by proxy advisory firms

A firm offering proxy advisory services will review and analyze the matters (either issuer or shareholder proposals) put for a vote at a shareholders' meeting and will make a vote recommendation to its client, usually an institutional investor. The matters for which proxy advisory firms may make a vote recommendation include anything from routine corporate governance matters to highly complex mergers and acquisition (M&A) transactions that involve a voting decision.

A proxy advisory firm's proxy vote recommendations are generally based on whether the issuer complies with the governance practices or standards recommended by the firm for that proxy season. On M&A matters, proxy advisory firms may also review transaction terms and other transaction documents. A firm may also offer custom analysis and vote recommendations to clients based on the voting policy of the client. An institutional investor may instruct the proxy advisor to submit its voting instructions based on the proxy advisor's guidelines or on the institutional investor's own guidelines.

A proxy advisory firm may also offer automatic vote execution services whereby a client's shares are automatically voted in accordance with the firm's recommendations or a custom policy designed by the client. The client has the ability to review and override the recommendations, as well as re-vote, prior to the vote cut-off time.

A firm may assist with the administrative tasks associated with keeping track of the large number of voting decisions. This includes an end-to-end proxy voting platform where a firm receives the clients' proxy ballots, works with custodian banks, executes votes on clients' behalf, maintains vote records and provides comprehensive reporting of the information in the system related to meetings, ballots and accounts.

In addition to providing proxy advisory and voting services to institutional investors, some firms also provide consulting advisory services to issuers on corporate governance matters or attribute governance risk indicators to issuers.

The proxy advisory industry in Canada is dominated by two firms – Institutional Shareholder Services Inc. (ISS) and Glass, Lewis & Co (Glass Lewis). Both are headquartered in the United States (U.S.).

ISS is a subsidiary of MSCI, Inc. MSCI Inc. is a provider of investment decision support tools, such as indices, portfolio risk and performance analytics, and governance tools, to clients such as large pension plans and boutique hedge funds.

Glass Lewis is a wholly-owned subsidiary of Ontario Teachers' Pension Plan Board (Teachers). Teachers is a single-profession pension plan in Canada and invests the pension fund's assets and administers the pensions of active and retired teachers in Ontario.

In the U.S., it is estimated that ISS has approximately 61% of the market, Glass Lewis approximately 36% and other US proxy advisors have the remaining 3%, based on the aggregate portfolio equity size of each proxy advisors institutional clients.[1] We are not aware of any similar statistics for the Canadian market.

1.2. Role of institutional investors

Proxy advisors play an important role in the capital markets by aggregating information, providing research expertise, setting default voting standards and facilitating investor participation in shareholder meetings.

In terms of Canadian institutional investors and their duty to vote, it is our understanding that institutional investors who hold their interest on behalf of their clients or plan beneficiaries would have a duty to their clients or plan beneficiaries to deal appropriately with the assets they hold on their behalf and that duty will typically require the institutional investor to vote the shares held.[2] Most organizations representing the views of institutional investors emphasize the importance of being an "active investor," generally meaning that institutional investors should vote all of their shares and should do so on an informed basis.[3]

Such engagement by institutional investors has the potential to better align the interests of shareholders and management as institutional investors have sufficient ownership stakes and sophistication to act as motivated representatives of diversified shareholders.

Institutional investors, in making their voting decisions, may use the services of proxy advisory firms in different ways and to varying degrees. In general, it is perceived that larger institutions with sophisticated in-house teams that focus on governance and voting issues may subscribe to the research reports and recommendations of one or more of the proxy advisory firms to further inform their own views, while smaller institutional investors may not have the necessary internal resources to conduct their own research and may choose to rely more heavily on the research and recommendations of proxy advisory firms for voting guidance.[4]

1.3. Growing demand for proxy advisory services

In recent years, the demand for the services provided by proxy advisory firms has grown. A number of factors are contributing to the increase in demand for the services offered by proxy advisory firms including the overall growth in institutional investment in a wide range of diversified issuers and greater pressure on institutional investors to effectively exercise their stewardship responsibilities.

Enhanced continuous disclosure requirements as well as the number and complexity of matters to be voted upon by shareholders at any given meeting have also increased the sheer volume of disclosure documents. These factors, combined

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1 Tamara C. Belinfanti, "The Proxy Advisory and Corporate Governance Industry: The Case for Increased Oversight and Control", *Stanford Journal of Law, Business and Finance*, Spring 2009, at pages 12-14.

2 Davies Ward Phillips and Vineberg LLP, *The Quality of the Shareholder Vote in Canada*, October 2011 (Davies Paper), at page 169.

3 Ibid., at page 169. Also, in Canada, the Canadian Coalition for Good Governance deals with this issue in its *Statement of Principles Regarding Member Activism*, February 16, 2005: http://www.ccgg.ca/site/ccgg/assets/pdf/Statement_of_Principles-Member_Activism__Rev._Version_-_Feb_16_2005_.pdf.

4 U.S. Government Accountability Office Report to Congressional Requesters, *Corporate Shareholder Meetings: Issues Relating to Firms that Advise Institutional Investors on Proxy Voting*, June 2007 (the GAO Report), at page 16.

with the time constraints imposed by the concentrated proxy season in Canada, have likely resulted in growing institutional investor demand for the analyses and vote recommendation services provided by proxy advisory firms.

With increased demand for proxy advisory services, the perceived influence of such firms' vote recommendations has also risen, leading some to suggest that a recommendation from a proxy advisory firm could make the difference between the success and failure of a corporate proposal.[5]

1.4. Potential or perceived influence of proxy advisory firms

The potential or perceived influence of proxy advisory firms on both institutional and retail investors is a complex issue. As noted, proxy advisors may play an important role, particularly with regards to investors who may not have the expertise to weigh in on particular questions put to shareholders, who do not have the necessary internal resources to carry out their own research or who determine that reliance on external recommendations is an appropriate means of exercising their voting rights in certain circumstances. For other investors, proxy advisory firms provide supplemental information, analysis, and research, which may improve the overall quality of votes.

Currently, in Canada, the potential influence of proxy advisory firms' recommendations could be significant because, on average, approximately 32% of the shares of TSX-listed issuers are held by institutional investors.[6]

It is expected that a number of factors will contribute to further increase the volume of proxy votes and this growth may be accompanied by greater reliance on the recommendations of proxy advisory firms.[7] However, the extent of reliance by institutional investors on proxy advisory firms is the subject of debate. Some suggest that certain institutional investors view the reliance on proxy advisory firms as a form of insurance against regulatory criticism. In particular, this may be the case in the U.S. to the extent that institutions view the advice given by proxy advisory firms as part of their due diligence process in satisfying their fiduciary duties (for example, see excerpt from the comment letter submitted by the Center[8] to the Securities and Exchange Commission (the SEC)).[9]

In the U.S., some studies suggest that approximately 15-20% of ISS clients have authorized ISS, the largest proxy advisory firm in North America, to automatically vote their proxies however it sees fit.[10]

However, it is our understanding that institutional investors generally follow the corporate governance policies and recommendations of proxy advisory firms because either: (i) they have considered and also agree with such policies and recommendations, or (ii) may not have considered the issue independently, but are prepared to rely on the proxy advisor's policies and recommendations because they believe the proxy advisor's voting guidelines are aligned with their views or guidelines.[11] Any potential influence of proxy advisory firms could be seen as positive to the extent that proxy advisory firms base their recommendations on the corporate governance views and preferences of Canadian institutional investors. From this perspective, the potential influence is not necessarily negative.

It is unclear whether proxy advisory firms' recommendations have any consequential impact on retail investors. The recommendations of proxy advisors with respect to individual matters voted on by an issuer's shareholders may be widely publicized in certain circumstances. For example, issuers and dissident shareholders in contested elections typically issue press releases publicizing proxy advisor recommendations in their favour, and such recommendations are considered significant

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5 Paul H. Edelman and Randall S. Thomas, "Selectica Resets the Trigger on the Poison Pill: Where Should the Delaware Courts Go Next?", Vanderbilt University Law School, Public Law and Legal Theory Working Paper Number 11-20, June 2011, at page 40: "third-party proxy advisors, such as Risk Metrics, can have an effect on institutional investors' voting patterns. Both the court and academic commentary have recognized that the recommendation of a proxy advisor can have a pivotal impact on the outcome of a vote." *See also*, Davies Paper, *supra* note 2, at page 162.

6 Bloomberg data search (January 2012), based on the average percentage of shares held by institutional investors for 1,114 of 1,500 TSX-listed issuers (institutional share ownership information is not available for all issuers).

7 Center on Executive Compensation (Center), *A call for Change in the Proxy Advisory Industry Status Quo: The Case for Greater Accountability and Oversight*, January 2011, at pages 15-19 and page 21.

8 The Center, based in Washington, develops and promotes principled pay and governance practices and advocates compensation policies that serve the best interests of shareholders (Center's website: http://www.execcomp.org/).

9 Center comment letter dated October 25, 2010 to the SEC Concept Release on the U.S. Proxy System published July 14, 2010 (the SEC Concept Release), at page 3: "A primary reason for institutional investor reliance on proxy advisory firms, in the U.S., is a 2003 SEC interpretation that indicated that investment advisors could discharge their duty to vote their proxies and demonstrate that their vote was not a product of a conflict of interest if the vote was made in accordance with a pre-determined policy and based on the recommendations of an independent third party. The advisory firms are considered independent third parties, and if institutional investors rely on the recommendations made by them, the investors are held to have discharged their fiduciary duties to vote in the investors' best interests."

10 Tamara C. Belinfanti, *supra* note 1, at page 15. *See also*, Paul Rose, "The Corporate Governance Industry", *The Journal of Corporation Law*, Summer 2007, at page 103.

11 Davies Paper, *supra* note 2, at page 162.

enough to be reported in the news media. At least one author suggests that retail investors are probably being swayed by the "tsunami of press coverage that often accompanies a formal recommendation by a [proxy advisory] firm".[12]

Anecdotal evidence suggests that some issuers may feel pressured to accept proxy advisory firms' corporate governance policies, regardless of whether the policies are appropriately taking into account key factors and the particular circumstances of the issuers.[13]

1.5. Potential impact of concerns on market integrity

Some market participants cite the potential influence of proxy advisory firms over vote outcomes and the corporate governance of issuers, combined with the possible negative impact of conflicts of interest and lack of transparency concerns that are further described below, as support for greater regulatory oversight in this area. Critics also argue that the possible risk to market integrity could be greater because of limited competition in the proxy advisory industry such that supply and demand market forces may not provide sufficient "checks and balances" on the quality of the recommendations made by a proxy advisory firm.

In our view, it may be appropriate for the Canadian Securities Administrators (CSA) to consider regulating proxy advisors if the above-noted concerns are validated and have a negative impact on the integrity of Canadian capital markets. Accordingly, the purpose of the Consultation Paper is to obtain additional information and assess the validity of concerns about the activities of proxy advisors, the impact on the capital markets, and, if warranted, the need for a securities regulatory response and the appropriate regulatory response.

2. SUMMARY OF CONCERNS

We identify in this section the various concerns raised by certain market participants, primarily issuers and their legal advisers, and the potential impact of these concerns.

Each of these concerns, including our analysis of potential mitigating factors, will be more fully discussed in Part 4.

2.1. Potential conflicts of interest

A conflict of interest may exist if a proxy advisory firm provides vote recommendations to institutional investors on corporate governance matters for which the same firm provided consulting services to the issuer. A proxy advisory firm's independence may also be compromised by conflicts arising in the ownership structure of some proxy advisory firms. Alternatively, an institutional client of a proxy advisory firm could be the proponent of a specific shareholder proposal that could be the subject of a favourable vote recommendation by the firm.

Potential conflicts of interest may compromise the independence of vote recommendations or create a perception that the recommendation is compromised. To the extent that potential conflicts of interest are not properly identified and managed, they could be viewed as having a negative impact on the integrity of the voting process.

2.2 Lack of transparency

It is our understanding that lack of transparency concerns appear to be a combination of both (i) the lack of disclosure about how proxy advisory firms arrive at their vote recommendations and (ii) the lack of public disclosure of the actual report. The concern with lack of transparency is that, without that disclosure, issuers and investors may not be able to question and fully assess the quality of the information and analysis that underlie the vote recommendations, and evaluate their merits. This could have an impact on the integrity of our capital markets. Because the proxy voting report is the product of the commercial relationship between proxy advisory firms and their clients, the report is only provided to subscribers, but the recommendations may be disclosed by subscribers, issuers or other parties to the media for strategic reasons.

2.3 Potential inaccuracies and limited opportunity for issuer engagement

The concern raised by some issuers with respect to apparent inaccuracies in proxy advisors' reports is that such inaccuracies may lead to misinformed decision-making to the extent that institutional investors significantly rely on a potentially flawed analysis underlying a vote recommendation. This concern may be especially acute in the context of complex, controversial voting matters (including M&A transactions) or close vote situations.

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[12] John Mackie, "Failed TMX Bid Puts Spotlight on Proxy Advisory Firms", *Business Law Currents*, June 30, 2011.

[13] Wachtell, Lipton, Rosen & Katz, comment letter dated October 19, 2010 in response to the SEC Concept Release (*supra* note 9)), at page 5. *Report of the New York Stock Exchange Commission on Corporate Governance*, September 23, 2010, at page 23: "Proxy advisory firms seem to develop on an annual basis new policies that constitute best practices for directors or boards, and then use the 'stick' of a recommended 'withhold' vote for directors not following their current notion of best practices." Davies Paper, *supra* note 2, at page 162.

Issuers also feel that the process for engaging with proxy advisory firms in these situations is often unclear. However, whether such inaccuracies in reports are simply differences of opinion amongst issuers and proxy advisory firms or represent misinformed recommendations remains unknown.

2.4. Perceived corporate governance implications

Another concern raised is that proxy advisory firms may have become *de facto* corporate governance standard setters and that, as a result, issuers are compelled to adopt certain "one-size-fits-all" standards which may not be entirely suitable for their specific circumstances. In a 2010 survey conducted by the Center, 54 percent of survey respondents said they had changed or adopted a compensation plan, policy or practice in the past three years primarily to meet the standards of a proxy advisory firm.[14]

As further evidence of the influence of proxy advisors on corporate governance, it is our understanding that some national corporate law firms advise their issuer clients to consult ISS Canadian Proxy Voting Guidelines and the ISS Canadian Governance Policy updates.[15]

We recognize, however, that this influence on corporate governance practices can be beneficial to investors as it may result in the adoption of corporate governance best practices.

2.5. Extent of reliance by institutional investors

To date, we have not received any complaints from institutional investors who subscribe for services provided by proxy advisory firms. However, as previously noted, certain market participants are concerned that institutional investors may rely too much on the vote recommendations provided by proxy advisory firms. The extent of reliance can either be complete reliance, which includes an automatic vote in accordance with a proxy advisor's recommendations, or partial reliance, where institutional investors will conduct their own research and include proxy advisors' recommendations as part of their analysis in determining how to vote.

Institutional investors have a duty to their clients to deal appropriately with the assets they hold on their behalf. That duty will compel the institutional investor to vote its shares, whether to protect the long-term value of the investment or to approve or disapprove an action or event that may affect the investment in the short term.[16]

In the Canadian context, limited information is available about institutional investors' reliance on the services provided by proxy advisory firms and whether they have concerns about the activities of proxy advisors but are limited in their options due to the lack of competition in this industry or for other reasons.

In order to obtain additional information from institutional investors on these issues, we pose specific questions at the end of the Consultation Paper.

3. CURRENT REGULATORY LANDSCAPE IN CANADA AND INTERNATIONALLY

3.1. Canada

Currently, in Canada, proxy advisory firms are not subject to formal securities regulatory oversight but their activities have been considered by securities regulators in the past to a limited extent, specifically in the context of our registration and proxy solicitation rules.

In terms of the registration regime, an "adviser" is defined as a person who engages in or holds himself out as engaging in the business of advising another with respect to investment in or the purchase or sale of securities.[17] The activities of a proxy advisory firm as described above do not include advising their clients whether or not to buy or sell securities, but are generally confined to advising their clients on how to exercise voting rights that attach to securities those clients already own.

Notwithstanding this view, it should be noted that in 2003 Fairvest Corporation, now Institutional Shareholder Services Canada Corp. (Canadian subsidiary of ISS), requested and obtained exemptive relief from our adviser registration requirements provided

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14 Center, *supra* note 7, at page 4.

15 For examples, see Stikeman Elliott LLP, *Continuous Disclosure Guide – 2011* (1 March 2011), Canadian Securities Law, www.canadiansecuritieslaw.com/2011/03/articles/continuous-timely-disclosure/continuous-disclosure-guide-2011/, and McCarthy Tétrault LLP, *Management Proxy Circular Disclosure (and related matters) – Aide-mémoire*, www.mccarthy.ca/pubs/Management_Proxy_Circular_Disclosure.pdf, at page 5.

16 Davies Paper, *supra* note 2, at page 169.

17 See the definition of "adviser" in each of our securities acts.

that proposals concerning corporate M&A transactions (i.e., which may lead to a "trade") do not exceed five per cent of proposals in a given year.[18]

In terms of the proxy solicitation regime, National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) contains a definition of "solicit" for the purposes of that rule. The act of providing proxy voting advice may be caught by paragraph (c) of the definition of "solicit", which would suggest that this activity is subject to the proxy solicitation requirements in Part 9 of NI 51-102.

However, to provide greater clarity as to the obligations of proxy advisory firms, proxy voting advice is carved out of the definition of "solicit" if it is communicated to clients (securityholders) in the ordinary course of business and not on behalf of any person soliciting proxies. In these circumstances, proxy voting advice is not subject to the proxy solicitation informational requirements in NI 51-102.

The relevant sections of the definition are as follows:

> "solicit", in connection with a proxy, includes . . .
>
> (c) sending a form of proxy or other communication to a securityholder under circumstances that to a reasonable person will likely result in the giving, withholding or revocation of a proxy . . .
>
> but does not include . . .
>
> (k) communicating, other than a solicitation by or on behalf of the management of the reporting issuer, to securityholders in the following circumstances . . .
>
> (iii) as clients, by a person who gives financial, corporate governance or proxy voting advice in the ordinary course of business and concerns proxy voting advice if:
>
> (A) the person discloses to the securityholder any significant relationship with the reporting issuer and any of its affiliates or with a securityholder who has submitted a matter to the reporting issuer that the securityholder intends to raise at the meeting of securityholders and any material interests the person has in relation to a matter on which advice is given;
>
> (B) the person receives any special commission or remuneration for giving the proxy voting advice only from the securityholder or securityholders receiving the advice; and
>
> (C) the proxy voting advice is not given on behalf of any person soliciting proxies or on behalf of a nominee for election as a director;

Equivalent provisions are found in the definition of "solicit" in section 147 of the *Canada Business Corporations Act* (paragraph (b) (vii) of such definition) and section 68 of the *Canada Business Corporations Regulations*.

As discussed more fully in Part 5, we continue to be of the view that neither of these regimes is an appropriate regulatory framework for any potential regulation of proxy advisory firms.

3.2. United States

As mentioned above, ISS and Glass Lewis are headquartered in the U.S. It is our understanding that, in addition to ISS and Glass Lewis, the proxy advisory industry in the U.S. is comprised of two other major firms: Marco Consulting Group and Egan-Jones Proxy Services. Of these four proxy advisory firms, two firms, ISS and Marco Consulting Group, have registered with the SEC as "investment advisers" under The *Investment Advisers Act of 1940* (*Advisers Act*) using the pension consultant exemption described below.[19] As a result, these firms have to make certain specific disclosures, including information about arrangements that the adviser has that involve certain conflicts of interest with its advisory client and are required to adopt, implement, and annually review an internal compliance program consisting of written policies and procedures that are reasonably designed to prevent the adviser or its supervised persons from violating the *Advisers Act*.[20]

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[18] At the time, Fairvest Corporation requested the relief because it sometimes provided proxy voting advice on corporate transactions such as amalgamations, mergers and other types of reorganizations that may influence the decision to invest in or the buy or sell securities. These transactions represented a small proportion of the proposals on which it provided proxy voting advice.

[19] SEC Concept Release, *supra* note 9, at page 109. A person is an "investment adviser" under the *Advisers Act* in the U.S. if the person, for compensation, engages in the business of providing advice to others as to the value of securities, whether to invest in, purchase, or sell securities, or issues reports or analyses concerning securities.

[20] Ibid., at page 113.

In terms of how proxy advisory firms are currently regulated under U.S. federal securities law, the SEC described its current regime in the concept release identified in section 3.3 hereafter. Depending on their activities, proxy advisory firms may be subject to federal securities laws in at least two respects. The SEC described the current federal regulation of proxy advisors in the U.S. as follows:

> First, because of the breadth of the definition of "solicitation," proxy advisory firms may be subject to our proxy rules because they provide recommendations that are reasonably calculated to result in the procurement, withholding, or revocation of a proxy. As a general matter, the furnishing of proxy voting advice constitutes a "solicitation" . . . however, we adopted Exchange Act Rule 14a-2(b) (3) to exempt the furnishing of proxy voting advice by any advisor to any other person with whom the advisor has a business relationship from the informational and filing requirements of the federal proxy rules, provided certain conditions are met. . . .
>
> Even if exempt from the informational and filing requirements of the federal proxy rules, the furnishing of proxy voting advice remains subject to the prohibition on false and misleading statements in Rule 14a-9.
>
> Second, when proxy advisory firms provide certain services, they meet the definition of investment adviser under the Advisers Act and thus are subject to regulation under that Act. . . . proxy advisory firms provide analyses of shareholder proposals, director candidacies or corporate actions and provide advice concerning particular votes in a manner that is intended to assist their institutional clients in achieving their investment goals with respect to the voting securities they hold. In that way, proxy advisory firms meet the definition of investment adviser because they, for compensation, engage in the business of issuing reports or analyses concerning securities and providing advice to others as to the value of securities. [21]

Proxy advisory firms may have to register with the SEC as investment advisers. The SEC noted that:

> Whether a particular investment adviser is required to register with the Commission depends on several factors. Investment advisers are generally prohibited from registering with the Commission if they have less than $25 million in assets under management. Proxy advisory firms are unlikely to have sufficient assets under management to register with the Commission because they typically do not manage client assets. Proxy advisory firms may nonetheless be eligible to register because they qualify for one of the exemptions from the registration prohibition under Rule 203A-2 under the Advisers Act. In particular, some proxy advisory firms may be able to rely on the exemption for "pension consultants" if they have pension plan clients with an aggregate minimum value of $50 million.[22]

3.3. International Regulatory Initiatives

Various international regulatory agencies have also been looking at the role and potential regulation of proxy advisory firms.

In the U.S., the SEC undertook a public consultative process through the publication in July 2010 of the SEC Concept Release to assess the extent of the regulatory concerns and the potential policy options to address them but did not propose any particular regulatory framework.

The SEC Concept Release related to various aspects of the U.S. proxy system and included a section on proxy advisory firms.

The SEC Concept Release described the concerns expressed by market participants on the lack of accuracy and transparency with respect to recommendations provided by proxy advisory firms. Also identified were the perceived conflicts of interest resulting from proxy advisory firms providing both proxy vote recommendations to institutional investors and consulting services to issuers seeking assistance with proposals put to shareholders or with improving their corporate governance ratings.

We reviewed the comments received by the SEC on proxy advisory firms as part of our analysis of the concerns identified by market participants. The commenters who responded included issuers, institutional investors, law firms, academics, the proxy advisory firms and industry associations.

Based on our review of these comments, we observed certain high-level themes, which are summarized here as follows:

- There is a general agreement among commenters that proxy advisory services have an impact on the proxy voting process and that proxy advisory firms influence voting outcomes and corporate behaviour. However, institutional investors view the influence on voting outcomes as overstated.

[21] Ibid., at pages 107-110. See also Note 19 for the definition of "investment adviser".

[22] Ibid., at pages 112-113.

- There is general consensus among commenters that reliance on proxy advisory firms' research and recommendations by institutional shareholders will continue to grow.

- Proxy advisory firms help institutional investors in managing their voting responsibilities. Large institutional investors have their own internal policies and use proxy advisory firms' advice primarily as a source of information, but smaller institutional investors may lack the staff needed to fully evaluate all matters being voted on and may conclude that for cost/benefit reasons that it is appropriate to base their votes largely or entirely on proxy advisory firms' recommendations.

- On the issue of conflicts of interest, some are of the view that the current standard of boilerplate generic disclosure statements is not adequate; there should be clear and full disclosure of the conflicts. Some recommended that conflicts of interest be prohibited. Others recommended that if a proxy advisory firm offers consulting services to public companies, there should be a complete and total separation of the proxy advisory business from the consulting services.

- There is also general consensus that there should be disclosure of methodologies and rationales for a vote recommendation. With increased disclosure of the criteria and processes used to formulate recommendations, investors will be better able to understand and evaluate vote recommendations.

- Almost all issuers expressed the concern that there may be errors in the vote recommendation reports and that they have little recourse to have these corrected by proxy advisory firms. Many suggested that proxy advisory firms should have processes to ensure factual accuracy and reliability of what they publish and include the opportunity for issuers to review and comment.

At the date of this publication, we are not aware of the SEC's timing or regulatory plans in this area. We will continue to monitor U.S. developments in this regard.

In 2009, the New York Stock Exchange Commission on Corporate Governance (CCG) carried out a comprehensive review of corporate governance principles. In its report dated September 23, 2010, the CCG stated in Principle 8 with respect to proxy advisory firms, that it "recognizes the influence that proxy advisory firms have on the market, and believes that such firms should be held to appropriate standards of transparency and accountability."

CCG recommended that:

1. the SEC should engage in a study of the role of proxy advisory firms to determine their potential impact on, among other things, corporate governance and behaviour and consider whether or not further regulation of these firms is appropriate;

2. at a minimum, proxy advisory firms should be required to disclose the policies and methodologies that the firms use to formulate vote recommendations, as well as material conflicts of interest, and to hold themselves to a high degree of care, accuracy and fairness in dealing with both shareholders and companies by adhering to strict codes of conduct; and

proxy advisory firms should be required to disclose the company's response to their analysis and conclusions.[23]

Similar initiatives have been undertaken in Europe. For example:

1. The French Autorité des marches financiers (AMF France) issued *AMF Recommendation No. 2011-06 of 18 March, 2011 on Proxy Advisory Firms*. AMF France recommended standards for proxy advisory firms in order to promote transparency and manage conflicts of interest.

2. The European Commission published for comment on April 5, 2011, the *Green Paper: The EU Corporate Governance Framework*, aimed at assessing the need for improvement of corporate governance in European listed companies.

3. The European Securities and Markets Authority published for comment on March 22, 2012 the *Discussion Paper: An Overview of the Proxy Advisory Industry - Considerations on Possible Policy Options*.

More details regarding these international initiatives can be found in Appendix A.

[23] *Report of the New York Stock Exchange Commission on Corporate Governance*, September 23, 2010, at page 6.

4. ANALYSIS OF CONCERNS RAISED AND POSSIBLE REGULATORY RESPONSES

We identified in Part 2 certain concerns raised by market participants. In this section, we will consider in greater detail whether these concerns raise market integrity issues that require a securities regulatory response. We will also consider the extent to which proxy advisors are voluntarily addressing these concerns without securities regulatory intervention.

Overall, any securities regulatory response should be proportionate to the potential impact of these concerns on market integrity. In examining and analyzing each of the concerns raised and, on the assumption that a securities regulatory response is warranted, we will discuss how a securities regulatory response may address each of these concerns.

We are requesting your feedback on the concerns identified, our analysis of them and our possible responses, as well as any other alternative regulatory response.

4.1. Potential conflicts of interest

A proxy advisory firm may provide advisory services to issuers on corporate governance or executive compensation matters or provide assistance in developing proposals to be submitted for shareholder approval. Some proxy advisers also qualitatively rate issuers' corporate governance policies and provide consulting services on how to improve their corporate governance ratings.[24] As a result, a proxy advisory firm may provide vote recommendations to institutional investors on corporate governance matters for which the same firm provided consulting services to the issuer.

Alternatively, an institutional client of a proxy advisory firm could be the proponent of a specific shareholder proposal that could be the subject of a favourable vote recommendation by the firm.

There may also be conflicts in ownership structure. For example, Glass Lewis is owned by Teachers which engages in public and private equity investing in issuers on whom Glass Lewis makes recommendations.

Current practice seems to be to provide minimal disclosure in the relevant report, sometimes in the form of boilerplate statements that simply note that conflicts may generally exist.[25]

4.1.1. Analysis

It is our understanding that proxy advisory firms have conflicts of interest policies and procedures in place within their organizations.

For example, ISS manages potential conflicts through a combination of the application of their published voting policy guidelines, a compliance program (Code of Ethics that prescribes conduct of employees in carrying out their responsibilities), implementation of a "firewall" to mitigate conflicts around the advisory business, and disclosure. Clients are informed of potential conflicts and each proxy report contains a legend that the issuer may be a client of ISS. Institutional clients may contact ISS' legal department for specific details.[26]

As another example, Glass Lewis provides disclosure on the front page of its reports regarding potential conflicts. When an institutional investor client solicits votes through a shareholder proposal, Glass Lewis discloses that fact on the front page of the report. Glass Lewis also discloses when an investment manager subsidiary of a public company on which it is writing a report subscribes to its research. Furthermore, where Glass Lewis becomes aware through public disclosure that Teachers has a significant, reportable stake in a company it is covering, that fact is disclosed on the front page of the report for that company.[27]

While this suggests that proxy advisory firms do undertake certain preventative measures, it is not clear to what extent all of the information regarding their policies and procedures are publicly available and whether making them publicly available might address the concerns expressed regarding conflicts of interests.

4.1.2. Possible approach

Potential conflicts of interest have traditionally been addressed in securities regulation through prohibition, adoption of policies or procedures that mitigate the conflicts, or disclosure.

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24 ISS publishes "governance risk indicators". See www.issgovernance.com/grid-info.

25 Cornell Law School, comment letter dated October 20, 2010 in response to the SEC Concept Release (*supra* note 9), at page 3. Pension Investment Association of Canada, comment letter dated December 22, 2010 in response to the SEC Concept Release (*supra* note 9), at page 3: "generic disclosure statements are inadequate and proxy advisory firms should make specific disclosure regarding the presence of a potential conflict of interest." *See also*, SEC Concept Release, (*supra* note 9), at page 117.

26 ISS comment letter dated October 20, 2010 in response to the SEC Concept Release (*supra* note 9), at page 8.

27 Glass Lewis comment letter dated October 18, 2010 in response to the SEC Concept Release (*supra* note 9), at page 10.

Prohibition of conflicts of interest would only be appropriate if there is clear evidence of a material negative impact of any potential conflict of interest on market integrity. We do not think outright prohibition of conflicts of interest is necessary or appropriate for proxy advisory firms at this time.

We considered the conflict of interest requirements of research analysts when publishing reports or making recommendations with respect to the purchase or sale of securities. There are minimum procedural requirements set out in IIROC (Investment Industry Regulatory Organisation of Canada) Dealer Member Rule 3400[28] for research analysts that operate within an investment dealer. We could consider the relevance of these provisions in developing any potential regulation of proxy advisory firms although we recognize that research analysts have a more direct link to our mandate of protecting investors and market efficiency.

An appropriate response to the concerns raised could be to require proxy advisory firms to identify and control conflicts of interest through adequate organizational structures. Some such structures may already be in place but currently are not fully transparent to other market participants since there are no specific regulatory requirements for proxy advisory firms to disclose such structures.

To the extent that market participants agree that a securities regulatory response is warranted to address potential conflicts of interests at proxy advisory firms, we are requesting your feedback on whether we should require proxy advisory firms to develop, implement and disclose conflicts of interest policies and procedures to manage potential conflicts of interest.

In particular, we request your feedback on the following possible requirements:

1. proxy advisory firms should separate their proxy voting services from the advisory or consulting services;

2. proxy advisory firms should have policies and procedures designed to identify and manage any conflicts of interest that arise in connection with the issuance of a vote recommendation; a firm should have policies to deal with employee conflicts and ownership conflicts;

3. proxy advisory firms should disclose the procedures in place to mitigate or address conflicts; disclosure of the specific conflict in the report to their clients may also be required; and

4. proxy advisory firms should review the effectiveness of such policies and procedures on a regular basis.

The conflicts of interest policies and procedures would be disclosed on the proxy advisors' websites.

4.2. Lack of transparency

Proxy advisory firms' recommendations and how they generate their vote recommendations are not in the public domain because subscription arrangements with clients are private contractual matters. Proxy advisory firms issue reports on a subscription basis to their institutional investor clients and we understand that issuers may also subscribe. For other (non-subscribing) investors, information regarding such recommendations comes in summary form from issuers, bidders or targets, typically in press releases.

Ordinarily, vote recommendation reports are not publicly available and, given the commercial nature of the relationship between proxy advisory firms and their clients, there may be valid business reasons for not making them publicly available.

Even if the recommendation is available publicly, the underlying analysis is not disclosed. While in some cases the analysis may be straightforward application of the proxy advisor's policies, there may be cases which are more nuanced and complex.

4.2.1. Analysis

It is our understanding that proxy advisory firms' vote recommendations are generally based on the application of predefined methodologies and are based on publicly available information. We also understand that there can be some subjective analyst review and there are internal procedures for reviewing the reports before they are finalized.

A concern may exist with the absence of information about how proxy advisors arrived at their recommendation to the extent that issuers and investors cannot assess the quality of the data and analysis that inform the recommendation, and evaluate its merits.

We are considering whether disclosure of the methodologies, analytical models and assumptions used in arriving at a vote recommendation would allow the market to evaluate and judge the rationale for the recommendation or determine why a proxy

[28] http://iiroc.knotia.ca/Knowledge/View/Document.cfm?Ktype=445&linkType=toc&dbID=281205341&tocID=842.

advisor has made a particular recommendation. Disclosure of significant public informational sources used in determining a recommendation may also be helpful.

The additional disclosure may improve the quality and credibility of vote recommendations. An example of the merits of disclosure of the analysis is where various proxy advisory firms make a different vote recommendation for the same matter put to a vote at a shareholders' meeting. Without sufficient details of the underlying analysis, the client cannot make an informed assessment of the different recommendations (for the same matter) in deciding how to vote.

However, we also question whether disclosure of methodologies and analytical models is necessary or appropriate given the commercially sensitive and proprietary nature of not only this information but even the process undertaken by proxy advisory firms to generate their vote recommendations. We would welcome views as to whether the market could benefit from improved transparency in this area or whether the risks in doing so are too significant to justify any intervention.

4.2.2. Possible approach

Given that the vote recommendation itself is essentially a product for which clients have paid subscription fees to obtain, it may not be appropriate to require the reports to be publicly disclosed.

To the extent that a securities regulatory response is warranted to address concerns surrounding lack of transparency, we request your feedback on whether disclosure of the analysis concerning a vote recommendation that enables an investor to assess the basis for a vote recommendation could be appropriate. We would consider requiring that proxy advisory firms disclose the internal procedures, guidelines, standards, methodologies, assumptions and sources of information supporting their vote recommendations. Data gathering procedures to ensure the accuracy of information could also be disclosed.

In determining whether to require the above disclosure, we will have to consider the appropriateness of requiring disclosure if the information is confidential, proprietary or cannot be disclosed for valid business purposes.

4.3. Potential inaccuracies and limited opportunity for issuer engagement

We obtained anecdotal information from our informal discussions with issuers (in addition to comment letters submitted to the SEC) about concerns with inaccuracies in the underlying data used to arrive at a recommendation.[29] Issuers have also complained that, even if those matters were raised, proxy advisory firms did not correct factual inaccuracies once they were made aware of them. A 2010 survey carried out by the Center in the U.S. seems to support this information: "of those responding, 53 percent said that a proxy advisory firm had made one or more mistakes in a final published report on the company's compensation programs in 2009 or 2010."[30]

In the Center's view, "the implications of these inaccuracies are alarming. ISS has historically recommended voting against between 30 and 40 percent of all stock plans it reviews. It follows that if the Center data is representative of large companies generally, then proxy advisory firms are negatively impacting the compensation programs at a meaningful number of companies because of institutional investors' reliance on the data."[31]

Some issuers have also complained of the limited time they are given to provide comments on a proxy advisory firm's preliminary report. They noted that the firm's final report often did not incorporate all of their comments and some reports contained mistakes.[32]

4.3.1. Analysis

ISS and Glass Lewis each have different approaches to engaging with issuers on matters proposed to be voted upon at shareholders' meetings.

ISS distributes its report and recommendations to the issuer in advance of releasing them and gives the issuer an opportunity to vet the report for factual content. Glass Lewis does not meet with issuers once the proxy materials have been sent out, because it believes it is more appropriate to restrict its analysis and recommendations to the issuer's public disclosure. Exceptions are made in the case of contested meetings, certain major transactions or other unique circumstances, where Glass Lewis will meet

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29 Kinross Gold Corporation comment letter dated October 20, 2010 in response to the SEC Concept Release (*supra* note 9), at pages 1-3. See also *Shareholder Democracy Summit Inaugural Report*, October 24-25, 2011, at page 28.

30 Center, *supra* note 7, at page 10.

31 Ibid., at page 10.

32 Ibid., at pages 55-57. The Center attributes the inaccuracies to the following: (1) workload pressures caused by the tremendous growth in the proxy advisory industry; (2) the increased length of proxy disclosures and short turnaround time for analyses; and (3) inadequate quality controls at the proxy advisory firms as proxy advisory firms seek to reduce costs by outsourcing data collection and analysis to low labour-cost countries.

with the issuer and dissidents on a call with some of its clients. It does not provide issuers with an opportunity to comment on its report and recommendations before it is released.[33]

Both ISS and Glass Lewis have recently announced new processes to facilitate engagement with investors and issuers.[34]

Nonetheless, issuers continue to be concerned with inaccuracies in proxy advisor reports as they may lead to misinformed decision-making, especially in the context of complex, controversial voting matters (including M&A transactions) or close votes and that the process for engaging with proxy advisory firms in these situations is often not clear. If these concerns are valid and result in material inaccuracies, that could support a proposal for proxy advisory firms to have a process to address issuer comments on vote recommendations and the underlying analysis.

However, it is not clear to us whether such inaccuracies may simply be differences of opinion or analysis rather than misinformed recommendations by proxy advisory firms that pose risks to market integrity and, ultimately, whether actual voting outcomes were negatively affected in these situations. Accordingly, we are soliciting feedback in this regard.

4.3.2. Possible approach

To the extent that a securities regulatory response is warranted to address these concerns, we request feedback on whether to require that proxy advisory firms have a policy to deal with issuer comments on vote recommendations and the underlying analysis. In particular, the policy would specify the process for issuer engagement, and require that proxy advisors publicly disclose this process.

To inform our analysis on this issue, we are requesting your feedback on whether, if we require proxy advisory firms to have a process for issuer engagement, we should also prescribe the terms of the process by which proxy advisors engage with issuers (for example, by setting specific timelines for which issuers must be given an opportunity to review a draft vote recommendation).

4.4. Development of corporate governance standards

It has been suggested that proxy advisory firms are no longer “independent” experts evaluating a proposal but influence behaviour of the issuer they make recommendations about.

Proxy advisory firms may indirectly act as “standard-setters” and, as such, some have questioned whether they have the necessary expertise to set corporate governance standards and whether their approach to developing such standards is sufficiently thorough and transparent. While a similar role is played by other governance organizations, these entities do not have as direct an (potential) influence over vote outcomes.

On the other hand, to the extent that proxy advisors engage in a valid policy development process, any potential influence they have may benefit investors broadly by encouraging widespread adoption of governance best practices.

4.4.1. Analysis

Because of the growing influence of proxy advisory firms, the impact of their policies and recommendations on Canadian corporate governance practices may be significant. As mentioned above, a number of issuers claim to adopt the policies in an effort to obtain positive vote recommendations from proxy advisory firms.

According to some proxy advisory firms, policies developed are likely to reflect institutional investor clients’ preferences and views as well as the perspectives of other market participants. For example, ISS gives institutional clients an opportunity to provide input and feedback on policy issues every year post proxy season. In addition, ISS analysts communicate with institutional clients during the course of proxy season on a range of issues including those that are highly contentious. Finally, all market policy documents are available on the ISS website for easy access by both institutional investors and the issuer community.[35]

Glass Lewis develops its proxy voting guidelines based on academic studies and client feedback.[36]

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33 Davies Paper, *supra* note 2, at page 166.

34 ISS, news release dated March 29, 2012 (www.issgovernance.com/news/). Glass Lewis, news release dated April 12, 2012 (www.glasslewis.com/about-glass-lewis/press-releases/).

35 Davies Paper, *supra* note 2, at page 164 for a full description of the process.

36 Ibid., at pages 164-165 for a full description of the process.

4.4.2. Possible approach

Because of the potential impact of the policies recommended by proxy advisory firms on issuers and their operations, it may be advisable that issuers and other market participants be made aware of any corporate governance policy proposed and ultimately adopted by proxy advisory firms that may affect them for purposes of the upcoming proxy season.

To the extent that a securities regulatory response is warranted to address these concerns, we request your feedback on whether proxy advisory firms should implement fair and transparent procedures for developing corporate governance standards. We would suggest that the procedures and standards be publicly disclosed. Public disclosure of the procedures may result in market participants' confidence in the standard-setting function of proxy advisors.

4.5. Reliance by institutional investors

As noted at the outset of the Consultation Paper, it is unclear to what extent institutional investors in Canada rely on the vote recommendations by proxy advisory firms in any given situation and, if such reliance is placed, the reasons why such investors have made this decision.

In the U.S. context, the GAO Report noted that, whether large or small, all of the 31 institutional investors interviewed indicated that they: (i) retain the fiduciary obligation to vote proxies in the best interest of their clients, irrespective of their reliance on proxy advisory firms, (ii) do not delegate this responsibility, and (iii) retain the right to override any proxy advisory firm recommendations, all of which may limit the amount of influence that proxy advisory firms hold.[37] We are not aware of any similar study in Canada.

Furthermore, we note that any potential influence that a recommendation from a proxy advisor wields generally stems from the willingness of institutional investors to follow vote recommendations on the basis that either:

(i) they have considered and also agree with such recommendations, or

(ii) may not have considered the issue independently, but are prepared to rely on the proxy advisor's recommendations because they believe they are aligned with their guidelines.[38]

4.5.1. Analysis

At a recent Canadian shareholder democracy conference, it was noted that for larger shareholders there is a lot of thought that goes into exercising their voting rights. Smaller institutions may be more likely to follow the advice of proxy advisors because there is a large regulatory burden on them to keep up with the information flows.[39]

However, it is our understanding that very limited empirical information exists about how institutional investors in Canada actually use the services of proxy advisory firms and, generally, whether they share any or all of the concerns discussed in the Consultation Paper. We are therefore soliciting feedback on: (i) how institutional investors view their voting obligations, (ii) the extent to which various types of institutional investors rely on the services provided by proxy advisors, and (iii) whether they share any of the concerns described above or if market forces are sufficiently addressing these issues from their perspective.

In this regard, we included at the end of the Consultation Paper specific questions for institutional investors to inform our analysis and views.

5. POTENTIAL SECURITIES REGULATORY FRAMEWORKS

There are good business reasons and capital market benefits for the existence of proxy advisory firms and the services they provide to their clients. They serve a market need and we anticipate increased demand for their services.

Overall, any possible regulatory response to the activities of proxy advisory firms should address the concerns identified above and meet the objective of making these firms more accountable and the process leading to vote recommendations more transparent.

Based on the feedback received and evidence of the impact of the concerns on market integrity, we may determine that a securities regulatory response is warranted to address any or all the concerns raised. Several securities regulatory frameworks can be considered to implement such responses.

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37 GAO Report, *supra* note 4, at pages 16-17.

38 Davies Paper, *supra* note 2, at page 162.

39 *Shareholder Democracy Summit Inaugural Report*, *supra* note 29, at pages 14-15.

This section deals with possible frameworks for imposing securities regulatory obligations on proxy advisory firms. We outline our analysis and assessments regarding each of the potential securities regulatory frameworks that we identified during the course of our review.

A possible securities regulatory framework in this area could consist of either:

1. amendments to existing securities regulatory frameworks; or

2. the creation of a new securities regulatory framework that would apply specifically to the activities of proxy advisory firms.

For reasons further detailed below, we are of the view that amendments to the existing securities regulatory regimes are not appropriate and that any proposed regulatory framework in this area should include the adoption of a new stand alone securities regulatory instrument. If we decide to implement such an instrument, it would require that we obtain the appropriate legislative authority to adopt it.

Once we have determined the need for regulatory intervention and identified the specific concerns that need to be addressed, we would determine what form of regulation may be appropriate. In that context, we will consider a range of alternatives including but not limited to the alternatives mentioned below.

5.1. Potential amendments to existing securities regulatory frameworks

In this section, we review and analyze whether amendments to our existing registration or proxy solicitation regulatory frameworks would be a suitable response to the concerns identified with proxy advisory firms, assuming that a securities regulatory response is actually warranted.

We note that even if we integrate proxy advisory firms into these existing securities regulatory frameworks, amendments to our securities acts would be necessary to regulate proxy advisory firms within these existing frameworks.

5.1.1. Registration as an "adviser"

National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) sets out the requirements for firms and individuals that are in the business of trading in, or advising on, securities, or if they act as an underwriter or manage an investment fund. To determine whether registration is required as a dealer or an adviser, a firm must consider whether its activities amount to trading or advising, and then determine whether it is carrying out those activities as a business.

NI 31-103 provides for categories of registration that serve to specify the types of registrable activity a firm may conduct, and provide specific requirements for each category.

An adviser, as defined in each of the securities acts in Canada, is a person who engages in or holds himself out as engaging in the business of advising another with respect to investment in or the purchase or sale of securities.

5.1.1.1. Analysis and conclusion

In our view, proxy advisory firms are not in the business of advising in the purchase or sale of securities, and therefore, should not be required to register as "advisers" under our securities acts. Although proxy advisory firms provide advice when they make vote recommendations to their clients regarding proposals put to shareholders at shareholders' meetings, this advice is most often not directly with respect to an investment in securities or the purchase or sale of securities.

Moreover, the activities of proxy advisory firms do not fit within the principles underlying the registration regime since these activities have little connection with registration in the traditional sense and are remote from the protection of retail investors.

As our objective would be to regulate proxy advisory firms as market participants and not necessarily to specifically regulate their relationships with clients, the application of the principles of registration would pose a challenge.

An additional difficulty is that the registration requirements and the registrant obligations under NI 31-103 are not tailored to the business of proxy advisory firms.

If we chose to regulate proxy advisory firms as advisers, we would have to consider whether our current fitness requirements for registered advisers based on the principles of proficiency, integrity and solvency are appropriate. Once registered, proxy advisory firms would then be subject to our oversight through our compliance review programme and our enforcement function.

Conclusion

Our registration regulatory framework was not designed to regulate the proxy advisory industry, since proxy advisors do not directly provide investment advice, do not execute trades or manage any client money. If we were to suggest that proxy advisors register as "advisers", we believe that significant amendments would need to be made to the registration framework to accommodate the regulation of proxy advisors. For these reasons, we conclude that the existing registration framework is not appropriate for proxy advisors.

5.1.2. Proxy solicitation requirements

As noted previously, NI 51-102, a rule that generally applies to reporting issuers, excludes from the definition of "solicit" the function of providing proxy voting advice. Specifically, the definition of "solicit" does not include a proxy advisory firm communicating to security holders, as clients, if the communication is in the ordinary course of business, the firm discloses any potential conflicts of interest, the firm receives remuneration only from clients, and the proxy voting advice is not given on behalf of a person soliciting proxies.

5.1.2.1. Analysis and conclusion

If we opted to regulate proxy advisory firms through the existing proxy solicitation framework, we would have to either remove the exception to the definition of "solicit" or add further conditions to that exception.

If we proposed to remove the exception, proxy advisory firms would be required to prepare and send a proxy circular to securityholders as required by Part 9 of NI 51-102. In our view, this is not the right outcome for regulating proxy voting advice.

Alternatively, we could propose additional conditions to the exception. Further conditions, in our view, would only be added if they related to the general business of a proxy advisory firm. We may not be able to add conditions to require proxy advisory firms to implement policies to deal with conflicts of interest or require disclosure of methodologies supporting the vote recommendations of proxy advisory firms without amending our securities acts to obtain rule-making authority to do so.

Conclusion

We do not believe that the activities of proxy advisory firms amount to "soliciting" proxies nor is preparing and sending a proxy circular the proper response to the concerns raised. Our view is supported by the fact that proxy voting advice is not considered as soliciting under our existing proxy solicitation rules, as evidenced by the exception to the definition of "solicit". Proxy solicitation rules should only apply if the person is actually soliciting proxies.

Furthermore, if we chose to regulate proxy advisory firms through the proxy solicitation requirements in NI 51-102, we would be creating a regulatory framework for proxy advisors in a rule that is designed to apply mainly to reporting issuers.

For these reasons, we do not believe that the proxy solicitation regulatory framework contained in NI 51-102 is an appropriate securities regulatory framework for proxy advisors.

5.2. Adoption of a new securities regulatory framework

To the extent that we conclude that a securities regulatory response is warranted, our preferred securities regulatory solution would be the creation of a new stand alone securities regulatory instrument. Such an instrument would require clear legislative authority to regulate proxy advisory firms. This approach would not attempt to compel proxy advisors to comply with requirements of existing regimes that were not designed with them in mind.

Amendments to our securities acts in order to obtain legislative authority to regulate proxy advisory firms will be necessary to implement this securities regulatory framework.

5.2.1. Requirements and disclosure framework

The framework described below could be set out in a rule that would be directed at proxy advisory firms. The rule could spell out the requirements for a proxy advisory firm in the business of "making" vote recommendations on proposals put to a vote at shareholders' meetings of Canadian reporting issuers.

The rule would include our securities regulatory proposals that we consider warranted to respond to conflicts of interest concerns, and increase transparency in the activities of proxy advisory firms.

In summary, possible requirements could be as follows:

1. to mitigate conflicts of interest,

    a. proxy advisory firms would be required to have policies and procedures designed to identify and manage any potential conflicts of interest that arise in connection with the issuance of a vote recommendation. A firm would have policies to deal with employee conflicts and ownership conflicts;

    b. proxy advisory firms would be required to disclose on their website the procedures in place to mitigate or address conflicts. Disclosure of a specific conflict in a vote recommendation report to their clients could also be required; and

    c. proxy advisory firms would separate their proxy voting services from the advisory or consulting services;

2. to increase transparency in the activities of proxy advisory firms,

    d. proxy advisory firms would disclose internal procedures, guidelines, standards, methodologies, assumptions and sources of information supporting vote recommendations;

    e. proxy advisory firms would implement policies that describe their processes to deal fairly with comments from issuers by allowing issuers an opportunity to review the reports and proxy advisory firms to respond to issuers' comments prior to the issuance of the report. The details of the policies would be disclosed on the firms' websites;

    f. proxy advisory firms would disclose on their websites the procedures they implement in developing their voting policy guidelines.

Based on our analysis, this would be the preferred securities regulatory framework for any potential regulation of proxy advisory firms.

5.2.2. Other possible securities frameworks considered

We've also considered the following frameworks and are seeking comments on these alternatives.

Designation framework

Some market participants have indicated that proxy advisory firms should be regulated in a manner similar to the regulation of credit rating organizations.

The securities regulatory framework contemplated for credit rating organizations may be a possible approach to respond to the conflicts of interest and transparency concerns raised regarding proxy advisory firms. In addition, a component of the designation framework would be the oversight function in the form of compliance reviews performed by regulators.

However, we do not believe that there are sufficient similarities to make it necessary to "designate" proxy advisory firms. Unlike credit rating organizations, proxy advisors do not have a formal role recognized in securities legislation; securities rules do not have requirements that rely on the activities of proxy advisory firms.

In our view, and for reasons mentioned above, it is not advisable to impose entry requirements nor appropriate for securities regulators to perform the requisite compliance oversight functions for proxy advisory firms as the role of proxy advisors is different to other entities whose activities are relied upon as part of other securities law requirements.

Certification framework

A certification securities regulatory framework requires an appropriate person to certify compliance with specific requirements in a rule. The rule would have to include requirements that may be similar to those identified above in section 5.2.1. We could then require that proxy advisory firms designate an appropriate organizational representative to certify that they have complied with the requirements.

Alternatively, we could require certification only with regards to certain requirements in the rule. For example, proxy advisory firms could certify that they have controls in place to mitigate conflicts of interest or to ensure accuracy of data used for their recommendations.

We are concerned that this securities regulatory approach may impose unnecessary burdens for proxy advisory firms. In order to provide a valid certification of compliance with the specific requirements, proxy advisory firms could potentially incur significant additional costs.

Comply or explain framework

A comply or explain securities regulatory framework would require proxy advisory firms to comply with specific best practices or guidelines, and to explain, if they have not complied with the practices and guidelines, why not. This framework would require securities regulators to determine what best practices and standards are for the proxy advisory industry (for example, the potential requirements identified above in section 5.2.1). These would be set out in a rule.

This would be a less intrusive and more incremental regulatory approach that would be appropriate if there are not valid reasons for an approach requiring strict compliance with specific rules for proxy advisory firms. However, it would require us to develop the practices and standards appropriate for proxy advisory firms.

Best practices guidance

Another option would be to adopt a policy that would give guidance on best practices for proxy advisory firms. This approach would be similar to a "comply or explain" model to the extent that securities regulators would determine what best practices are for proxy advisory firms. It would be a minimally intrusive form of potential regulation.

However, if the concerns and impact on market integrity are valid and significant, this option may not be sufficient as it would not provide securities regulators with the ability to ensure and enforce compliance as compared to a rule-based approach. Also, similar to the "comply and explain" approach, securities regulators would be required to develop the requisite best practices for proxy advisory firms.

5.3. Specific request for comment

We specifically seek comments in response to the following questions from *all market participants*:

General

1. Do you agree, or disagree, with each of the concerns identified in the Consultation Paper, namely: (i) potential conflicts of interest, (ii) perceived lack of transparency, (iii) potential inaccuracies and limited engagement with issuers, (iv) potentially inappropriate influence on corporate governance practices, and (v) the extent of reliance by institutional investors on the advice of such firms? Please explain and, if you disagree, please provide specific reasons for your position.

2. Are there other material concerns with proxy advisory firms that have not been identified? Please explain.

3. Are there specific gaps in the current practices of proxy advisory firms which justify regulatory intervention? Is there a concern that future gaps could be created as a result of new entrants or changes in business or other practices?

4. Do you believe that the activities of proxy advisory firms should be regulated in some respects and, if so, why and how?

Potential conflicts of interest

5. To what extent do you consider proxy advisory firms to: (i) be subject to conflicts of interest in practice, (ii) already have in place appropriate conflict mitigation measures, and (iii) be sufficiently transparent regarding the potential conflicts of interests they may face? If you are of the view that current disclosure by proxy advisory firms regarding potential conflicts of interest is not sufficient, please provide specific examples of such insufficient conflicts of interest disclosure and suggestions as to how such disclosure could be improved.

6. If you are of the view that there are conflicts of interest within proxy advisory firms that have not been appropriately mitigated, which of these are the most serious in terms of the potential (negative) impact on development of their voting recommendations and why?

7. Should we propose an amendment to NI 51-102 to require reporting issuers to disclose consulting services from proxy advisors in their proxy circular? Or would such disclosure undermine the existing controls and procedures (i.e., "ethical wall") in place which currently may prevent proxy advisory firm research staff who review an issuer's disclosure from being made aware of the identity of their firm's consulting clients?

Perceived lack of transparency

8. Could disclosure of underlying methodologies and analysis provide beneficial information to the market or would the commercial costs of doing so be too significant?

Issuer engagement

9. To what extent could there be an improvement in the dialogue with issuers during the vote recommendation process?

10. During proxy season, is it appropriate for a proxy advisory firm to engage with issuers in all circumstances or are there legitimate business and policy reasons why it should not be required to do so? Are there certain special types of situations where it is more important that issuers are able to engage with proxy advisory firms?

11. If a proxy advisory firm, as a matter of policy, believes that there are certain circumstances where it is not appropriate for it to give issuers an opportunity to review its reports, would it be sufficient to only require in these circumstances that the underlying rationale for such policy be disclosed? Please explain. Or, alternatively should proxy advisory firms be required to provide issuers with an opportunity to review their reports in all circumstances?

12. Should we prescribe the details of the processes that proxy advisory firms implement to engage with issuers? If so, what do you suggest the requirements should be?

Potentially inappropriate influence on corporate governance practices

13. To what extent should there be a more fair and transparent dialogue between proxy advisors and market participants on the development of voting policies and guidelines? Is it sufficient for proxy advisors to address governance matters by soliciting comments from their clients?

Proposed regulatory responses and framework(s)

14. Do you think a securities regulatory response is warranted in connection with each of the concerns identified above? Please explain why or why not.

15. Do you agree with the suggested securities regulatory responses to each of the concerns raised? If not, what alternatives would you suggest?

16. Do you agree or disagree with the requirements and disclosure framework set out in section 5.2.1 to address the concerns identified? If not, please indicate why. Would you prefer instead one of the other suggested securities regulatory frameworks identified above? If so, please indicate why. Do you agree or disagree with our analysis of these frameworks? Do you have suggestions for an alternative regulatory framework?

17. Are you of the view that we should prescribe requirements in addition to or instead of those identified above for proxy advisory firms?

Additional questions for *institutional investors:*

18. To what extent and in what ways do you rely on the services provided by proxy advisory firms? Please be as specific as possible.

19. How do you view your duty to vote and how do the vote recommendations of proxy advisory firms play a part in your decision-making process?

20. Do institutional investors have the ability to require changes to proxy advisory firms' practices without the need for regulatory intervention?

21. Assuming you share the concerns identified above, do lack of choice/competition or other market factors in the proxy advisory industry limit your ability to address these concerns directly such that regulatory intervention is warranted? Please explain.

22. Given the above-noted concerns regarding the overall quality and lack of transparency underlying the vote recommendations of proxy advisory firms, what measures do you take and, overall, how do you gain assurance that such recommendations are reliable for your voting purposes?

23. Do you view the policy development process and resulting proxy voting guidelines of proxy advisory firms as appropriate and reflective of your governance preferences and views? Would input from issuers further benefit or potentially hinder such process?

Additional questions for *issuers*:

24. Overall, what has been your experience with proxy advisory firms? Please be as specific as possible.

25. Do you believe that the concerns identified negatively affect voting outcomes at shareholders' meetings? Please provide specific examples of situations where any of the concerns identified above resulted in what you consider to be an inappropriate vote outcome and describe the nature and extent of the harm caused to market integrity.

26. To what extent do you adopt the corporate governance standards proposed by proxy advisory firms in your choice of corporate governance policies, even if such standards are not appropriate for your organization? Please provide examples of the types of practices that have been changed due to a proxy advisory firm's guidelines and why such changes were not appropriate or did not improve your organization's overall corporate governance.

27. In those instances where you have identified potential inaccuracies in a proxy advisory firm's recommendation, were these material inaccuracies that would have resulted in a change in the proxy advisory firm's vote recommendation? Please provide specific examples of how this situation resulted in an improper vote outcome (i.e., what was the risk to market integrity).

Additional questions for *proxy advisory firms*:

28. What are your views with respect to the concerns identified and with any of the possible regulatory approaches to these concerns?

29. In connection with the possible regulatory approaches, do you have concerns about disclosure of confidential or proprietary information? Please explain.

30. What impact could the preferred securities regulatory framework (requirements and disclosure) have on your operations? Please provide details and, where appropriate, propose an alternate approach.

31. In addition to your responses to the questions posed, we also welcome any additional information and data you can provide to inform our continued review and analysis of the issues identified in the Consultation Paper.

REQUEST FOR COMMENT

The CSA is publishing the Consultation Paper for a 60-day comment period. Please send your comments in writing on or before August 20, 2012. All submissions should refer to "CSA Consultation Paper 25-401". This reference should be included in the subject line if the submission is sent by e-mail. Regardless of whether you are sending your comments by email, you should also send or attach your submissions in an electronic file in Microsoft Word, Windows format.

Please address your submission to the following securities regulators:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Please send your comments **only** to the address below. Your comments will be forwarded to the other CSA member jurisdictions.

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Fax : 514-864-6381
e-mail: consultation-en-cours@lautorite.qc.ca

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318
e-mail: jstevenson@osc.gov.on.ca

All comments will be posted on the AMF website at www.lautorite.qc.ca and the websites of the other CSA jurisdictions. We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Questions

Please refer your questions to any of:

Rosetta Gagliardi
Senior Policy Advisor
Autorité des marchés financiers
514-395-0337 ext. 4462
rosetta.gagliardi@lautorite.qc.ca

Naizam Kanji
Deputy Director, Mergers & Acquisitions, Corporate Finance
Ontario Securities Commission
416-593-8060
nkanji@osc.gov.on.ca

Stephanie Tjon
Legal Counsel, Mergers & Acquisitions, Corporate Finance
Ontario Securities Commission
416-593-3655
stjon@osc.gov.on.ca

Bob Bouchard
Director
Manitoba Securities Commission
204-945-2555
bob.bouchard@gov.mb.ca

Celeste Evancio
Legal Counsel
Alberta Securities Commission
403-355-3885
celeste.evancio@asc.ca

June 21, 2012

APPENDIX A

Regulatory Initiatives Internationally

1. France

AMF France issued *AMF Recommendation No. 2011-06 of 18 March, 2011 on Proxy Advisory Firms* (the AMF Recommendation). A recommendation is a proposal to adopt behaviour or comply with a provision that, in AMF France's view, would make it easier to achieve the aims of the standards or general principles under its jurisdiction, without denying that other behaviours or provisions may also be consistent with these standards or principles. Recommendations are not mandatory.

The AMF Recommendation "addresses the issues of establishing and implementing voting policies, issuing voting recommendations, communicating with listed companies, and preventing conflicts of interest."[40] The objective of the AMF Recommendation is to promote transparency and manage conflicts of interest.

Establishing and issuing the voting policy

AMF France recommends that proxy advisory firms publish their general voting policies on their website. AMF France also recommends that the voting policy be established through a transparent process so that the opinions of investors and other market participants can be taken into consideration.

Issuing vote recommendations

AMF France recommends that proxy advisory firms define their methodologies to be used by their staff for their analyses and vote recommendations and publish them on their website.

Proxy advisory firms explain, in their reports, the reasons for the vote recommendations in particular with respect to their published general voting policy.

Communicating with the issuers

AMF France recommends that draft reports be submitted to issuers for review. The issuer would be given at least 24 hours to provide comments. The comments will be included in the report if they are concise and help the investor understand the resolution to be voted on. The final report is sent to issuers at the same time as it is sent to clients.

Proxy advisory firms have to correct any substantive error found in their reports and reported by the issuers.

The policy on communication with issuers would be published on their website.

Preventing conflicts of interest

AMF France recommends that proxy advisory firms define and post on their websites reasonable and appropriate measures to prevent potential conflicts of interest involving the firm, their executive directors and their analysts. Procedures should be specified for conflicts that arise when other activities are involved, for example, advising issuers, providing voting platform, and proxy solicitation.

Measures and procedures are included in a code of ethics or a code of conduct. A compliance officer is designated to ensure compliance with such codes.

Proxy advisors would state in their reports any ties that exist with:

- the issuer;
- a client that is submitting items for the agenda of an issuer on which the proxy advisor is preparing a vote recommendation;
- the persons who directly or indirectly control the issuer.

[40] *AMF Recommendation*, Introduction.

2. European Commission

The European Commission published for comment on April 5, 2011 the *Green Paper: The EU corporate governance framework* (Green Paper) aimed at assessing the need for improvement of corporate governance in European listed companies. The Green Paper highlighted the concerns raised by investors and issuers concerning proxy advisory firms and asked the following questions:

- Should EU law require proxy advisors to be more transparent, e.g. about their analytical methods, conflicts of interest and their policy for managing them and/or whether they apply a code of conduct? If so, how can this best be achieved?

- Do you believe that other (legislative) measures are necessary, e.g. restrictions on the ability of proxy advisors to provide consulting services to investee companies?[41]

The European Commission published responses to these questions an November 15, 2011. For the first question, the European Commission summarized the responses as follows:

> More than three quarters of respondents who provided an answer to this question agree that EU law should require proxy advisors to be more transparent. Amongst others, respondents mentioned that proxy advisors should be more transparent about the following issues: their methodology for preparing voting advice, voting policies and records, conflicts of interest and the system in place to manage them, whether a code of conduct applies or whether there are internal rules of conduct, applicable procedures for contacting companies when preparing the advice and stewardship policies. A number of respondents believe that in particular the issue of conflicts of interest of proxy advisors should be addressed. Moreover, some respondents are of the view that proxy advisors should be required to register and become supervised entities. It was also mentioned that institutional investors should disclose when they make use of the services of a proxy advisor.[42]

As for the second question, the responses are summarized as follows:

> A small majority of respondents who provided an answer to this question believe that other measures are necessary to address conflicts of interest of proxy advisors. A number of respondents suggested that there should be mandatory separation of services to investors and services to companies, while a few respondents mention that it should be disclosed if proxy advisors also provide services to investee companies. Respondents who provided a negative answer to the question said that the issue could be addressed through self-regulation or codes, or were of the opinion that the issue would be resolved if there were sufficient disclosure on conflicts of interest.[43]

In July 2011, the Department for Business, Innovation and Skills in the UK published the *UK Government Response to the European Commission Green Paper: The EU corporate governance framework*. The UK response to the Green Paper included the views of the Financial Services Authority. The UK's responses to questions 18 and 19 of the Green Paper are:

> Q 18: We understand that ESMA has recently issued a questionnaire to proxy advisors in order to research a possible discussion paper on the role of proxy advisors. The results of this exercise should be awaited before taking any firm decisions. We note that so far the evidence on whether proxy advisory functions pose risks that require a regulatory response is mixed.
>
> Q 19: Unless there is clear evidence that a regulatory response is necessary and justifiable in cost benefits terms, the UK would favour non-regulatory measures, such as an appropriately worded code of conduct against which proxy advisors make disclosure, to address any problems identified in this area.[44]

3. ESMA Discussion Paper

The European Securities and Markets Authority (ESMA) published for comment on March 22, 2012 the Discussion Paper *An Overview of the Proxy Advisory Industry - Considerations on Possible Policy Options* (the ESMA Paper). ESMA did not suggest any formal proposals for policy action related to proxy advisors but rather intends "to gain evidence on the extent to which

41 European Commission, *Green Paper: The EU corporate governance framework*, April 5, 2011, Questions 18 and 19, at page 15.

42 European Commission, *Feedback Statement: Summary of Responses to the Commission Green Paper on the EU Corporate Governance Framework*, November 15, 2011, at page 14.

43 Ibid., at page 15.

44 Department for Business, Innovation and Skills, *UK Government Response to the European Commission Green Paper: The EU corporate governance framework,* July 2011, at pages 14 and 15.

market failures related to the activities of proxy advisors may exist, the extent to which EU-level intervention might be appropriate, and what ESMA's role might involve."[45]

The ESMA Paper explored the issues that can be seen as factors which potentially influence the accuracy, independence and reliability of the proxy advice given to investors, such as the potential for conflicts of interest. Also considered are the degree of transparency on management of the conflicts of interest, the voting policies and guidelines, dialogue with issuers, vote recommendations and the procedures for elaborating a recommendation report.

ESMA put forth the following policy options that it will consider and on which it seeks input from market participants.[46]

1. No EU-level action at this stage

   This option would reflect that there are different markets within the EU, and that overall, the proxy advisory industry in Europe is still developing. Under this option, it would be up to each Member State (or industry) to develop the appropriate standards they consider necessary.

2. Encouraging Member States and industry to develop standards

   Under this option, there may be some form of informal engagement between the European authorities (ESMA, the European Commission), Member States, and/or industry to develop standards that are appropriately tailored for the European markets, either in the form of national codes developed by Member States or by encouraging proxy advisors to develop their own code of conduct.

3. Quasi-binding EU-level regulatory instruments

   This option would involve developing regulatory instruments, but this would not be in the form of binding legislation. One form would be developing standards on a "comply or explain" basis which would be underpinned by an EU Regulation or Directive. A second possibility would be ESMA guidelines or recommendations.

4. Binding EU-level legislative instruments

   This would involve the introduction of binding EU legislation. This approach might also include additional measures on authorization or registration and supervision by national competent authorities or ESMA.

[45] ESMA, Discussion Paper *An Overview of the Proxy Advisory Industry - Considerations on Possible Policy Options*, March 22, 2012, at page 5.

[46] Ibid., at page 5 and pages 34-38.

1.1.5 OSC Staff Notice 45-708 – Introduction of Electronic Report of Exempt Distribution on Form 45-106F1

OSC Staff Notice 45-708 – *Introduction of Electronic Report of Exempt Distribution on Form 45-106F1* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

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OSC Staff Notice
Introduction of Electronic Report of Exempt Distribution on Form 45-106F1

OSC Staff Notice 45-708
June 21, 2012

Staff of the Ontario Securities Commission (OSC) want to notify issuers, underwriters and their advisers that an electronic version (the E-form) of Form 45-106F1 *Report of Exempt Distribution* is being made available on the OSC website as of today. Issuers and underwriters that are required to prepare and file a report of exempt distribution on Form 45-106F1 (the Report) may now choose to prepare and file the Report using the E-form, instead of in paper format.

At this time, filing the Report electronically is voluntary, although we anticipate moving towards mandatory electronic filings in the future. Filers may continue to prepare and send in the paper version of the Report. However, we encourage filers to use the E-form whenever possible, as we anticipate that it will be faster and more efficient.

Report of exempt distribution (Form 45-106F1)

Section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) requires:

- issuers that distribute their own securities, and
- underwriters that distribute securities they acquired under section 2.33 of NI 45-106 (acting as underwriter)

to file a Report if a distribution is made in reliance on certain specified prospectus exemptions. The Report must be filed no later than 10 days after the distribution. In certain cases, investment funds are permitted to file the Report no later than 30 days after the financial year-end of the investment fund.

The exemptions that require the filing of a Report include some of the most commonly used prospectus exemptions in Ontario, including the accredited investor exemption (section 2.3) and the minimum amount investment exemption (section 2.10). The Report contains key information, including the name of the issuer or underwriter that distributed the securities, the exemption(s) relied on to effect the distribution, the type of securities that were distributed and detailed purchaser information. Until now, the Report was only available in paper format in Ontario.

Introducing an electronic version of the Report

The exempt market is a significant part of Ontario's capital markets. The total amount of capital raised through exempt distributions reported to the OSC in 2011 was approximately $142.9 billion. Approximately $86.5 billion of that amount was raised in Ontario. Information contained in filed Reports provides the OSC with insight into this exempt market activity, which would otherwise not be readily available. Having reliable information on exempt distributions is an important tool which may be used to inform the OSC's policy making initiatives.

Every year, thousands of Reports are filed with the OSC. Our goal in providing an E-form is to both make it easier for filers to prepare and file the Report, and also to facilitate the OSC's ability to review the data contained in the Report.

Obtaining the data electronically will make it possible for us to search and sort the data more efficiently and improve the quality of the data we receive.

The information required to be included in the Report has not changed and no new reporting requirements are being added at this time.

Training sessions

We plan to hold public training sessions on preparing and filing the E-form. These sessions will be open to anyone and will be most useful to those responsible for preparing the Report. There are two sessions currently scheduled, as follows:

- Friday July 20, 2012 from 1:00 to 2:30 p.m.
- Wednesday July 25, 2012 from 1:00 to 2:30 p.m.

If you are interested in attending one of these sessions, please contact us at E-formtraining@osc.gov.on.ca by Friday, July 6, 2012 to register.

Answers to key questions about the E-form

We have attached to this notice a list of questions and answers on preparing and filing the E-form. Note also that the OSC is concurrently publishing, along with this notice, a staff notice (OSC Staff Notice 45-709) on tips for preparing and filing the Report. For more detailed guidance on how to comply with the requirements of the Report, see this OSC Staff Notice.

Questions

Questions about how to file the Report may be directed to either Moses Seer or Shaill Bahuguna. Questions about the requirements in NI 45-106 relating to Reports may be referred to Frederick Gerra or Elizabeth Topp.

Moses Seer, Administrative Support Clerk Corporate Finance Tel: 416.593.3684 Email: mseer@osc.gov.on.ca	**Shaill Bahuguna, Database Clerk** Investment Funds Tel: 416.593.3678 Email: sbahuguna@osc.gov.on.ca

Elizabeth Topp, Senior Legal Counsel Corporate Finance Tel: 416.593.2377 Email: etopp@osc.gov.on.ca	**Frederick Gerra, Legal Counsel** Investment Funds Tel: 416.204.4956 Email: fgerra@osc.gov.on.ca

Questions about the electronic report of exempt distribution on Form 45-106F1

1. Where can I find a link to the E-form?

A link to the E-form can be found on the Ontario Securities Commission (OSC) website at www.osc.gov.on.ca, under the "Frequently Used Forms" section of the website.

2. If I am required to pay an activity fee when I submit the E-form, how would I do this?

Please mail a cheque to the OSC referencing the confirmation number that you receive when you electronically submit the E-form. The cheque should be made payable to the "Ontario Securities Commission" and mailed to:

Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario M5H 3S8

For the amount of the fee payable, please refer to OSC Rule 13-502 *Fees*.

3. How do I save a copy of the E-form once I have started entering the required information?

Click on the "Save" button located on the upper right hand corner of the E-form to save a copy at any time. When you first save the E-form you will be prompted to enter an e-mail address where a link to the saved form will be sent. The link to the saved E-form will remain active for 10 days. You can print a copy or e-mail the link to others for review.

4. What if an error was made in the E-form I submitted?

You must file an amended E-form by selecting Amended Submission on the Start page and reference the confirmation number that you received when you submitted your Initial Submission when prompted.

5. How do I sign and certify the E-form?

If you are an officer who is authorized on behalf of the issuer or underwriter to certify that the statements made in the E-form are true, fill in the information on the Certificate page at the end of the E-form and provide your name, title and signature in the appropriate fields.

If you are an agent (i.e. law firm) authorized to submit the E-form on behalf of the person signing the E-form, fill in their information on the Certificate page at the end of the E-form, then check the box to indicate you are authorized to complete and file the E-form on behalf of the person signing the E-form and provide your name and title. Please ensure that you have obtained appropriate authority from the issuer or underwriter to complete and submit the E-form.

6. Can I provide the Schedule 1 in any document format, including Word or Excel?

Schedule 1 includes specific information about each purchaser that acquired securities in the exempt distribution. We have provided an Excel spreadsheet that can be used for this purpose. Providing a separate spreadsheet will enable filers to save the spreadsheet to their computer and work on it separately from the E-form. This will be useful where there is a large number of purchasers to include in the schedule. In order for us to be able to review and sort the data provided in the Schedule 1, it needs to be in a consistent format. Therefore, at this time, we can only accept the Schedule 1 in the Excel template provided.

7. Why are there two versions of the E-form?

One version is for non-investment fund issuers and the other version is for investment fund issuers reporting exempt distributions as required by section 6.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*. As non-investment fund issuers and investment fund issuers generally have different filing deadlines for the Report (either 10 days after the distribution for non-investment fund issuers, or in the case of investment fund issuers, up to 30 days after the fund's financial year-end) and different distribution models, providing two versions of the E-form will make it easier for issuers, underwriters and their advisers to file the Report and should also allow OSC staff the ability to better collect the data from each respective segment of the market.

8. Can I file the E-form with other jurisdictions?

Currently the E-form is available in Ontario only. The only other jurisdiction that currently accepts electronic filing of the Report is British Columbia, however the B.C. system works differently. In addition, B.C. has a separate form of report of exempt distribution on Form 45-106F6 *British Columbia Report of Exempt Distribution* which is different from the E-form.

9. Do I have to use the E-form to file Reports?

Filing the Report using the E-form is voluntary at this time. We strongly encourage issuers and underwriters to use the E-form as it should make the filing process faster and more efficient. It will also assist the OSC in compiling data on the exempt market. We anticipate moving towards mandatory electronic filing in the future.

10. What is the deadline for filing the E-form?

Reports are due no later than 10 days after the distribution date. In certain cases, Investment Funds may file the Report not later than 30 days after the financial year-end of the fund. See Part 6 of NI 45-106 for information about filing deadlines.

You may submit the E-form electronically at any time of the day. E-forms submitted and received by the OSC by 11:59 p.m. on the day that they are due will be considered to be filed on time. Ensure that you allow sufficient time for the E-form and any related attachments (such as Schedule 1) to be uploaded and received by the OSC's server.

1.1.6 OSC Staff Notice 45-709 – Tips for Filing Reports of Exempt Distribution

OSC Staff Notice 45-709 – *Tips for Filing Reports of Exempt Distribution* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

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TIPS FOR FILING REPORTS OF EXEMPT DISTRIBUTION

OSC Staff Notice 45-709

June 21, 2012

Purpose

OSC Staff have prepared this notice to provide guidance to issuers, underwriters and their advisors in filing reports of exempt distribution in Ontario under National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106).[1]

Background

Securities legislation in Ontario prohibits the distribution of securities without a prospectus for which a receipt has been issued. NI 45-106 contains a number of exemptions from the prospectus requirement under which exempt distributions may be made. Part 6 of NI 45-106 requires issuers or underwriters relying on the prospectus exemptions specified in that Part to report exempt distributions and sets out the form of report required to be filed as well as the deadlines for filing the report.

Issuers and underwriters involved in exempt distributions must determine when a distribution has occurred in Ontario. For additional guidance on when a distribution has occurred in Ontario, issuers and underwriters should refer to:

- relevant case law, including the recent decision *Crowe et al. v. Ontario Securities Commission*,
- applicable OSC rules and related companion policies (for example Part 6 of NI 45-106 and related guidance in the companion policy), and
- other relevant notices, such as Interpretation Note 1 *Distributions of Securities Outside Ontario* (March 25, 1983) and proposed Multilateral Instrument 72-101 *Distributions Outside of the Local Jurisdiction*) (September 8, 2000).

If there is uncertainty as to whether a distribution has occurred in Ontario, we recommend that the report should also be filed in Ontario.

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[1] CSA Staff Notice 45-308 – *Guidance for Preparing and Filing Reports of Exempt Distribution* under National Instrument 45-106 *Prospectus and Registration Exemptions* also provides guidance on compliance with the reporting requirements in NI 45-106.

Tips

The following are tips to assist issuers, underwriters and their advisors in filing reports of exempt distribution in Ontario under NI 45-106. Please note this staff notice is not meant to be a complete checklist for these reports, but rather a quick reference tool to enable an issuer or underwriter to avoid certain deficiencies in completing and filing reports of exempt distribution.

1 File the report in the correct form.

In Ontario, the correct form of report of exempt distribution under NI 45-106 is Form 45-106F1 (Form F1). See section 6.3 of NI 45-106.

The British Columbia Securities Commission (BCSC) recently introduced an alternate report of exempt distribution, Form 45-106F6 (Form F6). Exempt distributions in British Columbia (BC) which occurred on or after October 3, 2011 must be reported to the BCSC using Form F6[2]. Exempt distributions in both BC and Ontario must be reported to the BCSC using Form F6 and to the OSC using Form F1.

Note that an electronic version of Form F1 is now available on the OSC's website in addition to the paper form.

2 File the report on time.

Reports of exempt distribution are due no later than 10 days after the distribution date. See section 6.1(2) of NI 45-106.

Investment funds are not required to file a report within 10 days of the distribution date for a distribution under section 2.3 [*Accredited investor*], section 2.10 [*Minimum amount*] or section 2.19 [*Additional investment in investment funds*] if the fund files the report not later than 30 days after the financial year-end of the fund. See section 6.2(2) of NI 45-106.

3 Identify the correct prospectus exemption relied on for the distribution in Ontario.

An issuer or underwriter must indicate in Form F1 the prospectus exemption(s) relied on for the distribution.

Issuers and underwriters should note that the following prospectus exemptions are <u>not</u> available in Ontario: section 2.5 [*Family, friends and business associates*], section 2.9 of NI 45-106 [*Offering memorandum*] and section 5.2 [*TSX Venture Exchange offering*].

[2] In limited cases, the BCSC will accept the Form F1 instead of the Form F6. Issuers that have distributed securities in BC should review BC Instrument 45-533 *Exemptions from Form 45-106F6* to determine if they may file the Form F1 in BC instead of the Form F6.

An issuer or underwriter should indicate in Schedule I to Form F1 a valid prospectus exemption for the distribution to each purchaser. This may necessitate reporting in Schedule I multiple exemptions relied on for the distribution to the same purchaser where the distribution is made in more than one jurisdiction and the same exemption is not available in those jurisdictions.

4 Ensure that the identified purchase price of the securities distributed is correct.

In order to rely on the prospectus exemption in section 2.10 [*Minimum amount investment*], the purchase price must be at least $150,000 (among other conditions). If an issuer or underwriter relies on this exemption, it should ensure that the purchase price set out in item 7 of Form F1 and Schedule 1 to Form F1 is at least that minimum amount.

5 If the purchase price for the securities distributed is $0, provide an explanation.

The purchase price for the securities distributed is required to be disclosed in item 7 of Form F1 and Schedule 1 to Form F1. The purchase price may be $0 where no funds are raised, and instead property is being acquired. These distributions may be completed under several different prospectus exemptions. If the distribution is being made under a prospectus exemption other than section 2.12 [*Asset acquisition*] or section 2.13 [*Petroleum, natural gas and mining properties*], the issuer or underwriter should include a footnote explaining the reason for the purchase price of $0.

6 Disclose all commissions and finder's fees.

Item 8 of Form F1 requires information regarding compensation received or to be received by any person in connection with the distribution. Compensation includes commissions, discounts or other fees or payments of a similar nature. Compensation does not include payments for services incidental to the distribution (such as clerical, printing, legal or accounting services).

7 Provide complete information regarding convertible or exchangeable securities distributed.

Item 6 of Form F1 requires information regarding the security distributed. If the security is convertible or exchangeable into an underlying security, the issuer or underwriter must include in the form:

- a description of the underlying security,
- the terms of conversion or exercise, and
- any expiry date.

8 Ensure that the information in both the Form F1 and Schedule 1 to Form F1 is consistent.

The number of purchasers, jurisdiction of residence, price per security and total dollar value raised from purchasers in each jurisdiction must be completed in item 7 of Form F1. Schedule 1 to Form F1 requires an issuer or underwriter to report the name of the purchaser, number and type of securities, total purchase price, prospectus exemption relied on and the date of the distribution. Issuers and underwriters should verify that the information included in item 7 of Form F1 and Schedule 1 is correct and consistent.

9 Ensure that all purchasers are identified in Schedule 1 to Form F1.

Schedule 1 to Form F1 should include a complete list of purchasers under the distribution, including purchasers that reside in Ontario, purchasers that reside in other Canadian jurisdictions and purchasers that reside outside of Canada.

If the distribution is made in more than one Canadian jurisdiction, the issuer or underwriter must complete a single Form F1 identifying all purchasers and file that report in each of the Canadian jurisdictions (other than BC) in which the distribution is made. As noted above, the issuer or underwriter must file a Form F6 with the BCSC.

10 Ensure that the correct number of purchasers is set out in Form F1.

Item 7 of Form F1 requires the total number of purchasers in each jurisdiction. The number of purchasers refers to the number of investors and not to the number of securities each purchaser purchased.

11 Date and sign the Form F1.

An issuer or underwriter must include the date and the signature of the person identified as signing the form in the certificate section of the Form F1.

12 Ensure that the correct fees are paid.

A filing fee must accompany a Form F1 for a distribution of securities of an issuer that is not subject to a participation fee. Refer to OSC Rule 13-502 *Fees*.

Questions

Questions may be referred to:

Jo-Anne Matear, Manager Corporate Finance Branch Tel: 416.593.2323 Email: jmatear@osc.gov.on.ca	**Elizabeth Topp, Senior Legal Counsel** Corporate Finance Branch Tel: 416.593.2377 Email: etopp@osc.gov.on.ca
Carolyn Slon, Legal Counsel Corporate Finance Branch Tel: 416.593.2364 Email: cslon@osc.gov.on.ca	**Melissa Schofield, Senior Legal Counsel** Investment Funds Branch Tel: 416.595.8777 Email: mschofield@osc.gov.on.ca
Moses Seer, Administrative Support Clerk Corporate Finance Branch Tel: 416.593.3684 Email: mseer@osc.gov.on.ca	

1.2 Notices of Hearing

1.2.1 Thirdcoast Limited and Parrish & Heimbecker, Limited

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

AND

IN THE MATTER OF
THIRDCOAST LIMITED AND
PARRISH & HEIMBECKER, LIMITED

NOTICE OF HEARING
(Section 127)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing (the "Hearing") at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario commencing on Wednesday, July 4, 2012 at 10:00 a.m. or as soon thereafter as the Hearing can be held;

TO CONSIDER whether it is in the public interest to make a cease trade order in respect of the shareholder rights plan of Thirdcoast Limited pursuant to an application by Parrish & Heimbecker, Limited.

AND TO CONSIDER whether it is in the public interest to make a cease trade order in respect of the lock-up agreements of Parrish & Heimbecker, Limited pursuant to an application by Thirdcoast Limited.

Dated at Toronto this 14th day of June, 2012.

"John Stevenson"
Secretary to the Commission

1.3 News Releases

1.3.1 Canadian Securities Regulators Propose Enhanced Disclosure Requirements on Investment Costs and Performance

FOR IMMEDIATE RELEASE
June 14, 2012

CANADIAN SECURITIES REGULATORS PROPOSE
ENHANCED DISCLOSURE REQUIREMENTS ON INVESTMENT COSTS AND PERFORMANCE

Toronto – The Canadian Securities Administrators (CSA) are publishing for a second comment period, proposed amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, which would require registered dealers and advisers to provide investors with clear and meaningful information on the costs and performance of their investments.

This Proposal includes, among other things, requirements for registered dealers and advisers to provide their clients with annual reports that show them:

- in dollars, what the dealer or adviser was paid for the products and services it provided, and
- in dollars and percentages, how the client's investments performed during that year and over longer periods

In June 2011, the CSA initially published the Proposal based on consultation with investors and industry. Approximately 2,000 investors were surveyed and document testing sessions were held to gain better insight into investors' understanding and expectations related to fees, performance measurement and reporting.

After reviewing public comments on the 2011 Proposal, conducting additional investor research and industry consultation, the CSA are now proposing some enhancements and added requirements to the 2011 Proposal, which include:

- disclosing some fixed income commissions to provide more clarity about embedded fees charged to investors;
- expanding the scope of account statements to provide more complete information to investors;
- establishing a standardized method for determining the market value of securities to ensure consistency in reporting to investors; and,
- disclosing the costs and risks that are unique to scholarship plan investments.

"This is an important investor protection initiative that aims to help investors better understand the costs and performance of their investments," said Bill Rice, Chair of the CSA and Chair and Chief Executive Officer of the Alberta Securities Commission. "With the proposed changes, investors will be able to better assess their progress towards meeting their financial goals and the value of the professional advice they receive."

The Notice, Request for Comment and reports on the investor surveys and document testing will be available on CSA members' websites. The comment period is open until September 14, 2012.

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

For more information:

Carolyn Shaw-Rimmington
Ontario Securities Commission
416-593-2361

Sylvain Théberge
Autorité des marchés financiers
514-940-2176

Richard Gilhooley
British Columbia Securities Commission
604-899-6713

Mark Dickey
Alberta Securities Commission
403-297-4481

Ainsley Cunningham
Manitoba Securities Commission
204-945-4733

Wendy Connors-Beckett
New Brunswick Securities Commission
506-643-7745

Shirley Lee
Nova Scotia Securities Commission
902-424-8586

Janice Callbeck
PEI Securities Office
Office of the Attorney General
902-368-6288

Helena Hrubesova
Yukon Securities Registry
867-667-5466

Donn MacDougall
Northwest Territories
Securities Office
867-920-8984

Dean Murrison
Saskatchewan Financial Services Commission
306-787-5842

Doug Connolly
Financial Services Regulation Div.
Newfoundland and Labrador
709-729-2594

Louis Arki
Nunavut Securities Office
867-975-6587

BACKGROUNDER: SUMMARY OF PROPOSED CHANGES TO NATIONAL INSTRUMENT 31-103 RELATED TO COST DISCLOSURE AND PERFORMANCE REPORTING – CLIENT RELATIONSHIP MODEL PHASE 2

Published on June 22, 2011, the proposal to amend National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103), would require registered dealers and advisers to deliver enhanced disclosure about the costs of investing and investment performance reports to their clients.

In response to public comments, today's publication includes some amendments to the 2011 Proposal and some new requirements to make the information investors receive more complete.

This as an important investor protection initiative. By informing investors of the costs and performance of their investments, investors would be able to assess their progress toward meeting their investing goals and the value of the professional advice they receive. The federal *Financial Literacy Task Force Report* states that "increasing the knowledge, skills and confidence of Canadians to make responsible financial decisions will help them meet their personal goals, enhance their quality of life and make Canada more competitive."

The proposed amendments are intended to form a common baseline for reporting to all investors. They would apply in all CSA jurisdictions, and we would expect the requirements for members of the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) to be materially harmonized.

Core Elements of the 2011 Proposal - Unchanged In Their Essentials

- Costs: relevant information at a relevant time:
    - at account opening – general information about what to expect;
    - when transacting – specific information about the cost; and,
    - an annual report showing costs and any other incentives the dealer or adviser has received – such as the actual dollar amount of trailing commissions they were paid in respect of a client's mutual funds.
- Performance Reporting: an annual investment performance report displaying:
    - money in,
    - money out,
    - change in value (in dollars, for past year and since inception of account); and,
    - annualized total percentage returns:
- for the past 1, 3, 5 and 10 years, and
- since inception

2012 Proposal: New Proposed Requirements

- Disclosing the dollar amount of commissions paid to dealing representatives on fixed income transactions (e.g.: bonds) to provide more clarity about embedded fees and dealer incentives. There would also be a notification regarding possible additional dealer firm compensation embedded in the price of fixed income securities.
- Expanding the scope of account statements to provide more complete information to investors, regardless of the technicalities of how their securities are held. Currently, back office arrangements (i.e.: whether a client's securities are held in "nominee name" by their dealer or "client name" at the issuer of the securities) can mean investors do not get the same information about all of the securities they own.
- Establishing a standardized method for determining the market value of securities to ensure consistency in reporting to investors. This uses a hierarchy of methodologies reflecting available information, subject to adjustment, based on the registered firm's exercise of professional judgement.

- Special reporting for scholarship plans that addresses the costs and risks that are unique to scholarship plan investments. These costs include front-loaded enrolment fees. The risks relate to failing to maintain the prescribed payments and the beneficiary not attending a qualifying educational program.

1.3.2 OSC Requests Members for New Ad Hoc Exempt Market Advisory Committee

FOR IMMEDIATE RELEASE
June 11, 2012

OSC REQUESTS MEMBERS FOR
NEW AD HOC EXEMPT MARKET ADVISORY COMMITTEE

Toronto – The Ontario Securities Commission (OSC) is seeking applicants for membership on its new ad hoc Exempt Market Advisory Committee (EMAC).

On June 7, 2012, the OSC announced that it is broadening the scope of its exempt market review to consider whether new capital raising prospectus exemptions for business enterprises should be introduced in Ontario.

As part of the next phase of its review, OSC staff will:

- publish a second consultation note,
- seek further feedback from investors, issuers, registrants and professional advisors, and
- consider the experience of other CSA and international jurisdictions.

The EMAC will inform staff on possible regulatory approaches to the capital raising segment of the exempt market and, in particular, advise on potential new capital raising prospectus exemptions for business enterprises that could be introduced.

The EMAC will be established for a term of one year and will meet approximately four to six times over the course of that year. It will consist of 10 to 15 members with a variety of different perspectives. Members will be selected for their knowledge of, or experience in, the capital raising segment of the exempt market. The EMAC will be chaired by Jo-Anne Matear, Manager, Corporate Finance Branch.

Interested parties should submit their application, indicating their relevant experience, by June 27, 2012.

Applications and questions regarding EMAC may be forwarded in writing to:

Jo-Anne Matear
Manager, Corporate Finance Branch
Ontario Securities Commission
jmatear@osc.gov.on.ca

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Dylan Rae
Media Relations Specialist
416-595-8934

Follow us on Twitter: OSC_News

For investor inquiries:

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

1.3.3 Canadian Securities Regulators Propose Disclosure Enhancements to Fund Facts

FOR IMMEDIATE RELEASE
June 21, 2012

CANADIAN SECURITIES REGULATORS PROPOSE
DISCLOSURE ENHANCEMENTS TO FUND FACTS

Toronto – The Canadian Securities Administrators (CSA) today published for a second comment period proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, which were originally published in August 2011 (2011 Proposal).

In the 2011 Proposal, the CSA set out Stage 2 of the implementation of the point of sale framework for mutual funds, which proposed amendments to allow delivery of the Fund Facts document to satisfy prospectus delivery requirements. The Fund Facts document is central to the point of sale initiative. It is in plain language, no more than two pages double-sided and highlights key information about a mutual fund that is important to investors.

Based on investor and stakeholder feedback on the 2011 Proposal, the CSA are now proposing changes to the content of the Fund Facts document, in particular, the presentation of risk in the document. Some of the more notable changes to the Fund Facts document include:

- Adding an explanation of the risk scale and the relationship between risk and losses;
- Requiring a list of some of the specific risk factors that could impact a fund's returns; and,
- Including a comparison of the mutual fund's performance with a low risk investment – a one-year Guaranteed Investment Certificate.

"The CSA's proposals are an important step in the implementation of this investor-focused initiative," said Bill Rice, Chair of the CSA and Chair and CEO of the Alberta Securities Commission. "The proposed changes to the Fund Facts are intended to provide more effective disclosure to assist investors in making informed investment decisions."

During the second comment period, the CSA will also conduct further document testing of the Fund Facts with investors to inform the final changes to the document.

To view the proposed amendments, please refer to the CSA Notice on NI 81-101 *Mutual Fund Prospectus Disclosure*, which is available on the websites of CSA members. A sample Fund Facts including the proposed changes is available in Appendix A of the Notice. The comment period is open until September 6, 2012.

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

For more information:

Carolyn Shaw-Rimmington
Ontario Securities Commission
416-593-2361

Sylvain Théberge
Autorité des marchés financiers
514-940-2176

Ainsley Cunningham
Manitoba Securities Commission
204-945-4733

Tanya Wiltshire
Nova Scotia Securities Commission
902-424-8586

Janice Callbeck
PEI Securities Office
Office of the Attorney General
902-368-6288

Mark Dickey
Alberta Securities Commission
403-297-4481

Richard Gilhooley
British Columbia Securities Commission
604-899-6713

Wendy Connors-Beckett
New Brunswick Securities Commission
506 643-7745

Dean Murrison
Saskatchewan Financial Services Commission
306-787-5879

Doug Connolly
Financial Services Regulation Div.
Newfoundland and Labrador
709-729-2594

Helena Hrubesova
Yukon Securities Office
867-667-5466

Donn MacDougall
Northwest Territories
Securities Office
867-920-8984

Louis Arki
Nunavut Securities Office
867-975-6587

1.4.1 Notices from the Office of the Secretary

1.4.1 Richvale Resource Corporation et al.

FOR IMMEDIATE RELEASE
June 13, 2012

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that the Sanctions Hearing is adjourned to June 22, 2012, at 11:00 a.m.

A copy of the Order dated June 8, 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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Dylan Rae
Media Relations Specialist
416-595-8934

For investor inquiries:

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

1.4.2 Thirdcoast Limited and Parrish & Heimbecker, Limited

FOR IMMEDIATE RELEASE
June 14, 2012

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

AND

IN THE MATTER OF
THIRDCOAST LIMITED AND
PARRISH & HEIMBECKER, LIMITED

TORONTO – On June 14, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* to consider the Application of Parrish & Heimbecker, Limited dated June 8, 2012 and the Application of Thirdcoast Limited dated June 12, 2012.

The hearing will be held on July 4, 2012 at 10:00 a.m. in the Large Hearing Room, 17th Floor at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing, Application of Parrish & Heimbecker, Limited dated June 8, 2012 and Application of Thirdcoast Limited dated June 12, 2012 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Dylan Rae
Media Relations Specialist
416-595-8934

For investor inquiries:

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

1.4.3 Sage Investment Group et al.

FOR IMMEDIATE RELEASE
June 18, 2012

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

AND

IN THE MATTER OF
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

TORONTO – The Commission issued an Order in the above named matter which provides that the status hearing shall continue on September 12, 2012 at 9:00 a.m.

A copy of the Order dated June 13, 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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Dylan Rae
Media Relations Specialist
416-595-8934

For investor inquiries:

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

1.4.4 Juniper Fund Management Corporation et al.

FOR IMMEDIATE RELEASE
June 18, 2012

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

AND

IN THE MATTER OF
THE JUNIPER FUND MANAGEMENT CORPORATION,
JUNIPER INCOME FUND, JUNIPER EQUITY GROWTH
FUND AND ROY BROWN
(a.k.a. ROY BROWN-RODRIGUES)

TORONTO – The Commission issued an Order in the above named matter which provides that Brown's request for a further adjournment is denied and closing oral submissions shall be heard on September 4, 2012 commencing at 11 a.m. The hearing dates of June 20 and 22, 2012 are hereby vacated.

A copy of the Order dated June 18, 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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Dylan Rae
Media Relations Specialist
416-595-8934

For investor inquiries:

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

1.4.5 Shallow Oil & Gas Inc. et al.

FOR IMMEDIATE RELEASE
June 19, 2012

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

AND

IN THE MATTER OF
SHALLOW OIL & GAS INC., ERIC O'BRIEN,
ABEL DA SILVA, ABRAHAM HERBERT GROSSMAN
also known as ALLEN GROSSMAN
and KEVIN WASH

TORONTO – The Commission issued an Order in the above named matter which provides that:

1. The hearing of the merits is adjourned to October 29, 2012, at 10:00 a.m. at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, and will continue on October 30, and 31, 2012; and

2. the hearing dates scheduled in this matter for June 20, 21 and 22, 2012, are hereby vacated.

A copy of the Order dated June 18, 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

Carolyn Shaw-Rimmington
Manager, Public Affairs
416-593-2361

Dylan Rae
Media Relations Specialist
416-595-8934

For investor inquiries:

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

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 IG FI International Equity Fund et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund mergers – approval required because mergers do not meet the criteria for pre-approval – differences in investment objectives – some mergers will not occur on a tax-deferred basis – liquidation of the portfolio assets of some terminating funds because they are not acceptable to the portfolio advisor of the continuing funds – Terminating funds' securityholders provided with timely and adequate disclosure regarding the merger and prospectus-level disclosure regarding the continuing fund.

Applicable Legislative Provisions

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

May 11, 2012

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

and

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

AND

IN THE MATTER OF
THE PROPOSED MERGERS INVOLVING
IG FI INTERNATIONAL EQUITY FUND AND
IG FI INTERNATIONAL EQUITY CLASS
(the "Terminating Funds")

AND

IG TEMPLETON INTERNATIONAL EQUITY FUND
AND
IG TEMPLETON INTERNATIONAL EQUITY CLASS
(the "Continuing Funds" and collectively with
the Terminating Funds referred to as the "Funds")

AND

IN THE MATTER OF
I.G. INVESTMENT MANAGEMENT, LTD.
(referred to as the "Investors Group" and
collectively with the Funds referred to the "Filers")

DECISION

BACKGROUND

The securities regulatory authority or regulator in each of the Jurisdictions (the "Decision Maker") has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the "Legislation") for approval under paragraph 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* ("NI 81-102") of the Merger of each Terminating Fund into its corresponding Continuing Fund (as further described below).

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

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

(b) the Filers have provided notice that section 4.7(1) of Multi-Lateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Nunavut and the North West Territories; and

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

INTERPRETATION

Defined terms contained in National Instrument 14-101 – *Definitions* and MI 11-102 have the same meaning if used in this decision, unless they are otherwise defined below:

- IG FI International Equity Fund and IG Templeton International Equity Fund are herein collectively referred to as the "Unit Trust Funds"; and

- IG FI International Equity Class and IG Templeton International Equity Class are herein collectively referred to as the "Corporate Class Funds".

REPRESENTATIONS

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

THE FILERS

1. Investors Group is a corporation continued under the laws of Ontario. It is the trustee and manager of the Unit Trust Funds and is the manager of the Corporate Class Funds. It is registered as a portfolio manager in Manitoba, Ontario, and Quebec and as an investment fund manager in Manitoba. It is also registered as an advisor under the Commodity Futures Act in Manitoba. The head office of Investors Group is in Winnipeg, Manitoba and, accordingly, Manitoba is the principal regulator. Investors Group is not in default of any of the requirements of securities legislation of any of the provinces and territories in Canada.

2. Investors Group Corporate Class Inc. (the "Corporation") is the issuer of the Corporate Class Funds.

3. All of the Funds are open-end mutual funds either continued under a Master Declaration of Trust under the laws of Manitoba, in the case of the Unit Trust Funds, or governed by the *Canada Business Corporations Act* (the "CBCA") in the case of the Corporate Class Funds.

4. All of the Funds are reporting issuers under the Legislation in each Jurisdiction and are not on the list of defaulting reporting issuers maintained under the Legislation in each Jurisdiction, and are not in default of any of the requirements of securities legislation of any of the provinces and territories of Canada. The securities of the Funds are qualified for distribution in each of the Jurisdictions pursuant to separate simplified prospectuses and annual information forms for the Unit Trust Funds and Corporate Class Funds, respectively, each dated June 30, 2011, as amended (referred to collectively as the "Prospectuses").

5. Other than circumstances in which the securities regulatory authority of a Jurisdiction has expressly exempted the Funds, the Funds follow the standard investment restrictions and practices established under the Legislation of the Jurisdictions.

6. Each Unit Trust Fund issues three series of units to retail purchasers. Each Corporate Class Fund issues two series of shares to retail purchasers. A Fund Facts document as prescribed by Form 81-101F3 (the "Fund Facts") has been filed for all of the retail series of units and shares issued by the Unit Trust Funds and the Corporate Class Funds, respectively, together with their Prospectuses as described above.

7. The net asset values of each series of the Funds are calculated on a daily basis on each day that Investors Group is open for business.

THE PROPOSED MERGERS

8. Investors Group proposes that each Terminating Fund be merged into a corresponding Continuing Fund (each a "Merger" and collectively the "Mergers") as follows:

Terminating Fund		Continuing Fund
IG FI International Equity Fund	*to merge into*	IG Templeton International Equity Fund
IG FI International Equity Class	*to merge into*	IG Templeton International Equity Class

9. The Mergers will increase operational efficiency by elimination of the duplication in time, effort and costs associated with the audit, board review and other compliance requirements arising from having multiple mandates.

10. It is anticipated that securityholders of the Terminating Funds will benefit from the potential for more stable and improved future performance of their investments after the Mergers due to the larger net asset size of the Continuing Funds after the Mergers which allow the portfolio advisor to better manage their assets through greater diversification.

11. Amendments to the Prospectuses and Fund Facts of each retail series of each Terminating Fund and for the Continuing Corporate Class Fund were filed on SEDAR on April 27, 2012, and a News Release and material change report were filed on SEDAR on April 25, 2012 with respect to the Mergers, as required by the Legislation of the Jurisdictions.

12. Subject to obtaining all approvals for the Mergers, the Terminating Funds will merge into the Continuing Funds on or about the close of business on June 22, 2012, and the Continuing Funds will continue as publicly offered open-end mutual funds.

13. The Terminating Funds will be wound up as soon as reasonably possible following the Mergers.

14. Securityholders of the Terminating Funds will receive Units or Shares of the equivalent series of the corresponding Continuing Fund in an amount equal to the fair market value of their Units or Shares in the Terminating Fund.

15. A Securityholder's Units or Shares in a Continuing Fund after the Mergers will be subject to the same deferred sales charge schedule (if any), as applied to their investment in the Terminating Fund.

16. Securityholders of the Terminating Funds will continue to have the right to redeem securities of the Terminating Funds for cash at any time up to the close of business on the business day immediately before the effective date of the Mergers.

17. No sales charges will be payable in connection with the acquisition by the Continuing Funds of the investment portfolios of the Terminating Funds.

18. Investors Group will pay for all costs associated with the meetings, including legal, proxy solicitation, printing, and mailing expenses, as well as any brokerage transaction fees associated with any Merger related trades and regulatory fees.

19. Investors Group proposes to effect the Merger of the Unit Trust Funds on a taxable basis to preserve the relatively significant tax losses of the Continuing Fund.

20. Investors Group believes the Mergers are in the best interest of the Funds.

MERGER APPROVALS

21. Meetings of the securityholders of the Terminating Funds are being convened on or about June 18, 2012, to approve the Mergers. A Meeting of the securityholders of IG Templeton International Equity Class (the "Continuing Corporate Class Fund") is also being convened as required by the provisions of the CBCA to approve changes to the Corporation's articles of incorporation in order to facilitate the Merger with its corresponding Terminating Fund. A notice of meeting, a management information circular and a proxy in connection with the meetings of securityholders of the Terminating Funds and the Continuing Corporate Class Fund (collectively, the "Meeting Materials"), will be mailed to

securityholders of the Terminating Funds and the Continuing Corporate Class Fund, commencing on or after May 4, 2012, and will be filed via SEDAR.

22. Investors Group has determined that the Mergers will not be a material change to the Continuing Funds because they will not entail a change in the business, operations or affairs of the Continuing Funds that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the Continuing Funds. The Meeting of the Continuing Corporate Class Fund is to approve an amendment to the articles of incorporation of the Corporation to facilitate its Merger pursuant to the CBCA and is not being convened because it is a material change for that Continuing Fund.

23. The tax implications of the Mergers, as well as the material differences between each Terminating Fund and the corresponding Continuing Fund, will be described in the Meeting Materials so securityholders of the Terminating Funds will be fully informed when considering whether to approve the Merger of their Fund at the meeting of their Fund. Accordingly, implicit in the approval by securityholders of the Mergers is the acceptance by the securityholders of the Terminating Funds of the proposed tax treatment and their adoption of the investment objective, strategy and fee structure of the corresponding Continuing Fund.

24. Although the investment portfolios held by the Continuing Funds and their corresponding Terminating Funds may be similar, their fundamental investment objectives and/or strategies are not substantially the same in all cases.

25. The fee structures of the Terminating Funds are the same as the fee structures of the Continuing Funds except thatin both instances the annual management fees of the Continuing Funds will be lower than that of the Terminating Funds.

26. The portfolio securities and other assets of the Terminating Funds to be acquired by the Continuing Funds arising from the Mergers are currently (or will be) acceptable prior to the effective date of the Mergers to the Portfolio Advisor of the Continuing Funds. The Merger of the Corporate Class Fund will entail the liquidation of the portfolio assets of the Terminating Corporate Class Fund (being the units of an underlying fund into which it invests) because the corresponding Continuing Fund does not follow a “fund-of-fund” investment strategy and, instead, invests directly in the equities markets to achieve its investment objective.

27. Investors Group will send the most recent Fund Facts of the Continuing Funds to securityholders of the Terminating Funds as permitted under paragraph 5.6(1)(f)(ii) of NI 81-102. In addition, the management information circular sent to securityholders of the Terminating Funds and the Continuing Corporate Class Fund fully describing the Mergers will prominently disclose that securityholders can obtain the most recent Prospectuses, audited annual and un-audited interim financial statements of the Continuing Funds by accessing the same at the Investors Group website or the SEDAR website, or requesting the same from Investors Group by toll-free number, or by contacting their servicing advisor at Investors Group or an affiliate of Investors Group (“Investors Group Consultant”), all as described in the Management Information Circular.

28. Approval of the Mergers is required because the Mergers do not satisfy one or more of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102 in the following ways:

    (a) contrary to section 5.6(1)(a)(ii), in the Merger of the Corporate Class Funds a reasonable person may not consider the Continuing Fund as having substantially similar fundamental investment objectives as the Terminating Fund; and

    (b) contrary to section 5.6(1)(b), the Merger of the Unit Trust Funds will not occur on a tax-deferred basis as a “qualifying exchange” within the meaning of section 132.2 of the Income Tax Act (Canada) (“ITA”) or a tax-deferred transaction under sub-section 85(1), 85.1(1), 86(1) or 87(1) of the ITA.

29. Except as noted above, the Mergers will otherwise comply with all of the other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

30. Investors Group has referred the Mergers to the Independent Review Committee of the Funds (the “IRC”) for its review. The IRC has been established as required by NI 81-107 – Fund Governance (“NI 81-107”) and consists of individuals who are not in any way related to the Investors Group or its affiliates. The IRC reviews and makes recommendations on conflicts of interest matters for the purposes described in NI 81-107 including fund mergers (if necessary). After due consideration, the IRC has concluded that the Mergers achieve a fair and reasonable result for each of the Funds.

DECISION

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation of 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:

1. (a) the management information circular sent to securityholders in connection with the Mergers provides sufficient information about the Mergers to permit securityholders to make an informed decision about the Mergers;

(b) the management information circular sent to securityholders in connection with the Mergers prominently discloses that securityholders can obtain the most recent prospectuses, interim and annual financial statements (if applicable) of the Continuing Funds by accessing the SEDAR website at www.sedar.com, by accessing the Investors Group website, by calling Investors Group's toll-free telephone number, or by contacting an Investors Group Consultant;

(c) the Continuing Funds and the Terminating Funds with respect to the Mergers have an unqualified audit report in respect of their last completed financial period; and

(d) the Meeting Materials sent to securityholders of the Terminating Funds in respect of the Mergers include the applicable Fund Facts of the Continuing Funds.

"Robert Bouchard"
Director and Chief Administration Officer
The Manitoba Securities Commission

2.1.2 Suncor Energy Inc.

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).

Citation: Suncor Energy Inc., Re, 2012 ABASC 250

June 13, 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
SUNCOR ENERGY INC.
(the Filer)

DECISION

Background

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

(a) 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**); and

(b) the previous decision of the Alberta Securities Commission dated 9 April 2009 and cited as *Re Suncor Energy Inc.*, 2009 ABASC 143 (the **Prior Decision)** be revoked upon the granting of the Exemption Sought.

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut; 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 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 Obligations*;
>
> "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 under the *Canada Business Corporations Act* with its executive and registered office in Calgary, Alberta.

2. The Filer is a reporting issuer in the Jurisdictions and the Passport Jurisdictions. The Filer is not in default of its reporting issuer obligations under the Legislation or the securities legislation of the Jurisdictions and 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 Filer's Commercial Paper issued in Canada has an "R-I(low)" rating from DBRS Limited (**DBRS**) and an "A-I(Low)" rating from Standard & Poor's Rating Services (**S&P**), both of which meet the prescribed threshold in NI 81-102.

6. The Filer's Commercial Paper issued in the United States does not meet the "approved credit rating" definition in NI 81-102 because it has a "P-2" rating from Moody's Investors Service, Inc. (**Moody's**) and an "A-2" rating from S&P, both of which are lower ratings than required by the Commercial Paper Exemption.

7. The Filer has been granted similar relief in nature to the Exemption Sought under the Prior Decision.

Decision

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

The decision of the Decision Makers is that:

(a) the Exemption Sought is granted provided that:

  (i) the Commercial Paper:

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

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

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

D. 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	R- 1 (low)
Fitch Ratings Ltd.	F2
Moody's	P-2
S&P	A-2

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

A. 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

B. June 30, 2017; and

(b) the Prior Decision is revoked with effect on the date hereof.

For the Commission:

"Glenda Campbell, QC"
Vice-Chair

"Stephen Murison"
Vice-Chair

2.1.3 Goldbrook Ventures Inc. – s. 1(10)(a)(ii)

Headnote

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

Applicable Legislative Provisions

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

June 14, 2012

Anthony Rasoulis
Gowling Lafleur Henderson LLP
160 Elgin Street, Suite 2600
Ottawa, ON K1P 1C3

Dear Mr. Rasoulis:

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

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

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

2.1.4 Duran Ventures Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 4.5 – National Instrument 52-110 Audit Committees, s. 8.1 – National Instrument 58-101 Disclosure of Corporate Governance Practices, s. 3.1 – General – Filer seeks relief from the requirement in s. 1.1 definition of "venture issuer", that a reporting issuer not have any of its securities listed or quoted on a marketplace outside of Canada and the United States of America, in order to become listed on the Risk Capital Segment of the Lima Stock Exchange Segmento de Capital de Riesgo da la Bolsa de Valores de Lima) (the Exchange) – A venture issuer with common shares listed on the TSXV wants to list on an exchange that does not meet the requirements of the definition of a venture issuer; the Exchange is a junior market that has less onerous requirements than the TSXV; the Exchange requires the Filer to comply with TSXV requirements in order to maintain listing on the Exchange; to remain a venture issuer, the Filer must continue to have its common shares listed on the TSXV and the Exchange must remain a junior market.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6.
National Instrument 52-110 Audit Committees, s. 8.1.
National Instrument 58-101 Disclosure of Corporate Governance Practices, s. 3.1.

June 14, 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
DURAN VENTURES INC.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities

legislation of the Jurisdiction (the "**Legislation**") for relief from the requirement in the definition of "venture issuer" in section 1.1 of each of National Instrument 51-102 *Continuous Disclosure Obligations*, National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*, National Instrument 52-110 *Audit Committees* and National Instrument 58-101 *Disclosure of Corporate Governance Practices* that a reporting issuer not, at the relevant time, have any of its securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc (the "**Exemption Sought**").

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

(a) the Ontario Securities Commission (the "**OSC**") is the principal regulator for the application; and

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

Interpretation

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

Representations

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

1. The Filer exists pursuant to articles of continuance dated October 30, 2008 filed in accordance with the *Canada Business Corporations Act*.

2. The registered and head office of the Filer is located in Toronto, Ontario.

3. The Filer's common shares (the "**Shares**") are listed on the TSX Venture Exchange (the "**TSXV**") under the trading symbol "DRV".

4. The Filer is a reporting issuer in each of the Reporting Jurisdictions.

5. The Filer is a junior exploration company with its principal assets located in Peru.

6. The Filer wishes to list its Shares on the Risk Capital Segment of the Lima Stock Exchange (Segmento de Capital de Riesgo de la Bolsa de Valores de Lima) in Peru (the "**Lima Exchange**") due to the Filer's connection to Peru and to facilitate the sale and transfer of the Shares in Peru.

7. The Lima Exchange is a junior market.

8. The Lima Exchange is similar to the TSXV in terms of its requirements as the requirements of the Lima Exchange were modelled after those of the TSXV.

9. The Lima Exchange requires the Filer to comply with TSXV requirements in order to maintain its listing; the Lima Exchange also requires that the Filer file with the Lima Exchange copies of all public disclosure documents filed with Canadian securities regulators.

10. The information that the Filer has provided about the Lima Exchange (and its status as a junior market) herein is accurate as at the date of this decision.

11. The Filer confirms that, as of the date of this application, the Filer is not in default of securities legislation in any of the Reporting Jurisdictions.

Decision

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

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

(a) the Lima Exchange is not restructured in a manner that makes it unreasonable to conclude that it is still a junior market;

(b) the representations listed in sections 7 to 10 above continue to be true;

(c) the Filer continues to have the Shares listed on the TSXV; and

(d) the Filer does not have any securities listed or quoted on any of the Toronto Stock Exchange, a U.S. marketplace or a marketplace outside of Canada and the United States of America other than the Lima Exchange, the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

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

2.1.5 Cumberland Associates Investment Counsel Inc. et al.

Headnote

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

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 15.1.

June 14, 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
CUMBERLAND ASSOCIATES
INVESTMENT COUNSEL INC.
(CAIC)

AND

CUMBERLAND PRIVATE WEALTH
MANAGEMENT INC.
(CPWM)

AND

SUKYONG YANG, PETER JACKSON
AND SCOTT LUIK
(collectively, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief (the **Requested Relief**) from the requirement under paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) to permit each of Ms. Sukyong Yang, Mr. Peter Jackson, and Mr. Scott Luik, and future individuals who are dealing representatives of CPWM to also be advising or associate advising representatives of CAIC (the **Dual Registration**).

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

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

(ii) 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 by the Filers in British Columbia, Ontario, Quebec and Alberta (collectively with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. CPWM is registered under NI 31-103 as an investment fund manager in Ontario, as a derivatives dealer in Quebec and as a dealer in the category of investment dealer in each Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan. CPWM is a member of Investment Industry Regulatory Organization of Canada (**IIROC**). The head office of CPWM is located in Ontario.

2. CAIC is registered under NI 31-103 as an adviser in the category of portfolio manager in British Columbia, Ontario, Quebec and Alberta. The head office of CAIC is located in Ontario. CAIC is also registered with the Securities Exchange Commission to carry on business as an adviser to U.S. resident clients under section 203 of the *United States Investment Advisers Act of 1940*.

3. Each of the Filers is a direct wholly-owned subsidiary of Cumberland Partners Ltd. (**CPL**).

4. Neither of the Filers is in default of any requirements of securities legislation in any jurisdiction of Canada.

5. Both CPWM and CAIC service predominantly high net worth individuals.

6. Although CPWM is registered as an investment dealer, its business primarily consists of providing discretionary investment management services. CPWM does not engage in corporate finance or underwriting activities. CPWM offers a variety of model portfolios to its clients. These model portfolios are also offered to clients of CAIC.

7. Currently there are a number of individuals registered as dealing representatives with CPWM who are also registered as advising representatives with CAIC. This dual registration permits portfolio managers to order the trades for all the managed accounts following a model, and allocate the trades at an average price, regardless of whether the account holder is a client of CPWM or CAIC. Thus, helping to ensure that clients of one registrant don't receive more favourable pricing than clients of the other registrant.

8. This dual registration permits a dealing representative of CPWM who is also an advising or associate advising representative of CAIC to act as an adviser in respect of securities to all CAIC clients including non-resident CAIC clients.

9. The individuals will have the appropriate proficiency requirements for both the category of dealing representative of CPWM and for an advising or associate advising representative of CAIC.

10. The individuals will have sufficient time to adequately meet their obligations under each firm.

11. The Filers are each wholly-owned subsidiaries of CPL and accordingly, the Dual Registration will not give rise to the conflicts of interest present in a similar arrangement involving unrelated, arm's length firms. The interests of CPWM and CAIC are aligned and therefore, the potential for conflicts of interest is remote.

12. The Filers have in place policies and procedures to address conflicts of interest that may arise as a result of the Dual Registration, and believe that they will be able to appropriately deal with these conflicts.

13. The Dual Registration is disclosed to clients of CPWM and CAIC.

14. Relief from paragraph 4.1(1)(b) of NI 31-103 has been granted to the Filers pursuant to a decision dated December 1, 2011 permitting Gerald Connor to be dually registered as a dealing representative of CPWM and as an advising representative of CAIC.

15. In the absence of the Requested Relief, the Filers would be prohibited from permitting additional dealing representatives of CPWM to act as advising or associate advising representatives of CAIC while they are registered as a dealing representative of CPWM even though CAIC is an affiliate of CPWM.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that with respect to any future individuals the circumstances described above in paragraphs 4, 8, 9, 10, 11, 12, and 13 remain in place.

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

2.1.6 Goldman, Sachs & Co. and Goldman Sachs Execution and Clearing, L.P.

Headnote

Multilateral Instrument 11-102 section 4.7(1) – Exemption granted from requirement to prepare financial statements on an audited unconsolidated basis – Exemption granted from requirements to provide annual financial statements on a comparative basis and that at least one director sign the statement of financial position – Filers to deliver the annual financial statements that they file with the SEC and FINRA – Relief conditional on the fact that the Filers were already granted relief to file unconsolidated FOCUS Reports in lieu of Form 31-103F1 – Filers must append audited supplemental information to annual audited financial statements that corresponds with line 3480 through to and including line 3910 "Computation of Net Capital" in the FOCUS Report and the auditor's report relating to each Filer's financial statements expresses an unmodified opinion on the supplemental information – The Margin Relief, the FOCUS Relief and the Exemption Sought shall expire on the date that is the earlier of the date that the Filers' registration as an exempt market dealer is terminated or revoked and December 31, 2013.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 12.10, 15.1.
National Instrument 52-107 Acceptable Accounting Principles and Accounting Standards ss. 3.15, 5.1.

June 15, 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
GOLDMAN, SACHS & CO. AND
GOLDMAN SACHS EXECUTION AND CLEARING, L.P.
(collectively the "Filers" and each, a "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers (the **Application**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting each of the Filers from:

(a) the requirements of subsection 3.15(b) *Acceptable Accounting Principles for Foreign Registrants* of National Instrument 52-107 *Acceptable Accounting Principles and Accounting Standards* (**NI 52-107**) that financial statements be prepared in accordance with U.S. GAAP, except that any investments in subsidiaries, jointly controlled entities and associates must be accounted for as specified for separate financial statements in International Accounting Standard 27 *Consolidated and Separate Financial Statements* (**IAS 27**); and

(b) the requirements of section 12.10 *Annual financial statements* of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) that the Filer prepare a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and a statement of financial position for the financial year immediately preceding the most recently completed financial year and that at least one director of the Filer sign the Filer's statement of financial position;

so long as the Filers deliver to the regulator the annual audited financial statements that they file with the United States (**U.S.**) Securities and Exchange Commission (**SEC**) and the Financial Industry Regulatory Authority (**FINRA**) (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 Filers have 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, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador and Yukon Territory (the **Passport Jurisdictions**, and together with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* 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. Goldman, Sachs & Co. (**GSCO**) is a limited partnership formed under the laws of the State of New York. The head office of GSCO is located in New York, New York, United States of America. GSCO is an indirect, wholly-owned subsidiary of The Goldman Sachs Group, Inc. (**GS Group**). GSCO is registered as a broker-dealer and investment adviser with the SEC and is a member of FINRA. GSCO is a member of all major U.S. stock exchanges and U.S. commodity futures exchanges. GSCO is registered as an exempt market dealer (**EMD**) and as a portfolio manager in each of the provinces of Canada and the Yukon Territory.

2. Goldman Sachs Execution & Clearing, L.P. (**GSEC**) is a limited partnership formed under the laws of the State of New York. The head office of GSEC is located in New York, New York, United States of America. GSEC is an indirect, wholly owned subsidiary of GS Group. GSEC is registered as a broker-dealer with the SEC and is a member of FINRA. GSEC is a member of all major U.S. stock exchanges and U.S. commodity futures exchanges. GSEC is registered as an EMD in each of the provinces of Canada and the Yukon Territory.

3. The Filers have obtained relief from the principal regulator on September 28, 2010 exempting them from the requirement contained in section 13.12 of NI 31-103 that a registrant must not lend money, extend credit or provide margin to a client (the **Margin Relief**).

4. The Filers have also obtained relief from the principal regulator on July 27, 2011 which permits them to deliver the Form X-17a-5 (the **FOCUS Report**) that they file with the SEC and FINRA regarding the calculation of their net capital in lieu of delivering Form 31-103F1 *Calculation of Net Working Capital* (**Form 31-103F1**) as required by NI 31-103 (the **FOCUS Relief**).

5. The Filers are subject to certain U.S. reporting requirements under Rule 17a-5 *Reports to Be Made by Certain Brokers and Dealers of the Securities and Exchange Act, 1934* (**SEA Rule 17a-5**), including the requirement to prepare and file annual audited financial statements. SEA Rule 17a-5 requires that the annual audited financial statements of the Filers be filed with the SEC and FINRA.

6. The SEC currently permits the Filers to file audited consolidated annual financial statements that are prepared in accordance with U.S. GAAP, whereas subsection 3.15(b) of NI 52-107 would require the Filers to prepare non-consolidated financial statements.

7. Section 12.10 of NI 31-103 provides that annual financial statements delivered to the regulator must include a statement of comprehensive income, a statement of changes in equity, a statement of cash flows and a statement of financial position for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, along with notes thereto. Further, section 12.10 of NI 31-103 also requires that the statement of financial position be signed by at least one director of the registered firm.

8. The annual audited financial statements that the Filers prepare and file with the SEC and FINRA are not required to include the statement of comprehensive income, the statement of changes in equity, the statement of cash flows and the statement of financial position for the financial year immediately preceding the most recently completed financial year , nor is a signature of at least one director of the Filers for the statement of financial position required. These are requirements under section 12.10 of NI 31-103.

9. The accounting principles and methods used to prepare the FOCUS Reports that the Filers deliver in lieu of Form 31-103F1 are consistent with the accounting principles and methods used to prepare the annual audited financial statements that each Filer files with the SEC and FINRA.

10. Audited supplemental information to each Filer's annual audited financial statements, as required by SEA Rule 17a-5, which includes supplemental information that correspond with line 3480 through to and including line 3910 "Computation of Net Capital" in the FOCUS Report, along with the auditor's report which expresses an unmodified opinion on this supplemental information, would allow the regulator to assess the capital position of each Filer and, therefore, achieve the same regulatory outcomes as the requirements for annual audited financial statements prepared in accordance with subsection 3.15(b) of NI 52-107 and section 12.10 of NI 31-103. Accordingly, it would be burdensome and costly for the Filers, if they were required to prepare and file unconsolidated annual audited financial statements.

Decision

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

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

(a) each Filer is registered, and in good standing, under the securities legislation of the United States in a category of registration that permits it to carry on the activities in the United States that registration as an investment dealer

would permit it to carry on in the Jurisdictions;

(b) by virtue of the registration referred to in paragraph (a), including required membership in one or more self-regulatory organizations, each Filer is subject to SEA Rule 17a-5 for the preparation of annual financial statements;

(c) each Filer delivers to the principal regulator no later than the 90th day after the end of its respective financial year its annual financial statements prepared in accordance with U.S. GAAP as permitted by SEA Rule 17a-5;

(d) each Filer gives prompt written notice to the principal regulator if the Filer has received written notice from the SEC or FINRA of any material non-compliance in the preparation and filing of its annual financial statements pursuant to the requirements of SEA Rule 17a-5;

(e) each Filer continues to be able to rely on the relief previously obtained permitting them to deliver the unconsolidated FOCUS Report that they file with the SEC and FINRA regarding the calculation of their net capital in lieu of delivering Form 31-103F1 as required by NI 31-103 and each filer selects Box 199 ("Unconsolidated") on the FOCUS Report;

(f) each Filer appends audited supplemental information to its annual audited financial statements, as required by SEA Rule 17a-5, which includes supplemental information that corresponds with line 3480 through to and including line 3910 “Computation of Net Capital” in the FOCUS Report; and

(g) the auditor’s report relating to each Filer’s financial statements expresses an unmodified opinion on the supplemental information referred to in (f).

It is further the decision of the principal regulator that the Margin Relief, the FOCUS Relief and the Exemption Sought shall expire on the date that is the earlier of:

(a) the date that each Filers’ registration as an exempt market dealer is terminated or revoked; and

(b) December 31, 2013.

“Marrianne Bridge”
Deputy Director,
Compliance & Registrant Regulation
Ontario Securities Commission

2.1.7 Matrix Funds Management (a Division of Growth Works Capital Ltd.) et al.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 81-102 Mutual Funds – A mutual fund manager seeks approval of proposed fund mergers under the approval requirements in NI 81-102 – The fund mergers comply with the pre-approved merger requirements in NI 81-102 except that the terminating fund and the continuing fund may have a different fee structure and the fundamental investment objective of the terminating fund is not "substantially similar" to the current fundamental investment objective of the continuing fund; the funds' independent review committee approved the merger; unitholders will vote on the proposed mergers.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, s. 5.5(1)(b).

June 12, 2012

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

AND

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

AND

IN THE MATTER OF
MATRIX FUNDS MANAGEMENT (A DIVISION OF GROWTH WORKS CAPITAL LTD.)
(the Filer)

AND

MATRIX SIERRA EQUITY FUND

AND

MATRIX STRATEGIC YIELD FUND

AND

MATRIX ASIA PACIFIC FUND

DECISION

Background

1 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) granting approval under subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* (NI 81-102) of the mergers of Matrix Sierra Equity Fund into Matrix Monthly Pay Fund; Matrix Strategic Yield Fund into Matrix Monthly Pay Fund and Matrix Asia Pacific Fund into Matrix International Balanced Fund (the Mergers) (the Approvals Sought).

Matrix Sierra Equity Fund, Matrix Strategic Yield Fund and Matrix Asia Pacific Fund are referred to as the Terminating Funds and each a Terminating Fund. Matrix Monthly Pay Fund and Matrix International Balanced Fund are referred to as the Continuing Funds and each a Continuing Fund. The Terminating Funds and Continuing Funds are referred to as the Funds and individually as a Fund.

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

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

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

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

Interpretation

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

Representations

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

The Filer and the Funds

1. the Filer is a corporation incorporated under the *Canada Business Corporations Act* (R.S.C. 1985, c. C-44) with its head office located in Vancouver, British Columbia;

2. the Filer is the manager and trustee of the Funds; and the Filer is not in default of securities legislation in any jurisdiction;

3. each Fund was established pursuant to a declaration of trust under the laws of the Province of Ontario; each Fund is a mutual fund in each of the provinces and territories of Canada and offers Class A, F, I and O units under a simplified prospectus dated June 30, 2011, as amended;

4. each Fund is a reporting issuer under the securities legislation of each of the provinces and territories of Canada and each of the Funds is not on the list of defaulting reporting issuers maintained under Canadian securities legislation and is not in default of securities legislation in any jurisdiction;

5. unless an exemption has been obtained, each of the Funds follows the standard investment restrictions and practices established under securities legislation;

6. the NAV for the units of each Fund is calculated on a daily basis on each day that the TSX is open for trading and units of each Fund are generally redeemable on a daily basis.

Details of the Merger

7. the Terminating Funds have complied with Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* in connection with the making of the decision to proceed with the Mergers by the board of directors of the Filer; the press release was filed on April 23, 2012, the material change report was filed on May 2, 2012 and amendments to the simplified prospectus and annual information form of the Terminating Funds in respect of the Mergers were filed on May 2, 2012;

8. subject to receipt of the required unitholder and securities regulatory approvals, it is expected that the Mergers will be effective on or about June 29, 2012;

9. the Filer referred the Mergers to the independent review committee of the Funds (the IRC) for its recommendation, and after reasonable inquiry, the IRC considered the conflict issues arising from the Mergers and determined that the Mergers achieve a fair and reasonable result for each of the Funds;

10. the Filer believes that the Mergers will be beneficial to the unitholders of the Terminating Funds for the following reasons:

    (a) unitholders of the applicable Terminating Fund and Continuing Fund may enjoy increased economies of scale and lower operating expenses (which are borne indirectly by unitholders) as part of the larger combined Continuing Fund;

(b) the Mergers will eliminate the administrative and regulatory costs of operating the Terminating Funds as separate mutual funds;

(c) the combined Continuing Fund will have a portfolio of greater value than the Terminating Fund allowing for increased portfolio opportunities than the Terminating Funds currently enjoy and which may enhance the ability of the Continuing Fund to further its investment objectives;

(d) to the extent that securities in a Terminating Fund's portfolio are transferred to the Continuing Fund, there will be a savings in brokerage charges over a straight liquidation of those portfolio securities if the Terminating Fund was simply terminated; and

(e) each combined Continuing Fund will benefit from a more significant profile in the marketplace as a result of a more streamlined offering of the Matrix Funds, and therefore fewer competing funds within the Matrix family of funds, and its increased size;

11. the result of each Merger will be that unitholders in each Terminating Fund will cease to be unitholders of a class of the Terminating Fund and will become unitholders of an equivalent class of the applicable Continuing Fund;

12. the portfolios and other assets of each Terminating Fund are currently, or will be at the effective date of the Mergers, acceptable to the portfolio advisor and consistent with the fundamental investment objectives of the applicable Continuing Fund;

13. the merger of each Terminating Fund into the applicable Continuing Fund is not contingent on any other merger and one or more Mergers may proceed even if one or more of the others is not approved by unitholders of the applicable Terminating Fund;

14. the transaction is a “qualifying exchange” within the meaning of section 132.2 of the *Income Tax Act* (R.S.C., 1985, c. 1 (5th Supp.);

15. unitholders of the Terminating Funds will be asked to approve the Mergers as required by subsection 5.1(f) and section 5.2 of NI 81-102; as required by section 5.4 of NI 81-102, a form of proxy, notice and management information circular in connection with the Mergers was mailed to unitholders of the Terminating Funds on May 30, 2012 and filed on SEDAR on May 31, 2012 for a special meeting of unitholders scheduled for June 22, 2012; the management information circular contains sufficient information about the Mergers (including the information required by subsection 5.6(f)(i) of NI 81-102) to permit unitholders to make an informed decision about the Mergers; as required by section 5.6(1)(f)(ii), unitholders of each Terminating Fund received a copy of the fund facts for the applicable Continuing Fund; as required by section 5.6(1)(f)(iii), the materials contain a statement that unitholders of the Terminating Funds may obtain in respect of the reorganized Continuing Fund, at no cost, a simplified prospectus, an annual information form, the most recently filed funds facts document, the most recent annual and interim financial statements, and the most recent management reports of fund performance that have been made public, by accessing the SEDAR website at www.sedar.com, accessing the Filer's website, by calling the Filer's toll free number or by emailing a request to the Filer;

16. upon receipt of a request from a unitholder of a Terminating Fund for the simplified prospectus, annual information form or financial statements of the applicable Continuing Fund, the Filer will make best efforts to fulfill the request before the unitholder meeting held to approve the applicable Merger;

17. the Funds will bear none of the costs and expenses associated with the Mergers, including all brokerage expenses incurred in respect of any required sale of portfolio assets of the Terminating Funds; these costs and expenses will be borne by the Filer;

18. unitholders of the Terminating Funds will continue to have the right to redeem securities of the Terminating Funds up to the close of business on the business day immediately before the effective date of the Mergers;

19. no sales charges will be payable in connection with the purchase by the Terminating Funds of units of the Continuing Funds;

20. as soon as reasonably possible following the Mergers, the Terminating Funds will be wound up;

21. the Filer has concluded that pre-approval under section 5.6 of NI 81-102 is not available for the Mergers because:

(a) in respect of the mergers of Matrix Sierra Equity Fund into Matrix Monthly Pay Fund and Matrix Asia Pacific Fund into Matrix International Balanced Fund, the Terminating Fund and the Continuing Fund each have a different fee structure;

(b) in respect of each Merger, the fundamental investment objective of the Terminating Fund is not, or may be considered not to be, "substantially similar" to the current fundamental investment objective of the Continuing Fund; and

22. the Filer has complied, and will continue to comply, with all applicable legal and regulatory requirements in effecting the Mergers, including obtaining all requisite unitholder approvals for the Mergers.

Decision

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

The decision of the Decision Makers under the Legislation is that the Approvals Sought are granted so long as:

(a) the management information circular sent to unitholders in connection with the Mergers provides sufficient information about the Mergers to permit unitholders to make an informed decision; and

(b) each applicable Terminating Fund and Continuing Fund have an unqualified audit report in respect of their last completed period.

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

2.1.8 Extract Resources Limited – s. 1(10)

Headnote

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

Ontario Statutes

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

June 18, 2012

Extract Resources Limited
South Perth
Western Australia
6151

Dear Sirs/Mesdames:

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

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

As the Applicant has represented to the Decision Makers that:

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

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

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

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

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

"Shannon O'Hearn"
Manager, Corporate Finance
Ontario Securities Commission

2.1.9 Neurodyn Inc.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Exemption granted from the take-over bid requirements in connection with an arm's length acquisition of shares of a non-reporting issuer. Target's shareholders have all entered into an unanimous shareholders agreement which allows a certain percentage of shareholders to decide to tender to an offer and drag the other shareholders along with them. Shareholders being dragged along have no investment decision to make.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 94-99.1, 104(2)(c).

June 15, 2012

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

AND

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

AND

IN THE MATTER OF
NEURODYN INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for an exemption from the requirements of Part 2 of Multilateral Instrument 62-104, *Take-Over Bids and Issuers Bids* (the "Instrument"), Sections 93 to 99.1 of the *Securities Act* (Ontario) (the "Act") and Ontario Securities Commission Rule 62-504 *Take-Over Bids and Issuers Bids* (the "Rule") (the Act and Rule, together with the Instrument, the "Legislation")) (the "Exemption Sought") in connection with a take-over bid by the Filer to acquire all of the outstanding securities of NeuroQuest Inc. (the Target).

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

(a) the Nova Scotia Securities Commission is the Principal Regulator for this application;

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

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

Interpretation

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 Filer:

1. The Filer is incorporated under the *Canada Business Corporations Act* (CBCA).

2. The head office of the Filer is in Charlottetown, Prince Edward Island. The Filer is not currently and has never been a reporting issuer in any jurisdiction, nor are any of its securities listed or posted for trading on any stock exchange.

3. The Target was incorporated on November 26, 2009, under the CBCA. Its authorized capital is an unlimited number of Class A common shares and an unlimited number of Class B common shares. The Class A common shares as a class are entitled to receive an aggregate sum of $1.00 in return of capital before the holders of the Class B common shares are entitled to receive any return of capital, and thereafter the two classes are entitled to receive the remaining assets and property pro rata among the holders of the Class A and Class B shares combined.

4. The head office of the Target is located in Halifax, Nova Scotia.

5. The Target is not and has not been a reporting issuer in any jurisdiction, nor are any of its securities listed or posted for trading on any stock exchange.

6. The issued and outstanding shares in the capital of the Target consist of 9,301,096 Class A common shares and 3,782,603 Class B common shares.

7. The Target has 96 shareholders of record (the "Target Shareholders") who are resident as follows:

i. Nova Scotia – 51

ii. New Brunswick – 11

iii. Ontario – 11

iv. British Columbia – 3

v. Quebec - 1

vi. Alberta – 1

vii. United States – 18

8. Each of the Target Shareholders is a shareholder of Origin Biomed Inc. ("Origin"), a corporation incorporated under the CBCA and with a head office in Halifax, Nova Scotia, whose business is the development, marketing and wholesale distribution of non-prescription natural products for topical pain treatment.

9. The shareholders of the Target acquired their shares under the same exemptions as they acquired shares in Origin, namely as family, friends and business associates of the directors and founder, as employees of a related entity of the Target or as accredited investors.

10. The Filer, the Target and Origin are not in default of securities legislation in any jurisdiction.

11. In or about November 2009, the directors of Origin decided to “spinout” certain intellectual property to a separate company in order to focus on research related to such intellectual property ("Research"), and the Target was incorporated for this purpose. In December 2009, Origin and the Target completed a spin out transaction (the "Spin Out Transaction"), whereby Origin transferred the intellectual property to the Target on the terms set out in an Asset Purchase Agreement dated December 18, 2009.

12. Pursuant to the Spin Out Transaction, Origin offered the following to the shareholders of Origin: (i) to the holders of preferred shares in Origin, the opportunity to subscribe for their pro rata portion of Class A common shares of the Target at a nominal price; and (ii) to the holders of common shares in Origin, the opportunity to subscribe for Class B common shares of the Target at a nominal price.

13. The above subscriptions included a condition that each subscriber who had not already signed the Unanimous Shareholders Agreement must agree to the terms of the Unanimous Shareholders Agreement dated December 18, 2009 between Target and its shareholders (the "Unanimous Shareholders’ Agreement") by signing an attached Assumption Agreement. Each of the Target Shareholders has signed either the Unanimous Shareholders Agreement or an Assumption Agreement to the Unanimous Shareholders’ Agreement.

14. The Unanimous Shareholders’ Agreement states that if any *bona fide* offer from a third party is made to purchase all and not less than all of the outstanding shares of the Target, and the holders of 70% of all outstanding shares are ready, willing and able to accept such offer, then the offer will be deemed to have been accepted by all shareholders of the Target, and authorizes the secretary of the Target to accept the offer on behalf of those shareholders who do not accept it (the “Drag-Along Provisions”). Shares are defined in the Unanimous Shareholders` Agreement as all shares of the Target, regardless of class.

15. The Target’s Research was financed by loans to the Target from the Atlantic Innovation Fund (AIF Loan) administered by Atlantic Canada Opportunities Agency ("ACOA") and loans from Origin. The AIF Loan was guaranteed by Origin and was repayable if the research program as originally submitted ("AIF Research Program") was not completed.

16. Origin has determined that it cannot afford to continue funding the Target’s AIF Research Program and the Target will not be able to afford to continue the AIF Research Program without contribution from Origin. In the event of discontinuation of the AIF Research Program, the Target and Origin would suffer financial hardship in connection with the AIF Loan which would render the Target insolvent.

17. The Filer, Target and Origin determined that if the Filer obtained approval under the AIF program to take over the funding responsibility for the AIF Research Program, then the Target could continue the AIF Research Program and Origin would be released by the Filer from its financial responsibilities relating to the AIF Loan.

18. Origin, the Filer and the Target entered into an Agreement to Purchase the Shares of NeuroQuest Inc. dated December 21, 2011 (the "Agreement") setting out a number of transfers, assignments, releases, payments and consents (collectively, the "Transaction") including the acquisition by the Filer of all outstanding Class A common and Class B common shares in the Target for a nominal aggregate price of $10.00 and the assumption by the Filer of Origin’s financial responsibility in connection with the AIF Research Program.

19. The primary purpose of the Transaction is to allow the Target's Research to continue under the ownership of the Filer, who is wiling to pay the one-third of the costs of further Research, to allow Origin to be released from its liability for further

costs and accrued loan guarantees in respect of the AIF Loan, and to prevent the AIF Loan and Origin loans from becoming payable by the Target in the event of discontinuance of the Research Program. Accordingly, the Transaction benefits both the Target and Origin. Since all of the Target Shareholders are also shareholders of Origin, the Transaction benefits these shareholders both in their capacity as Target Shareholders and as Origin shareholders. No other sources of financing are available to fund the Target's Research because private funding for early stage biotechnology research is very difficult to raise and government granting agencies generally require matching funding from funding applicants. Target has an urgent need to complete the Transaction in order continue to receive funding for its Research from ACOA, which has informed Target that no further funds will be advanced until Filer assumes responsibility for the AIF Loan. Accordingly, Target has an urgent financial necessity to complete the Transaction and no alternative solutions, including structuring the Transaction as a transaction other than a take-over bid, are financially viable. No other consents are required for the Transaction to occur.

20. Five Target Shareholders, holding 87.1% of the Class A common shares, 34.5% of the Class B common shares, and in total, 71.89% of all shares of the Target, agreed to sell their shares under the terms and conditions of the Agreement. As the Drag-Along Provisions were triggered by the consent of the five Target Shareholders, the other Target Shareholders have no decision to make in terms of whether to accept or reject the Transaction. Moreover, the Target Shareholders do not have any other dissent rights or appraisal rights under corporate law.

21. The board of directors of the Target (the "Board") has determined that the Target is not financially viable without the completion of the Transaction and there is no non-nominal value remaining in the Target`s shares. The Board has concluded that the Transaction represents a *bona fide* offer (as such term in defined in the Unanimous Shareholders' Agreement), is fair, and is in the best interests of the Target and the Target Shareholders.

22. None of the Target Shareholders will receive any "collateral benefit" (as such term is defined in the Legislation) in connection with the Transaction.

23. The Transaction constitutes a "formal bid" for purposes of the Legislation and no exemptions from the applicable take-over bid requirements of the Legislation are available to the Filer.

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 the Transaction is completed in compliance with the terms of the Unanimous Shareholders' Agreement.

"Kevin G. Redden"
Director, Corporate Finance
Nova Scotia Securities Commission

2.2 Orders

2.2.1 Richvale Resource Corporation 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
RICHVALE RESOURCE CORPORATION,
MARVIN WINICK, HOWARD BLUMENFELD,
JOHN COLONNA, PASQUALE SCHIAVONE,
AND SHAFI KHAN

ORDER
(Section 127 of the Act)

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

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

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

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

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

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

(iv) it was further ordered pursuant to clause 2 of subsection 127 (1) of the Act that any exemptions contained in Ontario securities laws in respect of Richvale, Winick, Blumenfeld, Schiavone and Khan are removed;

AND WHEREAS the Amended Temporary Order was extended on April 1, 2010 and June 3, 2010;

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

AND WHEREAS on December 2, 2010, the Amended Temporary Order was extended until the conclusion of the hearing on the merits;

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

AND WHEREAS on September 13, 2011, Staff filed an Amended Statement of Allegations with respect to Richvale, Winick, Blumenfeld, Colonna, Schiavone and Khan;

AND WHEREAS on October 14, 2011, the Commission approved Settlement Agreements entered into by Staff and Colonna, Khan, Winick and Blumenfeld, respectively;

AND WHEREAS on October 14, 2011, the hearing on the merits was adjourned to October 20, 2011, to give Staff an opportunity to prepare materials for a Written Hearing pursuant to Rule 11 of the Ontario Securities Commission *Rules of Procedure* (the "*Rules of Procedure*") against Schiavone and Richvale (the "Remaining Respondents");

AND WHEREAS on October 19, 2011, the hearing on the merits, which was to commence October 20, 2011, was adjourned to October 26, 2011;

AND WHEREAS on October 26, 2011, a hearing was held and Staff appeared and requested that the matter continue as a written hearing;

AND WHEREAS the Remaining Respondents did not appear at the hearing on October 26, 2011, but counsel for Schiavone provided his written consent to the continuation of the matter in writing, subject to Schiavone's right to attend and be heard by the Commission;

AND WHEREAS on October 26, 2011, the Commission ordered that this matter would continue as a written hearing pursuant to Rule 11.5 of the Commission's Rules of Procedure and that the matter would return before the Commission as an oral hearing on January 12, 2012;

AND WHEREAS a hearing took place and the Commission issued Reasons and Decision in this matter on

April 25, 2012, finding that Richvale and Schiavone had breached the Act;

AND WHEREAS a sanctions hearing in respect of the Remaining Respondents was scheduled for June 8, 2012, at 10:00 a.m. (the "Sanctions Hearing");

AND WHEREAS Staff appeared on June 8, 2012, and neither Schiavone nor Richvale appeared, though Schiavone had advised the Registrar of the Commission that he would attend;

AND WHEREAS Staff advised the panel that they had been unable to serve Schiavone with Staff's written materials for the Sanctions Hearing (the "Written Materials") because Schiavone had moved from the address at which Staff had previously served him and Richvale;

AND WHEREAS Staff requested that the matter be adjourned so that Staff could make a further attempt to obtain a current mailing address for Schiavone and deliver the Written Materials to Schiavone and to allow Schiavone to have an opportunity to respond;

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

IT IS ORDERED that the Sanctions Hearing is adjourned to June 22, 2012, at 11:00 a.m.

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

"Edward P. Kerwin"

2.2.2 Cayenne Gold Mines Ltd. – s. 144

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

Statutes Cited

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

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

AND

IN THE MATTER OF
CAYENNE GOLD MINES LTD.
(the Reporting Issuer)

ORDER
(Section 144)

Background

On February 27, 2012, the Director made an order under paragraph 2 of subsection 127(1) of the Act (the Cease Trade Order) that all trading in **CAYENNE GOLD MINES LTD.** securities of the Reporting Issuer, whether direct or indirect, shall cease until further order by the Director.

The Order was made because the Reporting Issuer was in default of certain filing requirements under Ontario securities law as described in the Cease Trade Order.

The Reporting Issuer has applied to the Ontario Securities Commission under section 144 of the Act for a revocation of the Cease Trade Order.

Representations

This order is based on the following facts represented by the Reporting Issuer:

1. The Reporting Issuer is a reporting issuer under the securities legislation of the provinces of Ontario, British Columbia, Alberta, Saskatchewan and Manitoba.

2. The Reporting Issuer has filed all outstanding continuous disclosure documents that are required to be filed under Ontario securities law.

3. The Reporting Issuer has paid all outstanding activity, participation and late filing fees that are required to be paid.

4. The Reporting Issuer was also subject to similar cease trade orders issued by the British Columbia Securities Commission (BCSC) and the Manitoba Securities Commission (MSC) as a result of the failure to make the filings described in the Cease Trade Order. The orders issued by BCSC and MSC were revoked on March 22, 2012 and March 23, 2012.

5. The Reporting Issuer's SEDAR profile and SEDI issuer profile supplement are current and accurate.

Order

The Director is of the opinion that it would not be prejudicial to the public interest to revoke the Cease Trade Order.

It is ordered under section 144 of the Act that the Cease Trade Order is revoked.

Dated: April 17, 2012

"Lisa Enright"
Manager, Corporate Finance

2.2.3 Homeland Energy Group Ltd. – s. 144

Headnote

Section 144 – full revocation of cease trade order upon remedying of defaults.

Statutes Cited

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

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

AND

IN THE MATTER OF
HOMELAND ENERGY GROUP LTD.
(the Reporting Issuer)

ORDER
(Section 144)

Background

On April 17, 2012, the Director made an order under paragraph 2 of subsection 127(1) of the Act (the Cease Trade Order) that all trading in securities of the Reporting Issuer, whether direct or indirect, shall cease until further order by the Director.

The Order was made because the Reporting Issuer was in default of certain filing requirements under Ontario securities law as described in the Cease Trade Order (the Default).

The Reporting Issuer has applied to the Ontario Securities Commission under section 144 of the Act for a revocation of the Cease Trade Order.

Representations

This order is based on the following facts represented by the Reporting Issuer:

1. The Reporting Issuer is a reporting issuer under the securities legislation of the provinces of Ontario, British Columbia and Alberta.

2. The Reporting Issuer is not in default of the Cease Trade Order.

3. Except for the Default, the Reporting Issuer is not in default of any requirements under Ontario securities law.

4. The Reporting Issuer has filed all outstanding continuous disclosure documents that are required to be filed under Ontario securities law.

5. The Reporting Issuer has paid all outstanding activity, participation and late filing fees that are required to be paid.

6. The Reporting Issuer's SEDAR profile and SEDI issuer profile supplement are current and accurate.

7. Upon the issuance of this revocation order, the Reporting Issuer will issue a news release announcing the revocation of the Cease Trade Order. The Reporting Issuer will concurrently file the news release and a material change report regarding the revocation of the Cease Trade Order on SEDAR.

Order

The Director is of the opinion that it would not be prejudicial to the public interest to revoke the Cease Trade Order.

It is ordered under section 144 of the Act that the Cease Trade Order is revoked.

Dated: June 13, 2012

"Jo-Anne Matear"
Manager, Corporate Finance

2.2.4 Sage Investment Group 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
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

ORDER
(Section 127 of the Securities Act)

WHEREAS on February 1, 2012, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") accompanied by a Statement of Allegations dated January 27, 2012, issued by Staff of the Commission ("Staff") with respect to Sage Investment Group ("Sage"), C.A.D.E. Resources Group Inc. ("C.A.D.E."), Greenstone Financial Group ("Greenstone"), Fidelity Financial Group ("Fidelity"), Antonio Carlos Neto David Oliveira ("Oliveira"), and Anne Marie Ridley ("Ridley"), (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing stated that a hearing would be held at the offices of the Commission on February 9, 2012;

AND WHEREAS on February 9, 2012, Staff confirmed that the Commission had received the affidavit of Charlene Rochman affirmed February 9, 2012, which indicated that the Notice of Hearing and Statement of Allegations were served on all Respondents personally, or through their counsel;

AND WHEREAS on February 9, 2012, Staff and Ridley attended the hearing and made submissions, and Staff requested that a pre-hearing conference be scheduled in this matter;

AND WHEREAS on February 9, 2012, the Commission ordered that a pre-hearing conference be scheduled for April 26, 2012 at 2:00 p.m.;

AND WHEREAS on April 26, 2012, Staff and counsel for Oliveira, Greenstone and Fidelity attended before the Commission and no-one appeared on behalf of the remaining Respondents;

AND WHEREAS on April 27, 2012, the Commission ordered that the hearing on the merits shall commence on January 23, 2013 and shall continue on January 24, 25, 30 and 31, 2013 from 10:00 a.m. to 4:00 p.m. or on such further or other dates as may be agreed to by the parties and fixed by the Office of the Secretary;

AND WHEREAS on April 27, 2012, the Commission further ordered that a status hearing shall take place on June 13, 2012 at 10:00 a.m.;

AND WHEREAS on June 13, 2012, Staff and Ridley attended before the Commission for a status hearing and no-one appeared on behalf of the remaining Respondents;

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

IT IS HEREBY ORDERED that the status hearing shall continue on September 12, 2012 at 9:00 a.m.

DATED at Toronto this 13th day of June, 2012.

"Edward P. Kerwin"

2.2.5 Juniper Fund Management Corporation et al.

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

AND

IN THE MATTER OF
THE JUNIPER FUND MANAGEMENT CORPORATION, JUNIPER INCOME FUND, JUNIPER EQUITY GROWTH FUND AND ROY BROWN (a.k.a. ROY BROWN-RODRIGUES)

ORDER
(Hearing held on June 8, 2012)

WHEREAS on March 8, 2006, the Ontario Securities Commission (the "Commission") ordered pursuant to subsection 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that all trading in the securities of the Juniper Income Fund ("JIF") and the Juniper Equity Growth Fund ("JEGF") (collectively, the "Funds") shall cease forthwith for a period of 15 days from the date thereof (the "Temporary Order");

AND WHEREAS pursuant to subsections 127(1) and 127(5) of the Act, a hearing was scheduled for March 23, 2006 (the "Hearing");

AND WHEREAS the Respondents were served with the Temporary Order, the Notice of Hearing dated March 21, 2006 and the Statement of Allegations dated March 21, 2006;

AND WHEREAS the Commission ordered the extension of the Temporary Order and an adjournment of the Hearing for various reasons on the following dates:

(i) March 23, 2006 extended and adjourned to May 4, 2006;

(ii) May 4, 2006 extended and adjourned to May 23, 2006;

(iii) May 23, 2006 extended and adjourned to September 21, 2006;

(iv) September 21, 2006 extended and adjourned to November 8, 2006;

(v) November 7, 2006 extended and adjourned to December 13, 2006;

(vi) December 13, 2006 extended and adjourned to March 2, 2007;

(vii) March 2, 2007 extended and adjourned to May 22, 2007;

(viii) May 22, 2007 extended and adjourned to July 17, 2007; and

(ix) July 17, 2007 extended and adjourned to September 4, 2007.

AND WHEREAS on September 4, 2007, the Commission ordered that the Hearing commence on April 7, 2008 and continue for nine days thereafter and that the Temporary Order be extended until the conclusion of the Hearing;

AND WHEREAS on March 31, 2008, Brown brought a motion for an adjournment on the basis that: (1) he was no longer represented by counsel; (2) he had not yet seen Staff's disclosure volumes which were served on his former counsel; and (3) he required additional time to prepare for the Hearing, and Staff opposed Brown's motion;

AND WHEREAS on March 31, 2008, the Commission granted Brown's request and ordered that the Hearing be adjourned to June 16, 2008;

AND WHEREAS on June 4, 2008, Staff brought a motion to adjourn the Hearing due to availability;

AND WHEREAS the Office of the Secretary tentatively scheduled the Hearing for June 15 to 19, 2009 but Brown was not available on those dates;

AND WHEREAS on December 23, 2009, Staff requested that a pre-hearing conference in this matter be scheduled, and pre-hearing conferences were subsequently held on:

(i) March 2, 2010;

(ii) April 30, 2010 (wherein the Hearing was scheduled to commence November 15, 2010 and thereafter);

(iii) October 1, 2010;

(iv) October 20, 2010; and

(v) November 1, 2010;

AND WHEREAS during the pre-hearing conference on November 1, 2010, the Commission advised the parties that it was no longer available for the Hearing scheduled to commence on November 15, 2010;

AND WHEREAS a pre-hearing conference was held on January 24, 2011 wherein the Commission ordered that the Hearing shall begin on September 14, 2011 and continue thereafter as scheduled:

AND WHEREAS a confidential hearing was held on August 25, 2011 to consider Brown's motion to adjourn the Hearing;

AND WHEREAS on August 30, 2011, the Commission ordered that the Hearing shall commence on September 16, 2011 and proceed as scheduled;

AND WHEREAS on September 16, 2011 the Commission dismissed Brown's motion to vary the Commission's adjournment decision and ordered that the Hearing commence on September 19, 2011;

AND WHEREAS the Hearing commenced on September 19, 2011 and continued thereafter on September 20, 21, 22, 23, 28, 29, and October 5, 2011;

AND WHEREAS on October 5, 2011, Brown advised the Commission of his inability to participate in the Hearing due to his medical condition and the Commission adjourned the Hearing to November 9, 2011;

AND WHEREAS by e-mail dated November 6, 2011 Brown requested a further adjournment of the Hearing for medical reasons with supporting evidence for this request;

AND WHEREAS on November 9, 2011 the Commission ordered: (i) the Hearing be adjourned to December 21, 2011, and (ii) Brown to provide the Commission with an update and evidence about his progress and medical condition by November 30, 2011;

AND WHEREAS on December 21, 2011, the Commission considered the evidence provided by Brown and ordered: (i) Brown to bring his motion to recall Staff's witnesses on February 14, 2012; and (ii) the Hearing to continue on February 27, 29 and March 2, 5 and 6, 2012;

AND WHEREAS Brown brought a motion returnable February 14, 2012 seeking an adjournment of the Hearing for approximately 60 days on the basis that his medical condition prevented him from participating in his motion to recall Staff's witnesses as scheduled (the "2012 Brown Adjournment Motion");

AND WHEREAS on February 14, 2012, the Commission heard submissions on the 2012 Brown Adjournment Motion, withheld its decision, and requested the parties re-attend to continue the motion on February 22, 2012 in order to allow Brown to provide the Commission with supporting evidence for his motion;

AND WHEREAS on February 17, 2012 Brown filed supporting evidence for his request to adjourn the Hearing and on February 22, 2012 the parties made further submissions in respect thereof;

AND WHEREAS on February 27, 2012, the Commission issued an order that provides, in part, that the Hearing be adjourned on a peremptory basis and shall continue on April 4, 2012 and for 5 days thereafter as scheduled, with or without counsel;

AND WHEREAS on March 30, 2012, Brown sent an e-mail to the Office of the Secretary indicating that he was not capable of participating in the continuation of the Merits Hearing on April 4, 2012;

AND WHEREAS on April 4, 2012, the Commission heard submissions from Staff and Brown on

the issue of whether the Merits Hearing should proceed on that date;

AND WHEREAS the Commission agreed to grant one final adjournment to Brown and ordered that the hearing shall commence on May 28, 2012 and shall continue for 7 days thereafter as scheduled;

AND WHEREAS on May 23, 2012, Brown sent a letter to the Commission indicating that he was medically unfit to participate in the continuation of the Merits Hearing on May 28, 2012 and requested a further adjournment in order that he may 1) cross-examine Staff witnesses by written interrogatories, 2) submit his own testimony by affidavit evidence, and 3) that he be allowed until the middle or end of September to submit his case;

AND WHEREAS on May 28, 2012, the Commission heard submissions from Staff and Brown on the issue of whether the Merits Hearing should be adjourned and on the requests made by Brown in his letter dated May 23, 2012;

AND WHEREAS on May 28, 2012, the Commission denied Brown's request for an adjournment, allowed Brown's request to participate in writing, vacated May 29, 2012 to give Brown an extra day to prepare his questions for the cross-examination of Staff's witnesses, and ordered the Merits Hearing to proceed on May 30, 2012 and thereafter, as previously scheduled;

AND WHEREAS on May 29, 2012, Brown sent an email to the Commission indicating his intent to request that the panel reconsider its decision of May 28, 2012 and permit a further adjournment of this matter;

AND WHEREAS on May 30, 2012, the Commission heard submissions from Staff and Brown on the request for reconsideration made by Brown to adjourn the Merits Hearing as per his email dated May 29, 2012 and determined that a further adjournment is prejudicial to the public interest in these proceedings;

AND WHEREAS at the hearing on May 30, 2012, the Commission ordered that Brown is permitted to submit his testimony either in-person or by way of affidavit on June 8, 2012 and that examinations will continue on June 8, 2012 either in-person or by videoconference;

AND WHEREAS on June 5, 2012, Brown sent an email to the Commission indicating that he is unable to participate in the hearing in any manner and made an informal request for a further adjournment;

AND WHEREAS on June 8, 2012, the Commission heard submissions by Brown and Staff and is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

1. Brown's request for a further adjournment is denied;
2. Staff shall serve and file its closing written submissions by no later than June 22, 2012;
3. Brown shall serve and file his responding closing submissions by no later than August 20, 2012;
4. Staff shall serve and file its reply by no later than August 31, 2012; and
5. Closing oral submissions shall be heard on September 4, 2012 commencing at 11 a.m. The hearing dates of June 20 and 22, 2012 are hereby vacated.

DATED at Toronto on this 18th day of June, 2012.

"Vern Krishna

"Margot C. Howard"

2.2.6 Shallow Oil & Gas Inc. et al. – s. 127

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

AND

IN THE MATTER OF
SHALLOW OIL & GAS INC., ERIC O'BRIEN,
ABEL DA SILVA, ABRAHAM HERBERT GROSSMAN
also known as ALLEN GROSSMAN
and KEVIN WASH

ORDER
(Section 127)

WHEREAS on January 16, 2008, the Ontario Securities Commission ("the Commission") issued a Temporary Order pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") that: (i) all trading in securities by Shallow Oil & Gas Inc. ("Shallow Oil") shall cease and that all trading in Shallow Oil securities shall cease; and (ii) Eric O'Brien ("O'Brien"), Abel Da Silva ("Da Silva"), and Abraham Herbert Grossman, also known as Allen Grossman ("Grossman"), cease trading in all securities (the "Temporary Order");

AND WHEREAS on June 19, 2008, following a hearing before the Commission, the Commission ordered:

1. the Temporary Order be extended until the completion of the hearings of the merits; and

2. pursuant to subsection 127(5) of the Act, that Kevin Wash ("Wash") cease trading in any securities (the "Second Temporary Order").

AND WHEREAS on November 25, 2008, the Commission ordered that the Second Temporary Order is extended until the conclusion of the hearing on the merits in this matter;

AND WHEREAS on December 15, 2011, it was ordered that the hearing on the merits shall commence on June 18, 2012, and shall continue on June 20, 21, and 22, 2012, or such further or other dates as may be agreed to by the parties and fixed by the Office of the Secretary;

AND WHEREAS an Amended Notice of Hearing was issued on May 14, 2012, accompanied by an Amended Statement of Allegations filed by Staff with respect to Shallow Oil, O'Brien, Da Silva, Grossman and Wash;

AND WHEREAS on May 29, 2012, Staff indicated that they would be requesting, pursuant to Rule 11 of the Commission's Rules of Procedure (2010), 33 O.S.C.B. 8017, that all or substantially all of the hearing on the merits be conducted as a written hearing;

AND WHEREAS on May 29, 2012, the Commission advised the parties that it would hear oral submissions in respect of Staff's request for a written hearing at the outset of the hearing on June 18, 2012;

AND WHEREAS on June 18, 2012, Staff appeared before the Commission for the hearing of the merits, and no one appeared on behalf of the Respondents;

AND WHEREAS on June 18, 2012, Staff withdrew their request for a written hearing;

AND WHEREAS the Commission is unable to hear this matter in the manner contemplated in the Order of December 15, 2011, due to a scheduling conflict;

IT IS ORDERED THAT:

1) The hearing of the merits is adjourned to October 29, 2012, at 10:00 a.m. at the offices of the Commission, 20 Queen Street West, 17th Floor, Toronto, and will continue on October 30, and 31, 2012; and

2) the hearing dates scheduled in this matter for June 20, 21 and 22, 2012, are hereby vacated.

DATED at Toronto this 18th day of June, 2012.

"James D. Carnwath"

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Homeland Energy Group Ltd.	05-Apr-12	17-Apr-12	17-Apr-12	13-Jun-12

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS FOR THIS WEEK.

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Chapter 6

Request for Comments

6.1.1 Implementation of Stage 2 of Point of Sale Disclosure for Mutual Funds – Proposed Amendments to NI 81-101 Mutual Fund Prospectus Disclosure, Form 81-101F3 Contents of Fund Facts Document and Companion Policy 81-101CP Mutual Fund Prospectus Disclosure – 2nd Request for Comments

CSA NOTICE AND REQUEST FOR COMMENT

IMPLEMENTATION OF STAGE 2 OF
POINT OF SALE DISCLOSURE FOR MUTUAL FUNDS

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*, FORM 81-101F3
AND COMPANION POLICY 81-101CP *MUTUAL FUND PROSPECTUS DISCLOSURE*
AND CONSEQUENTIAL AMENDMENTS
(2nd PUBLICATION)

June 21, 2012

Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for second comment changes to proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (the Rule or NI 81-101), including Form 81-101F3 (the Form) and Companion Policy 81-101CP (the Companion Policy). We refer to the proposed amendments to the Rule, the Form and the Companion Policy together as the Proposed Amendments.

A prior version of the proposed amendments to the Rule, the Form and the Companion Policy, together with consequential amendments, was published by the CSA on August 12, 2011 (the 2011 Proposal). The 2011 Proposal sets out proposed Stage 2 of the CSA's implementation of the point of sale disclosure framework (the Framework), published in October 2008 by the CSA and the Canadian Council of Insurance Regulators, as members of the Joint Forum of Financial Market Regulators (the Joint Forum).[1] The Fund Facts document (the Fund Facts) is central to the Framework.

Stage 2 will require delivery of the Fund Facts within two days of buying a mutual fund. It will also permit the delivery of the Fund Facts to satisfy the prospectus delivery requirements under securities legislation. Although delivery of the simplified prospectus will no longer be required, it will continue to be available to investors upon request.

The changes made to the 2011 Proposal are in response to stakeholder feedback, particularly investor advocates, and focus primarily on the presentation of risk in the Fund Facts. A sample Fund Facts with the proposed changes is set out in Appendix A to this Notice. Appendix B sets out the key changes we have made to the 2011 Proposal.

Concurrently with the publication of the Proposed Amendments, the CSA will test the proposed changes to the Fund Facts with investors which will inform any changes we make to the Fund Facts.

We will also continue to consider mandating a CSA risk classification methodology to identify a mutual fund's risk level on the scale prescribed in the Fund Facts. The CSA will publish for comment any proposed requirements that would prescribe a risk classification methodology for mutual funds.

The text of the Proposed Amendments is included in annexes to this Notice and is available on the websites of members of the CSA, together with proposed consequential amendments to:

- National Instrument 81-102 *Mutual Funds* (NI 81-102);
- Form 81-101F1 *Contents of Simplified Prospectus*; and
- Form 81-101F2 *Contents of Annual Information Form*.

[1] The goal of the Joint Forum is to continuously improve the financial services regulatory system through greater harmonization, simplification and co-ordination of regulatory activities. Under the framework, investors would receive more meaningful information about a mutual fund or segregated fund at a time that is relevant to their investment decision.

We expect the Proposed Amendments and consequential amendments to be adopted in each jurisdiction of Canada, following the satisfaction of applicable Ministerial approval requirements. In some jurisdictions, legislative amendments may need to be sought and enacted prior to implementing the Proposed Amendments and consequential amendments.

Background

On June 16, 2010, the CSA published CSA Staff Notice 81-319 *Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds*, which outlined the CSA's decision to implement the Framework in three stages.

Stage 1 was completed on January 1, 2011 when amendments to NI 81-101 came into force. These amendments, published on October 6, 2010, require mutual funds subject to NI 81-101 to produce and file a Fund Facts and make it available on the mutual fund's or mutual fund manager's website. The Fund Facts must also be delivered or sent to investors free of charge upon request.

Stage 2, now underway, proposes amendments to NI 81-101 to allow delivery of the Fund Facts to satisfy the prospectus delivery requirements under securities legislation to deliver a prospectus within two days of buying a mutual fund.

In Stage 3, the CSA will publish for further comment any proposed requirements that would implement point of sale delivery for mutual funds. As part of Stage 3, we will consider the applicability of a summary disclosure document and point of sale delivery for other types of publicly offered investment funds.

You can find additional background information and other Joint Forum publications on the topic of point of sale disclosure for mutual funds and segregated funds on the Joint Forum website at www.jointforum.ca and on the websites of members of the CSA.

Substance and Purpose of the Proposed Amendments

We know that many investors do not use the information in the simplified prospectus because they have trouble finding and understanding the information they need. Research on investor preferences for mutual fund information, including our own testing of the Fund Facts, indicates investors prefer to be offered a concise summary of key information.[2] Financial literacy research further reinforces the need for clear and simple disclosure.

The CSA designed the Fund Facts to make it easier for investors to find and use key information. It is in plain language, no more than two pages double-sided and highlights key information important to investors. The format provides investors with basic information about the mutual fund, followed by a concise explanation of mutual fund expenses and fees, dealer compensation and the investor's rights. Introductory text specifies that more detailed information about the mutual fund is available in its simplified prospectus.

The Proposed Amendments are an important step in the implementation of this investor-focused initiative. Investors will be able to review key information about the potential benefits, risks and costs of investing in a mutual fund in an accessible format at a time that is relevant to their investment decision. We also think familiarity with the Fund Facts may assist investors in their decision-making process and in discussions with dealer representatives, and highlight for investors where they can find further information about the mutual fund.

Changes to the 2011 Proposal

We received 12 comment letters on the 2011 Proposal. Copies of the comment letters have been posted on the Ontario Securities Commission website at www.osc.gov.on.ca. Copies are also available from any CSA member. You can find the names of the commenters and a summary of the comments and our responses in Appendix C to this Notice.

We have considered all of the comments. In response to the comments, the CSA have proposed a number of changes to the presentation of risk in the Fund Facts to enhance the current disclosure. For illustrative purposes, a sample Fund Facts with the proposed changes is set out in Appendix A to this Notice.

Concurrently with the publication, the CSA will test the Fund Facts with investors to better inform our decision on what changes to make.

[2] You can find a list of the research, studies and other sources that the Joint Forum reviewed and relied on in developing the point of sale disclosure framework in Appendix 4 to the proposed framework (the proposed Framework), published in June 2007. The proposed Framework is available on the Joint Forum website and on the websites of members of the CSA. The *Fund Facts Document Research Report* prepared by Research Strategy Group can be found in Appendix 5 to the proposed Framework.

Summary of the Proposed Amendments

You can find a summary of the key changes we made to the 2011 Proposal set out in Appendix B to this Notice. As indicated, the key changes we have made to the Proposed Amendments relate to the content of the Fund Facts, notably, the presentation of risk.

Appendix B to this Notice also raises some specific issues for comment related to the changes.

Alternatives Considered

The earlier publications by the Joint Forum outlined the alternatives we considered, as members of the Joint Forum, in developing the point of sale disclosure regime for mutual funds contemplated by the Proposed Amendments. These publications also set out the pros and cons to each alternative. You can find these documents on the Joint Forum website and on the websites of members of the CSA.

Anticipated Costs and Benefits

The earlier publications by the Joint Forum and CSA outlined some of the anticipated costs and benefits of implementation of the point of sale disclosure regime for mutual funds contemplated by the Framework. We consider these costs and benefits to still be valid. Overall, we continue to believe that the potential benefits of the changes to the disclosure regime for mutual funds as contemplated by the Proposed Amendments are proportionate to the costs of making them.

You can find these documents on the Joint Forum website and on the websites of members of the CSA.

Consequential Amendments

National amendments

Proposed amendments to NI 81-102 are set out in Annex C to this Notice.

Local amendments

Elements of local securities legislation may need to be amended in conjunction with the implementation of the Proposed Amendments. The provincial and territorial securities regulatory authorities may publish these proposed local amendments separately in their jurisdictions. These local changes may be to rules/regulations or to statutes. If statutory amendments are necessary in a jurisdiction, these changes will be initiated and published by the local provincial government.

Proposed consequential amendments to rules or regulations in a particular jurisdiction or publication requirements of a particular jurisdiction are in an Annex D to this Notice published in that particular jurisdiction.

Some jurisdictions may need to modify the application of the Proposed Amendments using a local implementing rule. Jurisdictions that must do so will separately publish the implementing rule.

Unpublished Materials

In developing the Proposed Amendments and consequential amendments, we have not relied on any significant unpublished study, report or other written materials.

Request for Comments

We would like your input on the Proposed Amendments and consequential amendments. We have raised specific issues for comment in Appendix B to this Notice. We also welcome your comments on other aspects of the Proposed Amendments.

Deadline for Comments

Your comments must be submitted in writing by **September 6, 2012**.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. All comments will be posted on the OSC website at www.osc.gov.on.ca.

Please send your comments electronically in Word, Windows format.

Where to Send Your Comments

Please address your comments to the following CSA members:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be forwarded to the other CSA members.

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

Questions

Please refer your questions to any of the following CSA staff:

Christopher Birchall
Senior Securities Analyst
Corporate Finance
British Columbia Securities Commission
Phone: 604-899-6722
E-mail: cbirchall@bcsc.bc.ca

Bob Bouchard
Director and Chief Administration Officer
Manitoba Securities Commission
Phone: 204-945-2555
E-mail: Bob.Bouchard@gov.mb.ca

Rhonda Goldberg
Director, Investment Funds Branch
Ontario Securities Commission
Phone: 416-593-3682
Email: rgoldberg@osc.gov.on.ca

George Hungerford
Senior Legal Counsel, Legal Services, Corporate Finance
British Columbia Securities Commission
Phone: 604-899-6690
Email: ghungerford@bcsc.bc.ca

Ian Kerr
Senior Legal Counsel, Corporate Finance
Alberta Securities Commission
Phone: 403-297-4225
E-mail: Ian.Kerr@asc.ca

Hugo Lacroix
Senior Analyst, Investment Funds Branch
Autorité des marchés financiers
Phone: 514-395-0337, ext. 4476
Email: hugo.lacroix@lautorite.qc.ca

Agnes Lau
Senior Advisor - Technical & Projects, Corporate Finance
Alberta Securities Commission
Phone: 403-297-8049
Email: Agnes.Lau@asc.ca

Chantal Leclerc
Lawyer / Senior policy advisor
Autorité des marchés financiers
Phone: 514-395-0337, ext. 4463
Email: Chantal.Leclerc@lautorite.qc.ca

Irene Lee
Legal Counsel, Investment Funds Branch
Ontario Securities Commission
Phone: 416-593-3668
E-mail: ilee@osc.gov.on.ca

Stephen Paglia
Senior Legal Counsel, Investment Funds Branch
Ontario Securities Commission
Phone: 416-593-2393
E-mail: spaglia@osc.gov.on.ca

The text of the Proposed Amendments and consequential amendments is contained in the following annexes to this Notice and is available on the websites of members of the CSA:

Annex A – Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*
Annex B – Amendments to Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure*
Annex C – Amendments to National Instrument 81-102 *Mutual Funds*
Annex D – Local Information

[Editor's note: Appendix A – *Sample Fund Facts Document* follows on unnumbered pages.]

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XYZ Mutual Funds

FUND FACTS

XYZ Canadian Equity Fund – Series B

June 30, 20XX

Fund Code: XYZ123

This document contains key information you should know about XYZ Canadian Equity Fund. You can find more details in the fund's simplified prospectus. Ask your dealer representative for a copy, contact XYZ Mutual Funds at 1-800-555-5556 or investing@xyzfunds.com, or visit www.xyzfunds.com.

Quick facts

Date series started:	March, 31, 2000	**Fund manager:**	XYZ Mutual Funds
Date fund started:	January 1, 1996	**Portfolio manager:**	Capital Asset Management Ltd.
Total value of series on June 1, 20XX:	$350 million	**Distributions:**	Annually, on December 15
Total value of fund on June 1, 20XX:	$1 billion	**Minimum investment:**	$500 initial, $50 additional
Management expense ratio (MER):	2.25%		

What does this fund invest in?

The fund invests in Canadian companies. They can be of any size and from any industry. The charts below give you a snapshot of the fund's investments on June 1, 20XX. The fund's investments will change.

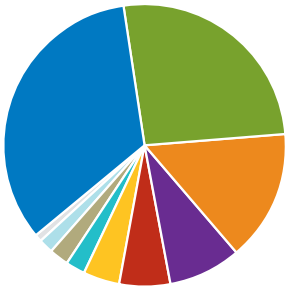
Top 10 investments (June 1, 20XX)

1.	Royal Bank of Canada	7.5%
2.	Toronto-Dominion Bank	7.1%
3.	Canadian Natural Resources	5.8%
4.	The Bank of Nova Scotia	4.1%
5.	Cenovus Energy Inc.	3.7%
6.	Suncor Energy Inc.	3.2%
7.	Enbridge Inc.	3.1%
8.	Canadian Imperial Bank of Commerce	2.9%
9.	Manulife Financial Corporation	2.7%
10.	Canadian National Railway Company	1.9%

The top 10 investments make up 42% of the fund.

Total number of investments 93

Investment mix (June 1, 20XX)



Industry	
Financial services	34.0%
Energy	26.6%
Industrial goods	16.5%
Business services	6.4%
Telecommunication	5.9%
Hardware	3.7%
Healthcare services	2.3%
Consumer services	2.1%
Media	1.9%
Consumer goods	0.6%

What are the risks of this fund?

All investments involve risks. Understanding those risks can help you choose the right fund for you.

Investment risk. When you invest in a fund, the value of your investment can go down as well as up. In some cases, you may see large changes in value. These changes can happen quickly.

XYZ Mutual Funds is required to rate the level of risk of its funds. The scale ranges from Low to High based on how the fund is invested and the level of risk and return involved. In most cases, a lower rating means lower risk and lower returns, with a lower chance of losses. A higher rating generally means higher risk and higher returns, with a greater chance of losing money.

Low	Low to medium	**Medium**	Medium to high	High

Typically lower returns and less chance of losses — Typically higher returns and greater chance of losses

The risk category shown is not fixed and may change over time. The lowest category does not mean there is no risk. A fund that is rated on the low end of the risk scale can still lose money.

Other specific risks. To understand risk better, you may also want to look at the specific risks for this fund and how they could affect its value. XYZ Mutual Funds has identified these top risk factors for the fund:

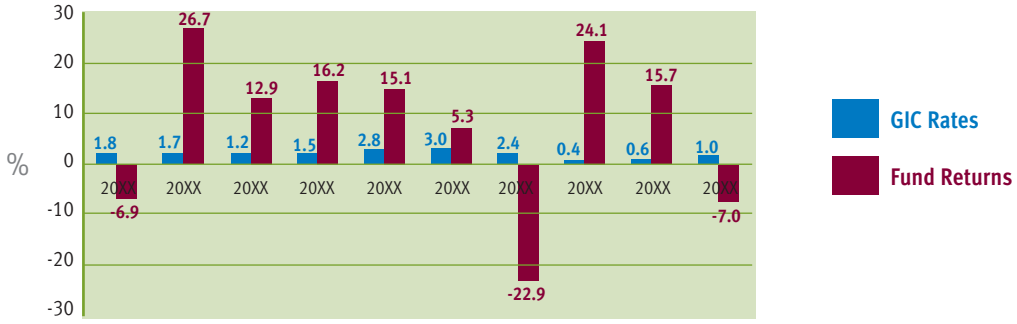
- **Active Management Risk**
- **Equity Risk**
- **Specialization Risk**

For a full list of this fund's risk factors and details about them, see the Risk section of the fund's simplified prospectus.

How has the fund performed?

This chart shows you:

- how the fund has performed over the past 10 years
- how the fund's return compares to the return of a one-year Guaranteed Investment Certificate (GIC). GIC data is from the Bank of Canada.



Notes:

- This chart does not tell you how the fund or GIC will perform in the future.
- Since the fund holds investments that are riskier than a GIC, it may have a higher return in some years and lose money in others.
- The fund's returns are after expenses have been deducted.
- Your actual after-tax return will depend on your personal tax situation.

Things you should know:

a) Worst return

The fund dropped in value in 3 of the last 10 years.

The worst quarterly return (3 months) of the fund since its start date was a drop in value of -24.7% in the 3-month period ending November 30, 2008. If you had invested $1,000 in the fund at the start of this period, your investment would have dropped to $753 after 3 months.

b) Average return

In the last 10 years, the fund generated an annual compounded return of 6.8%. This means if you had invested $1,000 in the fund 10 years ago, your investment would now be worth $1,930.

In comparison, the annual compounded return of a GIC, for the same period, was 1.6%. If you had invested $1,000 in a one-year GIC 10 years ago and kept reinvesting the maturity amount from one year to the next, you would now have $1,172.

Are there any guarantees?

Like most mutual funds, this fund doesn't have any guarantees. You may not get back the amount of money you invest.

Who is this fund for?

Investors who:

- are looking for a long-term investment
- want to invest in a broad range of Canadian companies
- can handle the ups and downs of the stock market.

! Don't buy this fund if you need a steady source of income from your investment.

Before you invest in any fund, you should consider how it would work with your other investments and your tolerance for risk.

A word about tax

In general, you'll have to pay income tax on any money you make on a fund. How much you pay depends on the tax laws where you live and whether or not you hold the fund in a registered plan, such as a Registered Retirement Savings Plan or a Tax-Free Savings Account.

Keep in mind that if you hold your fund in a non-registered account, fund distributions are included in your taxable income, whether you get them in cash or have them reinvested.

How much does it cost?

The following tables show the fees and expenses you could pay to buy, own and sell Series B units of the fund.
The fees and expenses are different for each series. Ask about other series that may be suitable for you.

1. Sales charges

You have to choose a sales charge option when you buy the fund. Ask about the pros and cons of each option.

Sales charge option	What you pay		How it works
	in per cent (%)	in dollars ($)	
Initial sales charge	0% to 4% of the amount you buy	$0 to $40 on every $1,000 you buy	• You and your dealer representative decide on the rate. • The initial sales charge is deducted from the amount you buy. It goes to your dealer as a commission.
Deferred sales charge	**If you sell within:** 1 year of buying 6.0% 2 years of buying 5.0% 3 years of buying 4.0% 4 years of buying 3.0% 5 years of buying 2.0% 6 years of buying 1.0% After 6 years nothing	$0 to $60 on every $1,000 you sell	• The deferred sales charge is a set rate. It is deducted from the amount you sell. • When you buy the fund, XYZ Mutual Funds pays your dealer a commission of 4.9%. Any deferred sales charge you pay goes to XYZ Mutual Funds. • You can sell up to 10% of your units each year without paying a deferred sales charge. • You can switch to Series B units of other XYZ Mutual Funds at any time without paying a deferred sales charge. The deferred sales charge schedule will be based on the date you bought the first fund.

2. Fund expenses

You don't pay these expenses directly. They affect you because they reduce the fund's returns.
As of March 31, 20XX, the fund's expenses were 2.30% of its value. This equals $23 for every $1,000 invested.

	Annual rate (as a % of the fund's value)
Management expense ratio (MER) This is the total of the fund's management fee and operating expenses. XYZ Mutual Funds waived some of the fund's expenses. If it had not done so, the MER would have been higher.	2.25%
Trading expense ratio (TER) These are the fund's trading costs.	0.05%
Fund expenses	**2.30%**

Trailing commission

XYZ Mutual Funds pays your dealer a trailing commission for as long as you own the fund. The trailing commission is paid out of the management fee. It is for the services and advice that your dealer provides to you. The rate depends on the sales charge option you choose:

- **Initial sales charge** – up to 1.0% of the value of your investment each year. This equals $10 each year for every $1,000 invested.
- **Deferred sales charge** – up to 0.50% of the value of your investment each year. This equals $5 each year for $1,000 invested.

These trailing commission payments may create a conflict of interest by influencing the dealer or its representatives to recommend the fund over another investment. Ask your dealer representative for more information.

How much does it cost? cont'd

3. Other fees

You may have to pay other fees when you buy, hold, sell or switch units of the fund.

Fees	What you pay
Short-term trading fee	1% of the value of units you sell or switch within 90 days of buying them. This fee goes to the fund.
Switch fee	Your dealer may charge you up to 2% of the value of units you switch to another XYZ Mutual Fund.
Change fee	Your dealer may charge you up to 2% of the value of units you switch to another series of the fund.

What if I change my mind?

Under securities law in some provinces and territories, you have the right to:

- withdraw from an agreement to buy mutual fund units within two business days after you receive a fund facts document or
- cancel your purchase within 48 hours after you receive confirmation of the purchase.

In some provinces and territories, you also have the right to cancel a purchase, or in some jurisdictions, claim damages, if the simplified prospectus, annual information form, fund facts document or financial statements contain a misrepresentation. You must act within the time limit set by the securities law in your province or territory.

For more information, see the securities law of your province or territory or ask a lawyer.

For more information

Contact XYZ Mutual Funds or your dealer representative for a copy of the fund's simplified prospectus and other disclosure documents. These documents and the fund facts make up the fund's legal documents.

XYZ Mutual Funds
123 Asset Allocation St.
Toronto, ON M1A 2B3

Phone: (416) 555-5555
Toll-free: 1-800-555-5556
Email: investing@xyzfunds.com
www.xyzfunds.com

To learn more about investing in mutual funds please see the brochure **Understanding mutual funds** which is available on the website of the Canadian Securities Administrators at www.securities-administrators.ca

Appendix B

Summary of Changes to the 2011 Proposal and Issues for Comment

This appendix describes the key changes we made to the 2011 Proposal and raises specific issues for comment in text boxes related to specific changes. Many of the changes respond to investor advocate comments relating to the presentation of risk in the Fund Facts.

Fund Facts

Content

We have made a number of revisions to the content of the Fund Facts. The changes respond to investor advocate comments to provide greater detail or clarity to the disclosure, specifically regarding the presentation of risk and performance. The changes include the following:

- We permitted all recognized and publicly available identification codes for the class or series of the mutual fund to be disclosed on the top of the first page.

- We improved the Quick Facts by adding background on the history and relative size of the class or series of the mutual fund. For example, we created separate headings for the "Date fund started" and "Date class/series started".

- We added the percentage of each holding to the list of Top 10 investments to provide a greater sense of the fund's concentration risk in a particular investment.

- We mandated stronger warning language about the risks of investing in mutual funds.

- We included an explanation of the risk scale and the relationship between risk and losses (i.e. higher returns typically result in greater chances of losses).

> **Feedback Sought:**
>
> 1. The proposed explanatory text included above the risk scale is based on the assumption that fund managers use risk classification methodologies based on measures of market volatility, such as standard deviation.
>
> We seek feedback on whether the proposed text will assist investors in understanding how to interpret the risk scale in the Fund Facts, and whether the explanation is compatible with the risk classification methodologies used by fund managers.

- We added a requirement to include a list of no more than four main risks of the fund, while continuing to direct investors to the simplified prospectus for a more detailed discussion of a fund's specific risks.

> **Feedback Sought**:
>
> 2. The intent of the proposed requirement to list the fund's main risks under the heading "What are the risks of this fund?" is to highlight for investors some of the specific risk factors that may impact the fund's returns. In an effort to avoid lengthy boilerplate disclosure, we are proposing to limit the list to no more than four risk factors, as identified by the fund manager, and to not allow any narrative description of those risks.
>
> We seek feedback on whether the proposed inclusion of the fund's main risks will assist investors in better understanding the risks associated with investing in the fund. If we were to allow narrative descriptions of each risk factor, we invite feedback on how we could ensure that such descriptions convey meaningful information to investors while remaining short, simple and in plain language.

- We added a comparison to the mutual fund's performance with a lower risk investment, specifically the one-year Guaranteed Investment Certificate (GIC).

> **Feedback Sought:**
>
> 3. We are proposing to compare the fund's performance to a benchmark of a one-year GIC, to assist investors in assessing the performance of the fund relative to its associated risk. This comparison is intended to highlight the risk of investing in a fund by illustrating how a fund may have a higher return than a GIC in some years, but its return will generally vary from year to year and may sometimes lose money.
>
> We seek feedback as to whether there are other appropriate benchmarks to illustrate this comparison.

- We added the worst 3 month return to the performance section to better inform investors about the possible loss of investing in the fund.

- We added a requirement to confirm whether trailing commissions are paid. We also added disclosure regarding the potential conflicts arising from the payment of trailing commissions.

- We permitted greater flexibility to include disclosure regarding a material change or a proposed fundamental change, such as a proposed merger.

- We extended the time frame for certain information disclosed in the Fund Facts from 30 days to 45 days to allow greater flexibility in complying with the disclosure requirements.

- We added a cross-reference to the brochure "Understanding mutual funds" which is available on the website of the Canadian Securities Administrators at www.securities-administrators.ca.

Binding

We made several revisions to reflect comments received. The changes include the following:

- We revised the list of documents which may be attached to, or bound with, the Fund Facts to include a cover page, account application documents and registered tax plan documents. We have also updated the order of documents attached to, or bound with, the Fund Facts.

- We replaced the term "trade confirmation" with "transaction confirmation" to more accurately reflect current business practices.

- We have repealed the list of documents which may be attached to, or bound with, the simplified prospectus (section 5.1(3) of NI 81-101).

Effective Date

- We have added a six month transition period from the date the instrument comes into force.

> **Feedback Sought:**
>
> 4. To implement Stage 2 in a reasonable time period, we are considering a six month transition period to allow for the implementation of systems to facilitate the delivery of the Fund Facts. This will also allow for necessary changes to be made to the Fund Facts template. It is the CSA's expectation that systems development to contemplate the delivery of Fund Facts will begin now.
>
> We also are considering whether to require the Fund Facts be amended to include the proposed changes to the Fund Facts prior to the expiry of the transition period. Alternatively, we could allow existing mutual funds to amend the Fund Facts at the earlier of an amendment to the mutual fund or the filing of its pro forma prospectus.
>
> We seek feedback on our proposed approach to implementation.

Appendix C

Summary of Public Comments on
Implementation of Stage 2 of Point of Sale (POS) Disclosure for Mutual Funds

Table of Contents

Part 1 – Background

Summary of Comments

On August 12, 2011, the Canadian Securities Administrators (CSA) published *Implementation of Stage 2 of Point of Sale (POS) Disclosure for Mutual Funds*, which proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101), Form 81-101F3 (the Form), Companion Policy 81-101CP (the Companion Policy) and National Instrument 81-102 *Mutual Funds* (NI 81-102) (NI 81-101, Form, the Companion Policy and NI 81-102, collectively, the Stage 2 Amendments). The comment period expired on November 10, 2011. We received submissions from 12 commenters, which are listed in Part 5 of this document.

We thank everyone who took the time to prepare and submit comment letters. This document contains a summary of the comments and the CSA's responses.

Part 2 – Comments on Stage 2 Amendments

Issue	Comments	Responses
Comments on delivery of the Fund Facts instead of the SP	***Support for delivery of Fund Facts instead of SP*** Both investor advocate and industry commenters conveyed their support for the Stage 2 Amendments and the POS project for the following reasons: • investors can understand the Fund Facts document (the **Fund Facts**) more easily than the simplified prospectus (the **SP**) because it is simple and contains key information to assist investors in making an informed investment decision; • the Fund Facts will be provided in a timely fashion and in an accessible format; • the Fund Facts assists investors in comparing funds. However, investor advocate commenters told us that the Fund Facts needs further refinement, in areas such as risk and cost disclosure, before proceeding with delivery in place of the SP.	We appreciate the feedback from commenters.

	Opposition to delivery of Fund Facts instead of SP We were told that the Fund Facts cannot replace the SP or other disclosure documents that provide valuable information about investment funds, and will not address the problem of information asymmetry between industry and investors. Removing the requirement to deliver the SP, said one investor advocate commenter, is a major policy change particularly since the Fund Facts is not required under securities legislation to provide full, true and plain disclosure of all material facts.	The CSA remains committed to delivery of the Fund Facts. We think that the disclosure in the Fund Facts provides investors with the opportunity to make more informed investment decisions by giving them access to key information about a mutual fund, in language they can easily understand, at a time that is relevant to their investment decision. However, in response to investor advocate feedback we are proposing a number of changes to the risk and performance disclosure in the Fund Facts. For more information, please see the responses to the sections entitled “How has the fund performed” and “How much does it cost?”. While we continue to view the SP as a valuable disclosure document, we know that investors do not read the SP. Research on investor preferences for mutual fund information, including our own testing of the Fund Facts, indicates investors prefer a concise summary of key information. The CSA designed the Fund Facts to make it easier for investors to access and use key information. For more information on our investor research, please see the *Fund Facts Document Research Report* prepared by Research Strategy Group in Appendix 5 to Proposed Framework 81-406 *Point of Sale Disclosure for Mutual Funds and Segregated Funds* published by the Joint Forum on June 15, 2007 (the Initial Framework) on the OSC website. We note that the SP continues to be available to investors free of charge upon request and on SEDAR.
Binding (s. 5.1.1 of NI 81-101)	***Flexibility in binding documents to the Fund Facts*** Several industry commenters view the binding provisions to be restrictive and argue that flexibility is critical to achieving efficiencies in delivering accessible materials to investors. One of these commenters requested flexibility to bind the Fund Facts with other Fund Facts for funds that the dealer wishes the client to consider purchasing in the relatively near future. In contrast, an investor advocate commenter argued that the proposed binding restrictions are too flexible, and questioned whether promotional and non-educational material should be delivered to investors with legal disclosure materials. Said this commenter, a separate folder, staple, or clip may not make a meaningful difference to how investors process information in formulating their	The CSA continues to support restricting the documents which may be attached to, or bound with, the Fund Facts. We remain committed to providing investors with key information in an accessible format. Permitting extraneous documents to be attached to, or bound with, the Fund Facts detracts from this goal. However, in response to comments, we are permitting increased flexibility to bind the Fund Facts with account application documents and registered tax plan documents.

	investment decisions. ***Including transaction confirmations in section 5.1.1*** A few industry commenters requested expanding section 5.1.1(1)(1) to include "transaction confirmations" (i.e. purchase *and* sale confirmations) for the following reasons: • currently confirmations for sale, purchase and switch transactions are consolidated and printed on the same sheet of paper and bound together with required supporting documents – therefore permitting binding of the three transaction types will be consistent with current practices; • failure to expand the binding provision will have a significant impact on dealers that use "statement style" transaction confirmation layout and those that use transaction confirmation consolidation; and • binding restrictions will negatively impact the investor experience because they will receive multiple mailings for transactions processed on the same day. Another commenter recommended deleting subsection 5.1(3) of NI 81-101 and importing greater flexibility into proposed section 5.1.1 of NI 81-101. We were told that the current interplay of section 5.1(3) and proposed 5.1.1 is confusing since the Fund Facts is a document incorporated by reference into the SP. ***Order of bound documents*** A commenter sought clarification of whether under section 5.1.1(2) any *or all* of the front cover, table of contents, and confirmation may be placed before the Fund Facts, if only the confirmation is attached to or bound with the Fund Facts. ***Delivery of non-educational material*** A few industry commenters sought clarification regarding which educational and non-educational materials may be delivered with the Fund Facts – although not attached to or bound with the Fund Facts. Section 5.1.1 of NI 81-101 limits the documents that may be attached to, or bound with the Fund Facts. However, section 7.4 of 81-101CP indicates that there are 'no restrictions' on delivery of non-educational material with either the SP or AIF, provided that it is not included within, wrapped around or attached or bound to these documents. As a result, the commenters	We have revised the requirement to capture transaction confirmations. If the transaction confirmation is attached to, or bound with, the Fund Facts, any required disclosure document that relates to a transaction listed in the transaction confirmation may also be attached to, or bound with, the Fund Facts. We expect that this will capture only transactions completed on the same day and will avoid multiple mailings. For greater clarity, we propose to repeal the list of documents in section 5.1(3) because we intend delivery of the Fund Facts to satisfy current prospectus delivery requirements under securities legislation. If another document is attached to, or bound with, the Fund Facts, we propose that a table of contents must be attached to the bound package. No pages may come before the Fund Facts other than the table of contents and the transaction confirmation. For greater clarity, we have revised section 7.4 of 81-101CP to indicate that the CSA do not intend educational and non-educational material to be attached to, or bound with, the Fund Facts.

	recommend addressing delivery of education material in section 7.4 of 81-101CP as the failure to mention them implies that the educational materials may no longer be delivered with the Fund Facts or SP under new section 5.1.1 of the NI 81-101. ***Codifying exemptive relief for binding SP sections*** One commenter recommended revising section 5.1.1 of NI 81-101 to codify existing exemptive relief granted to a service provider to extract the Part A section of an SP and the applicable Part B sections of the SP.	The CSA expects the exemptive relief from the binding provisions to expire upon the implementation of the Stage 2 Amendments, when the Fund Facts will be delivered instead of the SP. This is consistent with the existing sunset provisions in such exemptions.
Transition period	Several industry commenters request a transition period of 12 to 18 months for the Stage 2 Amendments.	We do not propose a lengthy transition period for Stage 2. With the publications of CSA Staff Notices 81-319 and 81-321 and the Stage 2 Amendments in August, 2011, coupled with the granting of relief to over 45 fund managers to permit the early use of the Fund Facts, the CSA do not think a lengthy transition period is necessary.
Legislative amendments	A few commenters requested a uniform statutory right of withdrawal and rescission to address ambiguity in the existing rights. For greater efficiency, changes to the statutory rights, we were told, should occur with the legislative amendments to implement delivery of the Fund Facts instead of the SP. One commenter asked for clarification on the mechanism for the delivery obligations under the Stage 2 Amendments and withdrawal and rescission rights. Given the investor will not receive the SP, we were asked how the rights of action for misrepresentations will operate if the Fund Facts is delivered instead of the SP and how investors will be informed about this change.	As noted in prior responses to comments, the CSA have concluded not to proceed with a harmonized rescission and withdrawal right at this time. As implementation of the POS project progresses, we may consider this issue further. The withdrawal rights will be triggered with the sending or delivery of the Fund Facts. We have made changes to the "Statement of Rights" section of the Fund Facts to alert investors to this change. Rescission rights remain unchanged and flow from receipt of the trade confirmation and/or failure to deliver the Fund Facts, in accordance with the securities legislation in each CSA jurisdiction, as amended.
Part 3 – Comments on the Fund Facts		
Issue	**Comments**	**Responses**
Improving clarity and consistency in the Fund Facts	An investor advocate commenter noted that the Fund Facts is vague in critical areas such as cost disclosure and investor rights, which undermines the objective to enhance investor understanding of the value, risks, and performance of managed investment products. Another investor advocate commenter requested we use terms set out in National Instrument 31-103 *Registration Requirements and Exemptions* (**NI 31-103**) in the Fund Facts. For example, replacing the term "adviser" with "representative".	In response to these comments, we have provided greater clarity in specific sections of the Fund Facts. As implementation of the POS project progresses, we may consider further refinements to the Fund Facts. For more information, please see the responses under "What does the fund invest in?" and "How much does it cost?". We have replaced the term "adviser" with "dealer representative" for consistency with NI 31-103.
Warning language	Consistent with earlier feedback, a commenter	The CSA proposes no further changes to the

	again requested we use a more emphatic statement at the beginning of the Fund Facts that emphasizes the SP should be consulted.	introductory language in the Fund Facts at this time. We note that there is already a reference to consult the SP in the "For more information" section, as well as in the risk section of the Fund Facts.
General instructions	We were asked to clarify General Instruction 16 to the Form, which states that each Fund Facts start on a new page.	We expect that every Fund Facts start on a new sheet of paper and have made this clarification in General Instruction 16.
Quick facts	One commenter requested that the heading in the "Quick Facts" should be amended to disclose the date that a particular series or class was established.	We agree with this comment and have made the change. We have also added a separate heading for the date the mutual fund was created, to provide context for investors.
What does the fund invest in?	A commenter asked for additional disclosure of the fund's investment objectives given its importance. This commenter also requested that the "Top 10 investments" section include the percentage of each holding to provide a sense of concentration risk and that the description specify the asset classes invested in by the fund (i.e. stocks, bonds).	We have revised the "Top 10 investments" section to require disclosure of the percentage of each holding in the Top 10 list.
How has the fund performed? ***Inclusion of a benchmark***	***Performance*** Two investor advocate commenters requested that this section add a stronger warning about choosing funds based on past performance. One suggested adding wording that past performance is not a useful predictor of future returns. The other commenter suggested adding wording to not expect the fund's past performance to continue in the future. Still another commenter requested that the Form better articulate whether the performance disclosure requirements apply to the fund or to the class or series of the fund. ***Benchmark*** Three commenters requested we add a benchmark to this section. Benchmarks, we were told, would allow investors to compare the fund's historical rate of return to the performance of a relevant benchmark or a risk-free rate of return such as GICs or Canadian Government bonds, which would provide context in assessing its historical performance. One of these commenters remarked that benchmarks are essential to providing a framework within which investors can assess the relative performance of a given fund, and its associated risk (since different benchmarks will have different levels of risk (i.e. 5 year GIC vs. S&P/TSX Composite Index) and make a more informed financial decision about whether to purchase a fund.	The Fund Facts currently mandates disclosure that states the performance of the fund will not tell an investor how the fund will perform in the future. Accordingly, we do not propose any further changes at this time. Instruction 4 to Item 5 of the Form requires performance data related to the specific class or series in the Fund Facts. In response to this feedback, we have added a comparison to the fund's performance with a less risky investment, specifically the one-year GIC. We are of the view that adding this comparison may assist investors in assessing the risk-return tradeoff associated with investing in a particular fund. We will be interested in the results of this added disclosure in our testing with investors.

Risk disclosure	Several investor advocate commenters raised concerns about the presentation of risk in the Fund Facts, including the following: • permitting fund managers to select the risk classification level for a fund, results in an inconsistent evaluation of risk; • the description of risk in the Fund Facts is virtually identical to that in the New Account Application Forms (NAAF) and could confuse an investor or his/her salesperson; • many funds are using the risk methodology developed by IFIC, an industry lobby group, and not a methodology developed by regulators with investor consultation; • the IFIC risk methodology measures only volatility risk, calculated as the three-year standard deviation of returns which may not adequately capture the volatility of a particular fund; and • it is difficult for investors to access the SP and understand the risk classification methodology alongside the Fund Facts; as a result, investors will rely disproportionately on the risk classification in the Fund Facts. These commenters provided some recommendations for improving risk disclosure, including: prescribing a standardized risk methodology to ensure comparability between funds, such as the risk methodology prescribed by the Committee of European Securities Regulators in CESR/10-6739; adding to the performance section of the Fund Facts a specific measure such as the worst monthly, quarterly or annual loss in the previous 10 years; and clarifying the connection between investor suitability and the risk classification level selected in the Fund Facts. Said one of those commenters, the IFIC Volatility Risk Classification Report (the **Report**) should be made publicly available since it is incorporated by reference into the SP by fund managers.	In response to the concerns raised by investor advocate commenters, we are proposing the changes described below, which we intend to focus test with investors. We are adding stronger warning language about the risks of investing in mutual funds. We are mandating the inclusion of a list of the fund's three to four main risks, while continuing to direct investors to the SP for a more detailed discussion of a fund's specific risks. We are adding an explanation that the risk scale is intended to show market risk and the relationship between risk and losses (i.e. higher returns typically result in greater chances of losses). We are adding the worst 3 month return to the "Performance" section. The CSA is committed to assessing the feasibility of developing a CSA risk methodology to be applied by fund managers in assessing the fund's risk on the scale in the Fund Facts. This work is currently underway. As an interim step, we are proposing to maintain the existing Fund Facts risk scale with the additional disclosure described above, which we think responds to the feedback we have received. The CSA expects fund managers to make the Report available upon request.
A word about tax	Consistent with recent prospectus reviews, one commenter requested amending the prescribed wording for the "A word about tax" section to include more specifics regarding the tax implications of holding securities of a fund.	We propose no change. The CSA considers the Form to be flexible enough to allow such additional information.
How much does it cost?	We were asked by an investor advocate commenter to better clarify the impact of fees on investor returns. Also, other fees such as switch fees, change fees, and trailing commissions, said this commenter, are presented as potential, rather than actual costs to the investor. If the fees are	We have considered these comments and in response, have added the following statement regarding commissions: *"These trailing commission payments may create a conflict of interest by influencing*

	discretionary, then this should also be clearly stated. The disclosure of other information, such as foreign exchange hedging policies, should also be considered. Added another investor advocate commenter, the cost disclosure should clearly indicate whether or not the salesperson will earn a commission from selling the fund. ***Fee based arrangements*** Two commenters expressed concerns with proposed changes to Instruction (2) to Item 1.4 of Part II of the Form. They noted that fund companies typically have no control over the fees charged by third-party dealers for fee-based arrangements, and may not know the range of some fees. These commenters suggested that the scope of the required disclosure should be limited to management fees or other fees charged by a mutual fund or its manager, and that the required disclosure should not apply to fee-based arrangements. One of these commenters also asked for clarification of the scope of the requirement to disclose all fees and expenses payable directly by the investor when buying, holding, selling or switching units or shares of the mutual fund. For example, whether all possible expenses currently referred to in the SP (such as NSF charges, wire transaction charges) are required under the proposed language in Instruction (1) to Item 1.4 of Part II of the Form. This commenter also sought clarification of whether a fixed administration fee in lieu of all or a portion of a mutual fund's operating expenses should be disclosed in "Other fees" or whether the disclosure should be in "Fund expenses" (Item 1.3(4) of Part II of the Form).	*the dealer or its representatives to recommend the fund over another investment. Ask your dealer representative for more information."* We have also proposed that the Fund Facts disclose whether trailing commissions are paid to dealers. We note that if foreign currency hedging is a fundamental feature of a fund, we expect this feature to be disclosed in the "What does the fund invest in?" section and listed as a critical risk in the Risk section. The CSA thinks disclosure of the existence of fee-based arrangements is important for investors. As the Fund Facts is filed on a class or series basis, it is important to clarify whether the particular class or series is intended for fee-based arrangements. The CSA does not expect all possible expenses listed in the SP to be disclosed under "Other fees". Rather, the key fees and expenses required to hold the securities of the class or series should be disclosed, as set out in Instruction 1 to Item 1.4 of Part II of the Form. Fixed administration fees should be disclosed in the "Fund expenses" section of the Fund Facts since they are expenses paid by the fund and must be included in the fund's management expense ratio, further to section 15.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.
Conflict of interest disclosure	One commenter requested that the Fund Facts disclose any conflict of interest that could give the intermediary or its salespersons a financial incentive to sell a particular fund over others. This commenter further recommends adding clear language to the Fund Facts explicitly stating either (a) there is no payment of a trailing commission; or (b) there is a trailing commission paid which creates a conflict of interest and which may influence the broker-dealer or other intermediary and the salesperson to recommend that fund over another investment. Another commenter supported this recommendation.	In response, we have added disclosure to the Fund Facts identifying the potential for conflicts of interest that may arise from the dealer receiving commissions. Please see the response under "How much does it cost?".

Statement of rights	Two commenters noted that the proposed amendments replace the "Statement of Rights" section in the Fund Facts (Item 2 in Part II of Form 81-101F3) to indicate that the right of withdrawal exists within two business days after delivery of the Fund Facts, however, there is no corresponding change made to the disclosure in the SP.	We have revised the disclosure in the SP to ensure consistency with the Fund Facts.
Incorporation by reference of the Fund Facts into the SP	Consistent with a prior comment, we again were asked by a commenter to make the Fund Facts "a prospectus" for the purposes of securities legislation, and deem the SP to be incorporated by reference into the Fund Facts.	As we indicated in prior responses to comment, the CSA proposes no change at this time. The Fund Facts is incorporated by reference into the SP and, together with the fund's disclosure documents, comprise a mutual fund's disclosure documents.
Fund codes	Industry and investor commenters told us they supported adding fund codes to the Fund Facts.	Consistent with recent prospectus reviews, we have made the change to allow fund codes on the Fund Facts. We will allow reference to generally accepted and publicly available codes in the Fund Facts.
Exceptions for individual jurisdictions	A few commenters stressed the need to avoid provincial differences in the implementation of Stage 2. For example, we were asked to explain why in some cases the proposed amendments to the Form state "except in British Columbia" (i.e. item 6(1)(a) in Part I, and to item 1.3(5) in Part II of the Form).	The CSA has worked to ensure the results of our amendments achieve a harmonized outcome. However, this common outcome has been reached working with different legislative approaches or wording, which results in differences in the drafting of NI 81-101.
Future material changes and mergers	A few commenters requested we allow disclosure in the Fund Facts of future material changes in instances where the fund manager considers relevant. For example, upcoming fund mergers.	We agree with this feedback. In response, we have added General Instruction 8.1 to the Form permitting greater flexibility to disclose anticipated fundamental changes and material changes in the Fund Facts. We are also permitting a fund to present financial information as at a date within 45 days before the date of the amended and restated Fund Facts.
Additional disclosure	One industry commenter again asked that the Fund Facts recognize the role of the registered financial advisor. This commenter is also concerned about the possibility of investors relying on an outdated Fund Facts. It was suggested that the Fund Facts clearly state that the document may be updated without notice to the investor and that the investor should consult with his or her registered financial advisor to be sure that he or she is in possession of the most up-to-date of the particular Fund Facts.	We propose no further change at this time. We note that the Form already directs investors to contact their dealer representative for more information. We propose no further change since the Fund Facts is dated and the relevant financial information is taken from publicly available documents, such as the management report of fund performance.
CSA Companion Guide to the Fund Facts	Consistent with earlier feedback, an investor advocate commenter reiterated their request that the CSA prepare a Companion Guide for investors to assist them in understanding the Fund Facts.	As we stated in the Initial Framework, while we agree that investor education is a key aspect of investor protection, we no longer think it is necessary to create a consumers' guide as part of this project. We have, however, in response to this comment, added to the "For more information" section of the Fund Facts a cross-reference the CSA brochure entitled "Understanding mutual funds" available on the CSA website, to provide investors with more general information about mutual funds. This brochure was revised with the Fund Facts in mind.

Ordering of items in the Fund Facts	A few commenters requested changes to the ordering of items in the Fund Facts. One asked for the section entitled "Who is this fund for?" to be moved up to just below the Quick Facts section. Another requested that cost and risk information be disclosed before performance data.	As a result of the changes made to the risk disclosure in the Fund Facts, the risk information now comes before the performance information.
Part 4 – Other comments		
Issue	**Comments**	**Responses**
Exemptive relief to allow early use of the Fund Facts	One investor advocate commenter indicated they did not support the CSA's consideration of applications for exemptive relief to permit the early use of the Fund Facts before implementation of the Stage 2 Amendments.	The early use of the Fund Facts to satisfy the current prospectus delivery requirements is intended to provide investors with the opportunity to have access to more meaningful information about a mutual fund at a time that is still relevant to their investment decision. We think that receipt of a Fund Facts within two days of buying a mutual fund would give investors the opportunity to review the basic features of the fund they purchased, and determine if it's the investment they wanted or if they have changed their mind. Early use of the Fund Facts would also provide investors and dealers with the opportunity to become more familiar with the new document. Familiarity with the Fund Facts may prompt investors to start requesting Fund Facts before they make investment decisions. It could also prompt dealers to start using Fund Facts as a tool in making recommendations.
Enforcement of Fund Facts	One commenter strongly urged the CSA to establish an enforcement approach, such as regulatory sanctions and penalties for non-compliance. This commenter also requested that the CSA collaborate with IIROC and the MFDA and other industry groups to develop stronger and more harmonized public enforcement mechanisms.	The CSA actively monitors compliance with the Form through prospectus and continuous disclosure reviews. We also continue to collaborate with IIROC and the MFDA.
Fiduciary duty	One commenter advocated for the establishment of a fiduciary duty for investment advisors to their clients and suggested the absence of a fiduciary duty was the underlying problem the Fund Facts is trying to address. This commenter noted that the fact that clients cannot rely upon their advisors for unbiased advice or to act in their client's best interests, rather than that of the advisor or their dealer, is the underlying problem that a worthwhile initiative like the Fund Facts is trying to fix.	Nothing in the Stage 2 Amendments is intended to detract from the central role of a dealer representative. We think that the Fund Facts builds on a dealer representative's existing obligation to determine suitability of all purchases of a mutual fund. We expect that the Fund Facts will be a tool used by representatives to assist in the sales process.
POS delivery	Investor advocate commenters requested that we implement POS delivery of the Fund Facts as soon as possible because the Fund Facts was never intended to be provided after an investment decision had been made and post-sale delivery will not inform an investor's decision. In contrast, an industry advocate indicated that dealers continue to have concerns with delivery at or before the point of sale because it may not be practical when conducting business.	The CSA remains committed to implementing point of sale disclosure for mutual funds. A staged approach allows us the opportunity to continue to consult with stakeholders and to consider the applicability of the point of sale regime for mutual funds to other types of publicly offered investment funds, with the possible outcome of implementing a point of sale delivery requirement at the same time for all comparable investment fund products.

Summary disclosure for other types of investment funds	Investor advocate commenters reiterated their view that a key facts document should be developed for other investment fund products, including structured products, ETFs (including leveraged, inverse and commodity ETFs), contracts for difference, and listed funds within six to twelve months.	Consistent with CSA Staff Notice 81-319, as we move forward with implementation of the POS project, the CSA will be considering summary disclosure documents for other types of investment funds.
Reconciliation of SP and AIF	One commenter asked the CSA to rationalize the SP, AIF and Fund Facts to remove redundancies and duplication. This commenter noted that investors are not well served with duplicative and redundant disclosure documents.	As we indicated in our June 2009 publication, following the CSA's implementation of a point of sale delivery regime, we intend to review the overall disclosure framework for mutual funds to reduce unnecessary duplication. In particular, we intend to explore the development of a single foundation document to replace the current SP and AIF.

Part 5– List of commenters

- Advocis
- Borden Lardner Gervais LLP
- Broadridge Investor Communication Solutions, Canada
- Canadian Advocacy Council for Canadian CFA Institute Societies
- Canadian Bankers Association
- Canadian Foundation for Advancement of Investor Rights
- Fidelity Investments Canada ULC
- InvestorPOS
- Investment Funds Institute of Canada
- Investment Industry Association of Canada
- Kenmar Associates
- OSC Investor Advisory Panel

Annex A

Proposed Amendments to
National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

1. National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.

2. Section 1.1 is amended by adding the following definitions:

"statutory right of action" means,

(a) in Alberta, paragraph 206(a) of the *Securities Act* (Alberta),

(b) in British Columbia, section 135 of the *Securities Act* (British Columbia), and

(c) in New Brunswick, section 155 of the *Securities Act* (New Brunswick),***; and***

"statutory right of withdrawal" means,

(a) in Alberta, subsection 130(1) of the *Securities Act* (Alberta),

(b) in British Columbia, subsections 83(3) and (5) of the *Securities Act* (British Columbia), and

(c) in New Brunswick, subsection 88(2) of the *Securities Act* (New Brunswick)**.**

3. Section 3.2 is amended by replacing subsection (2) with the following:

(2) If a prospectus is required under securities legislation to be sent or delivered to a person or company, the fund facts document most recently filed under this Instrument for the applicable class or series of securities must be sent or delivered to the person or company at the same time and in the same manner as otherwise required for the prospectus.

(2.1) The requirement in securities legislation to send or deliver a prospectus does not apply if a fund facts document is sent or delivered under subsection (2).

(2.2) In Ontario, a fund facts document is a disclosure document prescribed under subsection 71(1.1) of the *Securities Act* (Ontario)**.**

4. The following sections are added after section 3.2:

3.2.1 Fund facts document – purchaser's right of withdrawal

(1) A purchaser has a right of withdrawal in respect of a fund facts document that was sent or delivered under subsection 3.2(2), as the purchaser would otherwise have when a prospectus is required to be sent or delivered under securities legislation and, for that purpose, a fund facts document is a prescribed document under the statutory right of withdrawal.

(2) In Ontario, instead of subsection (1), subsection 71(2) of the *Securities Act* (Ontario) applies.

(3) In Québec, instead of subsection (1), section 30 of the *Securities Act* (Québec) applies**.**

3.2.2 Fund facts document – purchaser's right of action for failure to send or deliver

(1) A purchaser has a right of action if a fund facts document is not sent or delivered as required by subsection 3.2(2), as the purchaser would otherwise have when a prospectus is not sent or delivered as required under securities legislation and, for that purpose, a fund facts document is a prescribed document under the statutory right of action.

(2) In Ontario, instead of subsection (1), section 133 of the *Securities Act* (Ontario) applies.

(3) In Québec, instead of subsection (1), section 214 of the *Securities Act* (Québec) applies**.**

5. Section 3.5 is amended by replacing "**must**" with "**may**".

6. Subsection 4.1(1) is amended by replacing "**in a format**" with "**be in a format**".

7. Subsection 5.1(3) is repealed.

8. Section 5.2 is replaced with the following:

5.2 Combinations of Fund Facts Documents for Delivery Purposes

(1) A fund facts document sent or delivered under section 3.2 must not be attached to or bound with any other materials or documents except one or more of the following:

1. A general front cover pertaining to the package of attached or bound materials and documents.

2. A transaction confirmation which discloses the purchase of securities of the mutual fund.

3. A fund facts document of another mutual fund if that fund facts document is being sent or delivered under section 3.2.

4. A simplified prospectus or a multiple SP of the mutual fund.

5. Any document incorporated by reference into the simplified prospectus or the multiple SP.

6. Account application documents.

7. Registered tax plan applications and documents.

(2) If a transaction confirmation referred to in subsection (1) is attached to or bound with a fund facts document, any other disclosure document required to be sent or delivered to satisfy a regulatory requirement for purchases listed in the transaction confirmation may be attached to or bound with the fund facts document.

(3) If a fund facts document is attached to or bound with any of the materials or documents referred to in subsection (1), a table of contents specifying all documents must be attached to or bound with the fund facts document, except when the only other document attached to or bound with the fund facts document is the cover page.

(4) If one or more fund facts document are attached to or bound with any of the materials or documents referred to in subsection (1), only the general front cover, the table of contents and the transaction confirmation may be placed in front of those fund facts documents.**.**

9. Form 81-101F1 Contents of Simplified Prospectus is amended:

a. by adding the following after Item 1.1(6) of Part A:

INSTRUCTION

Complete the bracketed information in paragraph (3) above by

(a) inserting the names of each jurisdiction in which the mutual fund intends to offer securities under the prospectus;

(b) stating that the filing has been made in each of the provinces of Canada or each of the provinces and territories of Canada; or

*(c) identifying the filing jurisdictions by exception (i.e. every province of Canada or every province and territory of Canada, except [excluded jurisdictions]).**;***

b. by adding the following after Item 1.2(6) of Part A:

INSTRUCTION

Complete the bracketed information in paragraph (3) above by

(a) inserting the names of each jurisdiction in which the mutual fund intends to offer securities under the prospectus;

(b) stating that the filing has been made in each of the provinces of Canada or each of the provinces and territories of Canada; or

*(c) identifying the filing jurisdictions by exception (i.e. every province of Canada or every province and territory of Canada, except [excluded jurisdictions]).**; and***

c. by replacing the text following the introduction in Item 11 of Part A with the following:

Securities legislation in some provinces and territories gives you the right to withdraw from an agreement to buy mutual funds within two business days of receiving the Simplified Prospectus or Fund Facts, or to cancel your purchase within 48 hours of receiving confirmation of your order.

Securities legislation in some provinces and territories also allows you to cancel an agreement to buy mutual fund [units/shares] and get your money back, or to make a claim for damages, if the Simplified Prospectus, Annual Information Form, Fund Facts or financial statements misrepresent any facts about the Fund. These rights must usually be exercised within certain time limits.

For more information, refer to the securities legislation of your province or territory or consult your lawyer.**.**

10. Form 81-101F2 Contents of Annual Information Form is amended

a. by adding the following after Item 1.1(6):

INSTRUCTION

Complete the bracketed information in paragraph (3) above by

(a) inserting the names of each jurisdiction in which the mutual fund intends to offer securities under the prospectus;

(b) stating that the filing has been made in each of the provinces of Canada or each of the provinces and territories of Canada; or

*(c) identifying the filing jurisdictions by exception (i.e. every province of Canada or every province and territory of Canada, except [excluded jurisdictions]).**; and***

b. by adding the following after Item 1.2(6):

INSTRUCTION

Complete the bracketed information in paragraph (3) above by

(a) inserting the names of each jurisdiction in which the mutual fund intends to offer securities under the prospectus;

(b) stating that the filing has been made in each of the provinces of Canada or each of the provinces and territories of Canada; or

*(c) identifying the filing jurisdictions by exception (i.e. every province of Canada or every province and territory of Canada, except [excluded jurisdictions]).**.***

11. Form 81-101F3 Contents of Fund Facts Document is amended:

a. by adding the following sentence at the end of subsection (8) of the General Instructions:

If information required to be disclosed in the fund facts document is not applicable or is not available, please state so and provide an explanation.***;***

b. by adding subsection (8.1) to the General Instructions which states:

(8.1) A fund facts document may disclose a material change and proposed fundamental change, such as a proposed merger. The most relevant section of the fund facts document should be revised to describe the material change or proposed fundamental change.***;***

c. by replacing the reference to "section 5.4***" with "***Part 5***" in subsection (15) of the General Instructions;***

d. by replacing the last sentence of subsection (16) of the General Instructions with the following:

Each fund facts document must start on a new page, and may not share a page with another fund facts document.***;***

e. by replacing paragraph (c) of Item 1 of Part I with the following:

(c) the name of the mutual fund to which the fund facts document pertains;***;***

f. by adding the following after paragraph (c) of Item 1 of Part I:

(c.1) if the mutual fund has more than one class or series of securities, the name of the class or series described in the fund facts document and, at the option of the mutual fund, all recognized and publicly available identification codes for the class or series of the mutual fund;***;***

g. by replacing the text which follows the introduction to paragraph (e) of Item 1 of Part I with the following:

This document contains key information you should know about [insert name of the mutual fund]. You can find more details in the fund's simplified prospectus. Ask your dealer representative for a copy, contact [insert name of the manager of the mutual fund] at [insert if applicable the toll-free number and email address of the manager of the mutual fund] or visit [insert the website of the mutual fund, the mutual fund's family or the manager of the mutual fund] [as applicable].***;***

h. by replacing the table under Item 2 of Part I with the following:

Date [class/series] started: (see instruction 1)	**Fund manager:** (see instruction 3.1)
Date fund started: (see instruction 1.1)	**Portfolio manager:** (see instruction 4)
Total value of [class/series]on [date]: (see instruction 2.1)	**Distributions:** (see instruction 5)
Total fund value on [date]: (see instruction 2)	**Minimum investment:** (see instruction 6)
Management expense ratio (MER): (see instruction 3)	

i. by adding subsection (1.1) to the Instructions under Item 2 of Part I which states:

(1.1) If the date that the mutual fund first became available to the public differs from the date that the class or series of the mutual fund became available to the public, include the date that the mutual fund first became available to the public.***;***

j. by replacing "30 days***" with "***45 days***" in subsection (2) of the Instructions under Item 2 of Part I;***

k. by adding subsection (2.1) to the Instructions under Item 2 of Part I which states:

(2.1) Specify the net asset value of the class or series of the mutual fund as at a date within 45 days before the date of the fund facts document. For a newly established class or series of a mutual fund, simply state that this information is not available because it is a new class or series.***;***

l. by adding subsection (3.1) to the Instructions under Item 2 of Part I which states:

(3.1) Specify the name of the manager of the mutual fund.***;***

m. by replacing subsection (4) of the Instructions under Item 2 of Part I with the following:

(4) Specify the mutual fund's portfolio manager. The mutual fund may also include the name of the specific individual(s) responsible for portfolio selection and if applicable, the name of the sub-advisor(s).***;***

n. by replacing Item 3(4) of Part I with the following:

(4) Include under the sub-heading "Top 10 investments [date]" a table disclosing:

(a) the top 10 positions held by the mutual fund, each expressed as a percentage of net asset value of the mutual fund;

(b) the percentage of net asset value of the mutual fund represented by the top 10 positions; and

(c) the total number of positions held by the mutual fund.***;***

o. by replacing "30 days***" with "***45 days***" in subsection (4) of the Instructions to Item 3 of Part I;***

p. by replacing "30 days***" with "***45 days***" in subsection (9) of the Instructions to Item 3 of Part I;***

q. by replacing Item 4 and Item 5 with the following:

Item 4: Risks

(1) Under the heading "⚠What are the risks of this fund?" state in wording substantially similar to the following:

All investments involve risks. Understanding those risks can help you choose the right fund for you.

(2) Under the subheading "Investment risk" state in wording substantially similar to the following:

When you invest in a fund, the value of your investment can go down as well as up. In some cases, you may see large changes in value. These changes can happen quickly.

[Insert fund manager name] is required to rate the level of risk of its funds. The scale ranges from Low to High based on how the fund is invested and the level of risk and return involved. In most cases, a lower rating means lower risk and lower returns, with a lower chance of losses. A higher rating generally means higher risk and higher returns, with a greater chance of losing money.

(3) Using the investment risk classification methodology adopted by the manager, identify the mutual fund's investment risk level on the following scale:

Low	Low to medium	**Medium**	Medium to high	High

Typically lower returns and lower chance of losses ⟷ Typically higher returns and greater chance of losses

(4) State in bold font in wording substantially similar to the following:

The risk category shown is not fixed and may change over time. The lowest category does not mean there is no risk. A fund that is rated on the low end of the risk scale can still lose money.

(5) Under the subheading "Other specific risks" state in wording substantially similar to the following:

To understand risk better, you may also want to look at the specific risks for this fund and how they could affect its value. [Insert fund manager name] has identified these top risk factors for the fund: [insert risk factors].

For a full list of this fund's risk factors and details about them, see the Risk section of the fund's simplified prospectus.

INSTRUCTIONS:

(1) Based upon the investment risk classification methodology adopted by the manager of the mutual fund, identify where the mutual fund fits on the continuum of investment risk levels by showing the full investment risk scale set out in Item 4(3) and highlighting the applicable category on the scale.

(2) Where the mutual fund is a newly established mutual fund and it is not possible for the manager of the mutual fund to apply its investment risk classification methodology to the mutual fund, include a statement explaining that it is a new mutual fund and use the scale to indicate the investment risk level that the manager of the mutual fund would expect for the mutual fund.

(3) In response to Item 4(5), insert no more than 4 main risks of the mutual fund. Disclosure in this section is limited to a listing of the applicable risk factors and must not include a general description of each risk factor.

Item 5: Past Performance

(1) Under the heading "How has the fund performed?" include an introduction using wording substantially similar to the following:

This chart shows you:

- how the fund has performed over the past 10 years
- how the fund's return compares to the return of a one-year Guaranteed Investment Certificate (GIC). GIC data is from the Bank of Canada.

(2) Provide a bar chart that shows

(a) the annual total return of the mutual fund, in chronological order with the most recent year on the right of the bar chart, for the lesser of

(i) each of the 10 most recently completed calendar years, and

(ii) each of the completed calendar years in which the mutual fund has been in existence and which the mutual fund was a reporting issuer; and

(b) the average of the monthly series of the one-year GIC rates for each calendar year as disclosed on the Bank of Canada website, in chronological order with the most recent year on the right of the bar chart, for the lesser of

(i) each of the 10 most recently completed calendar years, and

(ii) each of the completed calendar years in which the mutual fund has been in existence and which the mutual fund was a reporting issuer.

(3) Under the bar chart state in wording substantially similar to the following:

Notes:

- This chart does not tell you how the fund or GIC will perform in the future.
- Since the fund holds investments that are riskier that a GIC, it may have a higher return in some years and lose money in others.
- The fund's returns are after expenses have been deducted.
- Your actual after-tax return will depend on your personal tax situation.

(4) Include the sub-heading “Things you should know:”.

(5) Under the sub-heading “a) Worst return” provide:

(a) for the particular years shown in the bar chart above, the number of years in which the value of the mutual fund dropped.

(b) since the inception of the mutual fund, the worst rolling 3-month return as at the end of the period that ends within 45 days before the date of the fund facts document, and

(c) the final value that would equate with a hypothetical $1000 investment during the worst 3-month period.

(6) Under the sub-heading “b) Average return” show

(a) the final value of a hypothetical $1000 investment in the mutual fund as at the end of the period that ends within 45 days before the date of the fund facts document and consists of the lesser of

(i) 10 years, or

(ii) the time since inception of the mutual fund;

(b) the annual compounded rate of return that would equate the hypothetical $1000 investment to the final value; and

(c) the final value of a hypothetical $1000 investment in a one-year GIC rate as at the end of the period that ends within 45 days before the date of the fund facts document and consists of the lesser of

(i) a continual reinvestment of the maturity amount in a one-year GIC for each of the past 10 years, or

(ii) a continual reinvestment of the maturity amount in a one-year GIC since inception of the mutual fund.

INSTRUCTIONS

(1) In responding to the requirements of this Item, a mutual fund must comply with the relevant sections of Part 15 of National Instrument 81-102 Mutual Funds as if those sections applied to a fund facts document.

(2) Use a linear scale for each axis of the bar chart required by this Item.

(3) The x-axis and y-axis for the bar chart required by this Item must intersect at 0.

(4) A mutual fund that distributes different classes or series of securities that are referable to the same portfolio of assets must only show performance data related to the specific class or series of securities being described in the fund facts document.

(5) If the information required to be disclosed under this Item is not reasonably available, include the required sub-headings, provide a brief statement explaining why the required information is not available. Information relating to year-by-year returns in the bar chart will generally not be available for a mutual fund that has been distributing securities under a simplified prospectus for less than one calendar year. Information under “a) Worst return” and “b) Average return” will generally not be available for a mutual fund that has been distributing securities under a simplified prospectus for less than 12 consecutive months.

(6) The dollar amounts shown under this Item may be rounded up to the nearest dollar.

(7) The percentage amounts shown under this Item may be rounded up to the nearest decimal place.;

r. except in British Columbia, by adding "and***" at the end of paragraph (a) of Item 6(1) in Part I;***

s. except in British Columbia, in Item 1.3(5) in Part II by replacing "where***" with "***in which***";***

t. by replacing Item 1.3(6) of Part II with the following:

(6) Under the sub-heading "Trailing commission", state whether the manager of the mutual fund or another member of the mutual fund's organization pays trailing commissions, and include a brief description of these commissions.***;***

u. by replacing Item 1.3(7) of Part II with the following:

(7) The description of trailing commissions must include a statement in substantially the following words:

[insert name of fund manager] pays your dealer a trailing commission for as long as you own the fund. The trailing commission is paid out of the management fee. It is for the services and advice that your dealer provides to you. The rate depends on the sales charge option you choose [if applicable, insert sales charge options].

These trailing commission payments may create a conflict of interest by influencing the dealer or its representatives to recommend the fund over another investment. Ask your dealer representative for more information.***;***

v. by adding subsection (2.1) to the Instructions under Item 1.3 of Part II which states:

*(2.1) Disclose any fixed administration fees payable in the Fund expenses.**;***

w. by replacing subsection (8) to the Instructions under Item 1.3 of Part II with the following:

(8) The description of the trailing commission must briefly and concisely explain the purpose of the commission, how the commissions are paid and the maximum rate of the commission for each of the sales charge options. In addition to the percentage amount of the commission, this description must also set out the equivalent dollar amount for each $1000 investment.***;***

x. by replacing Item 1.4(1) of Part II with the following:

(1) Under the sub-heading "Other fees" provide an introduction using wording similar to the following:

You may have to pay other fees when you buy, hold, sell or switch [units/shares] of the fund.***;***

y. by adding "buy, hold,***" before "***sell or switch***" to Item 1.4(2) of Part II;***

z. by replacing subsections (1) and (2) to the Instructions under Item 1.4 of Part II with the following:

(1) Under this Item, it is necessary to include only those fees that apply to the particular series or class of the mutual fund. Examples include management fees and administration fees payable directly by investors, short-term trading fees, switch fees and change fees. This would also include any requirement for an investor to participate in a fee-based arrangement with their dealer in order to be eligible to purchase the particular class or series of the mutual fund. If there are no other fees associated with buying, holding, selling or switching units or shares of the mutual fund, replace the table with a statement to that effect.

*(2) Provide a brief description of each fee disclosing the amount to be paid as a percentage (or, if applicable, a fixed dollar amount) and state who charges the fee. If the amount of the fee varies so that specific disclosure of the amount of the fee cannot be disclosed, where possible, include the highest possible rate or range for that fee.**;***

aa. by replacing Item 2 in Part II with the following:

Item 2: Statement of Rights

Under the heading "What if I change my mind?" state in substantially the following words:

Under securities law in some provinces and territories, you have the right to:

- *withdraw from an agreement to buy mutual funds within two business days after you receive a fund facts document, or*
- *cancel your purchase within 48 hours after you receive confirmation of the purchase.*

In some provinces and territories, you also have the right to cancel a purchase, or in some jurisdictions, claim damages, if the simplified prospectus, annual information form, fund facts document or financial statements contain a misrepresentation. You must act within the time limit set by the securities law in your province or territory.

For more information, see the securities law of the province or territory or ask a lawyer.***;***

bb. by replacing Item 3(1) of Part II with the following:

(1) Under the heading "For more information" state in substantially the following words:

Contact [insert name of the manager of the mutual fund] or your dealer representative for a copy of the fund's simplified prospectus and other disclosure documents. These documents and the Fund Facts make up the fund's legal documents.***; and***

cc. by adding Item 3(3) of Part II which states:

(3) State in substantially the following words:

To learn more about investing in mutual funds please see the brochure **Understanding mutual funds** which is available on the website of the Canadian Securities Administrators at **www.securities-administrators.ca**.*.*

12. Transition – expiration of exemptions and waivers

Any exemption from or waiver of a provision of National Instrument 81-101 Mutual Fund Prospectus Disclosure in relation to the prospectus delivery requirements for mutual funds, or an approval in relation to those requirements, expires on the date that this Instrument comes into force.

13. Effective date

(1) This Instrument comes into force on •.

(2) Despite subsection (1) this Instrument does not apply to a mutual fund until the date that is six months after this Instrument comes into force.

Annex B

Proposed Changes to
Companion Policy 81-101CP *To National Instrument 81-101 Mutual Fund Prospectus Disclosure*

1. The changes proposed to Companion Policy 81-101CP To National Instrument 81-101 Mutual Fund Prospectus Disclosure are set out in this Annex.

2. Subsection 2.1.1(4) is replaced by the following:

The CSA encourages the use and distribution of the fund facts document as a key part of the sales process in helping to inform investors about mutual funds they are considering for investment. The Instrument also requires delivery of the fund facts document, which may satisfy the prospectus delivery requirements under applicable securities legislation.**.**

3. Subsection 2.2(1) is replaced by the following:

(1) A simplified prospectus is the prospectus for the purposes of securities legislation. While the Instrument allows delivery of a fund facts document to an investor in connection with a purchase, an investor may also request delivery of the simplified prospectus, or any other documents incorporated by reference into the simplified prospectus.**.**

4. Section 2.7 is changed by adding the following paragraph:

(2.1) General Instruction (8.1) of Form 81-101F3 permits a mutual fund to disclose a material change and proposed fundamental change, such as a proposed merger, in an amended and restated fund facts document. We would permit flexibility in selecting the appropriate section of the amended and restated fund facts document to describe the material change or proposed fundamental change. However, we also expect that the variable sections of the fund facts document, such as the Top 10 investments and investment mix, to be updated within 45 days before the date of the fund facts document. In addition, if a mutual fund completes a calendar year or files a management report of fund performance prior to the filing of the amended and restated fund facts document, we expect the fund facts document to reflect the updated information.**.**

5. Subsection 4.1.3(3) is changed by replacing the reference to "section 2.3.2***" with "***section 2.3.1***".***

6. Subsection 7.1(1) is replaced by the following:

7.1 Delivery of the Simplified prospectus and Annual Information Form – (1) The Instrument contemplates delivery to all investors of a fund facts document in accordance with the requirements in securities legislation. It does not require the delivery of the simplified prospectus, or any other documents incorporated by reference into the simplified prospectus, unless requested. Mutual funds or dealers may also provide investors with any of the other disclosure documents incorporated by reference into the simplified prospectus.**.**

7. Section 7.4 is replaced by the following:

7.4 Delivery of Non-Educational Material – The Instrument and related forms contain no restrictions on the delivery of non-educational material such as promotional brochures with either of the simplified prospectus and the annual information form. This type of material may, therefore, be delivered with, but cannot be included within, wrapped around, or attached or bound to, the simplified prospectus and the annual information form. The Instrument does not permit the binding of educational and non-educational material with the Fund Facts Document. The intention of the Instrument is not to unreasonably encumber the Fund Facts with additional documents.**.**

8. These changes becomes effective on •.

Annex C

Proposed Amendments to
National Instrument 81-102 *Mutual Funds*

1. National Instrument 81-102 Mutual Funds is amended by this Instrument.

2. Subparagraph 5.6(1)(f)(ii) is replaced with the following:

(ii) the most recently filed fund facts document for the mutual fund into which the mutual fund will be reorganized, and***.***

3. This Instrument comes into force on •.

Annex D

Ontario Rule-Making Authority

Authority for the Proposed Amendments

The following provisions of the *Securities Act* (Ontario) (the **Act**) provide the Commission with authority to adopt the Proposed Amendments:

Subparagraph 143(1)2(i) of the Act authorizes the Commission to make rules prescribing the standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients.

Paragraph 143(1)7 of the Act authorizes the Commission to make rules prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants or providing for exemptions from or varying the requirements under this Act in respect of the disclosure or furnishing of information to the public or the Commission by registrants.

Paragraph 143(1)31 of the Act authorizes the Commission to make rules regulating investment funds and the distribution and trading of the securities of investment funds, including

- making rules varying Part XV (Prospectuses – Distribution) or Part XVIII (Continuous Disclosure) by prescribing additional disclosure requirements in respect of investment funds and requiring or permitting the use of particular forms or types of additional offering or other documents in connection with the funds **(subparagraph (i))**; and

- making rules prescribing procedures applicable to investment funds, registrants and any other person or company in respect of sales and redemptions of investment fund securities **(subparagraph (xi))**.

Paragraph 143(1)49 of the Act authorizes the Commission to make rules permitting or requiring, or varying this Act to permit or require, methods of filing or delivery, to or by the Commission, issuers, registrants, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by Ontario securities law.

Paragraph 143(1)53 of the Act authorizes the Commission to make rules providing for exemptions from or varying the requirements of section 71.

Paragraph 143(1)54 of the Act authorizes the Commission to prescribe the disclosure document that is required to be sent or delivered in respect of the purchase and sale of an investment fund security for the purpose of subsection 71(1.1). Each of these provisions received Royal Assent on May 12, 2011 as part of the *Better Tomorrow for Ontario Act (Budget Measures), 2011* and comes into force on proclamation. The power to make rules authorized by passed but not proclaimed provisions is provided by subsection 10(1) of the *Legislation Act* (Ontario).

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
05/21/2012		1	Angie's List, Inc. - Common Shares	63,986.00	4,800.00
04/13/2012 04/20/2012	to	11	Bison Income Trust II - Trust Units	1,903,380.00	190,338.00
04/10/2012 04/17/2012	to	13	Bison Income Trust II - Trust Units	798,710.00	79,871.00
03/05/2012		1	Bison Income Trust II - Trust Units	25,000.00	2,500.00
02/23/2012 03/01/2012	to	11	Bison Income Trust II - Trust Units	5,409,210.00	540,921.00
02/01/2012 02/09/2012	to	11	Bison Income Trust II - Trust Units	2,819,300.00	281,930.00
05/03/2012		1	Bison Income Trust II - Trust Units	300,000.00	30,000.00
05/14/2012 05/16/2012	to	7	Bison Income Trust II - Trust Units	304,020.00	30,402.00
06/04/2012		8	Bison Income Trust II - Trust Units	445,350.00	44,535.00
05/25/2012		1	Bison Income Trust II - Trust Units	100,000.00	10,000.00
03/27/2012 04/05/2012	to	22	Bison Income Trust II - Trust Units	1,848,540.00	184,854.00
03/23/2012		5	Brazil Ecoethanol, LLC - Common Shares	1,111,010.00	3,703,366.00
05/29/2012		19	Canadian Western Bank - Common Shares	63,508,265.52	2,256,868.00
05/24/2012		26	Centurion Minerals Ltd. - Units	685,000.00	6,850,000.00
05/10/2012		1	CLP Australia Finance Pty Ltd. - Note	31,000,000.00	1.00
05/17/2012		26	Corvus Gold Inc. - Common Shares	5,527,500.00	8,250,000.00
06/05/2012		11	CT Developers Ltd. - Common Shares	115,500.00	577,500.00
06/01/2012		1	DragonWave Inc. - Common Shares	6,421,302.48	2,000,978.00
06/04/2012		9	Duran Ventures Inc. - Units	600,000.00	7,500,000.00
05/31/2012		141	Element Financial Corporation - Special Warrants	87,128,475.00	16,595,900.00
05/14/2012		2	Embotics Corporation - Preferred Shares	4,999,995.51	1,164,062.00
05/24/2012		1	Energizer Holdings, Inc. - Note	512,290.95	1.00
06/06/2012		13	Entourage Metals Ltd. - Common Shares	375,200.00	1,072,000.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
05/24/2012	305	Esperanza Resources Corp. - Special Warrants	34,017,500.00	27,214,000.00
05/22/2012	9	Facebook, Inc. - Common Shares	1,611,168.00	41,600.00
05/22/2012	27	Facebook, Inc. - Common Shares	174,779,836.46	4,513,266.00
05/23/2012	22	Flowonix Medical Incorporated - Preferred Shares	73,085,454.17	3,757,849.00
05/17/2012	1	Frontier Communications Corporation - Notes	1,016,400.00	1,000.00
05/28/2012 to 05/30/2012	39	Highland Resources Inc. - Units	11,701,660.00	146,270,750.00
05/24/2012	1	ICN Resources Ltd. - Common Shares	13,500.00	150,000.00
05/16/2012	8	Ignite Restaurant Group, Inc. - Common Shares	1,371,580.00	97,000.00
05/22/2012	3	InvestPlus Vantage Finance Corp. - Bonds	339,100.00	339.10
05/18/2012	45	Keek Inc. - Units	3,162,500.00	3,162,500.00
06/05/2012	20	Loon Energy Corporation - Common Shares	1,000,000.00	10,000,000.00
06/08/2012	46	Lorus Therapeutics Inc. - Units	6,600,000.00	20,625,000.00
05/21/2012	5	Louisiana-Pacific Corporation - Notes	5,746,223.30	5.00
06/04/2012	22	Loyalist Group Limited - Common Shares	2,000,000.00	20,000,000.00
05/29/2012	187	Mirabela Nickel Ltd. - Common Shares	27,174,187.56	265,914,983.00
05/25/2012	10	Myca Health Inc. - Common Shares	1,065,000.00	266,250.00
05/16/2012	41	Nanotech Security Corp. - Common Shares	1,844,822.00	1,844,822.00
05/22/2012	2	NGPL PipeCo LLC - Notes	1,496,482.50	1,525.00
05/14/2012	2	North American Nickel Inc. - Common Shares	4,500.00	75,000.00
06/01/2012	1	NorthWest Healthcare Properties Real Estate Investment Trust - Trust Units	16,300,000.00	1,323,858.00
05/17/2012	3	Penn Virginia Resources Partners, L.P. and Penn Virginia Resource Finance Corporation II - Notes	27,442,800.00	3.00
05/25/2012	1	PIMCO Total Return Bond Fund - Units	253,375.00	10,399.33
05/31/2012	3	Polar Star Mining Corporation - Common Shares	180,000.00	720,000.00
05/16/2012	1	PROLOR Biotech, Inc. - Common Shares	151,500.00	30,000.00
05/30/2012	2	REBgold Corporation - Units	780,000.00	1,950,000.00
05/14/2012	1	Return On Innovation Capital Ltd. - Units	560,444.30	560,444.30
05/10/2012	1	Return On Innovation Capital Ltd. - Units	292,122.00	292,122.00
05/14/2012	3	ROI Capital Ltd. - Units	39,780,750.00	39,780,750.00

Transaction Date	No. of Purchasers	Issuer/Security	Total Purchase Price ($)	No. of Securities Distributed
05/14/2012	4	ROI Capital Ltd. - Units	1,000,000.00	1,000,000.00
05/01/2012	1	ROI Capital Ltd. - Units	200,000.00	200,000.00
04/26/2012	1	ROI Capital Ltd. - Units	13,793.52	13,793.52
05/14/2012	21	Sabre Metals Inc. - Common Shares	975,000.00	3,900,000.00
05/15/2012	2	Sally Holdings LLC and Sally Capital Inc. - Notes	7,020,300.00	7,000.00
05/25/2012	14	Seprotech Systems Incorporated “Corrected” - Common Shares	352,500.00	3,525,000
05/17/2012	1	Seven Generations Energy Ltd. - Common Shares	200,002,000.00	18,182,000.00
05/14/2012	5	Silver Sun Resource Corp. - Units	79,200.00	480,000.00
05/15/2012	13	Skyline Apartment Real Estate Investment Trust - Units	1,370,655.00	124,605.00
05/18/2012	4	Solantro Semiconductor Corp. - Preferred Shares	5,000,000.00	1,212,005.00
05/25/2012	13	Sonomax Technologies Inc. - Common Shares	3,000,000.00	90,000,000.00
05/17/2012	5	Speedy Cash Intermediate Holdings Corp. - Notes	2,855,762.71	5.00
06/11/2012	4	Stream Ventures Inc. - Units	350,000.00	7,000,000.00
05/29/2012	4	Tartisan Resources Corp. - Units	182,500.00	730,000.00
05/21/2012	2	The Bank of New York Mellon Corporation - Notes	12,296,597.67	2.00
05/16/2012	2	The Ryland Group, Inc. - Notes	2,025,400.00	2,000.00
03/30/2012	1	Trovagene, Inc. - Units	100,000.00	12,500.00
05/23/2012	72	US Oil Sands Inc. - Units	11,020,452.34	61,224,735.00
05/31/2012	26	Vertex Fund - Trust Units	2,607,156.21	N/A
05/31/2012	3	Vertex Managed Value Portfolio - Trust Units	117,224.44	N/A
05/31/2012	1	Vertex Strategic Income Fund - Trust Units	10,836.25	N/A
05/31/2012	25	Walton Westphalia Development Corporation - Common Shares	735,000.00	73,500.00
05/14/2012	9	Wave Accounting Inc. - Preferred Shares	12,318,271.49	4,092,449.00
05/28/2012	3	Yukon-Nevada Gold Corp. - Common Shares	6,854,220.00	22,847,400.00
05/02/2012	38	Zimtu Capital Corp. - Common Shares	501,464.40	1,167,887.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Atlantic Power Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 15, 2012
NP 11-202 Receipt dated June 18, 2012
Offering Price and Description:
US$130,000,000 - * % Series C Convertible Unsecured Subordinated Debentures due * Price: US$1,000.00 per Debenture
Underwriter(s) or Distributor(s):
TD Securities Inc.
Promoter(s):
-
Project #1923359

Issuer Name:
Atlantic Power Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 15, 2012
NP 11-202 Receipt dated June 18, 2012
Offering Price and Description:
Cdn$ * - 6,000,000 Common Shares Price: Cdn$ * per Common Share
Underwriter(s) or Distributor(s):
Morgan Stanley Canada Limited
Promoter(s):
-
Project #1923628

Issuer Name:
Crombie Real Estate Investment Trust
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated June 18, 2012
NP 11-202 Receipt dated June 18, 2012
Offering Price and Description:
60,000,000 - 5.00% Series D Convertible Unsecured Subordinated Debentures Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
CIBC WORLDMARKETS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
MACQUARIE CAPITALMARKETS CANADA LTD.
RAYMOND JAMES LTD.
BROOKFIELD FINANCIAL CORP.
DESJARDINS SECURITIES INC.
Promoter(s):
-
Project #1923703

Issuer Name:
Alaris Royalty Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated June 12, 2012
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
$44,070,000.00 - 2,260,000 Common Shares Price: $19.50 per Common Share
Underwriter(s) or Distributor(s):
Acumen Capital Finance Partners Limited
Cormark Securities Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Promoter(s):
-
Project #1921966

Issuer Name:
Argent Energy Trust
Principal Regulator – Alberta
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated June 12, 2012
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
$ * - * Units
Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
ALTACORP CAPITAL INC.
CORMARK SECURITIES INC.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
FIRSTENERGY CAPITAL CORP.
GMP SECURITIES L.P.
Promoter(s):
Aston Hill Financial Inc.
Project #1905559

Issuer Name:
Bauer Performance Sports Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated June 15, 2012
NP 11-202 Receipt dated June 15, 2012
Offering Price and Description:
$25,038,000.00 - 3,210,000 Common Shares
Price: $7.80 per Common Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
PARADIGM CAPITAL INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #1923181

Issuer Name:
Brickburn 2012 Royalty Income Limited Partnership
Principal Regulator - Alberta
Type and Date:
Preliminary Long Form Prospectus dated June 13, 2012
NP 11-202 Receipt dated June 14, 2012
Offering Price and Description:
Maximum Offering: $30,000,000.00 (300,000 Units);
Minimum Offering: $5,000,000.00 (50,000 Units)
Price: $100.00 per Unit Minimum Purchase: $5,000.00 (50 Units)
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Scotia Capital Inc.
GMP Securities LP
Canaccord Genuity Corp.
Dundee Securities Ltd.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Manulife Securities Incorporated
Promoter(s):
Brickburn Asset Management Inc.
Project #1922403

Issuer Name:
Brookfield Property Partners L.P.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated June 15, 2012
NP 11-202 Receipt dated June 15, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brookfield Asset Management Inc.
Project #1923201

Issuer Name:
Cott Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Based Shelf Prospectus dated June 14, 2012
NP 11-202 Receipt dated June 14, 2012
Offering Price and Description:
U.S. $300,000,000.00 - Debt Securities, Guarantees of Debt Securities, Preferred Shares, Common Shares, Depositary Shares, Warrants to Purchase Debt Securities, Warrants to Purchase Common Shares,
Warrants to Purchase Preferred Shares, Warrants to Purchase Depositary Shares,
Stock Purchase Contracts and Stock Purchase Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1922605

Issuer Name:
Counsel Global Dividend
Counsel High Yield Fixed Income
Counsel Managed High Yield Portfolio
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated June 11, 2012
NP 11-202 Receipt dated June 12, 2012
Offering Price and Description:
Series A, D, E, F, I, P, T, and ET Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
COUNSEL PORTFOLIO SERVICES INC.
Project #1921600

Issuer Name:
Gateway Casinos & Entertainment Limited
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated June 12, 2012
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
TD SECURITIES INC.
BMO NESBITT BURNS INC.
J.P. MORGAN SECURITIES CANADA INC.
SCOTIA CAPITAL INC.
CIBC World Markets Inc.
GMP Securities LP
Goldman Sachs Canada Inc.
Macquarie Capital Markets Canada Ltd.
Morgan Stanley Canada Limited
Raymond James Ltd.
Canaccord Genuity Corp.
Promoter(s):
-
Project #1910511

Issuer Name:
Genivar Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated June 12, 2012
NP 11-202 Receipt dated June 12, 2012
Offering Price and Description:
$225,000,000.00 - 9,375,000 Subscription Receipts each representing the right to receive one Common Share Price: $24.00 per Subscription Receipt
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
BARCLAYS CAPITAL CANADA INC.
RAYMOND JAMES LTD.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
DESJARDINS SECURITIES INC.
SCOTIA CAPITAL INC.
ALTACORP CAPITAL INC.
CANACCORD GENUITY CORP.
LAURENTIAN BANK SECURITIES INC.
CORMARK SECURITIES INC.
DUNDEE SECURITIES LTD.
GMP SECURITIES L.P.
STONECAP SECURITIES INC.
Promoter(s):
-
Project #1921941

Issuer Name:
Gold Canyon Resources Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated June 15, 2012
NP 11-202 Receipt dated June 15, 2012
Offering Price and Description:
$2,535,000.00 - 1,950,000 Common Shares Price $1.30 per Common Share and $10,510,500.00 - 7,150,000 - Flow-through Common Shares Price: $1.47 per Flow-Through Common Share
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
FRASER MACKENZIE LIMITED
DUNDEE SECURITIES LTD.
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #1923215

Issuer Name:
iCo Therapeutics Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated June 13, 2012
NP 11-202 Receipt dated June 14, 2012
Offering Price and Description:
$25,000,000.00 - Common Shares, Warrants, Units, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1922360

Issuer Name:
Individual plan Trust
Principal Regulator - Quebec
Type and Date:
Preliminary Long Form Prospectus dated June 6, 2012
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
Registered Education Savings Plans
Underwriter(s) or Distributor(s):
UNIVERSITAS MANAGEMENT INC.
Promoter(s):
-
Project #1920395

Issuer Name:
Reflex plan Trust
Principal Regulator - Quebec
Type and Date:
Preliminary Long Form Prospectus dated June 6, 2012
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
Registered Education Savings Plans
Underwriter(s) or Distributor(s):
UNIVERSITAS MANAGEMENT INC.
Promoter(s):
-
Project #1920399

Issuer Name:
Sprott Physical Platinum and Palladium Trust
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form PREP Prospectus dated June 13, 2012
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
US$ * (* Units)
Minimum Subscription: US$1,000.00 (100 Units)
Price: US$10.00 per Unit
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
MORGAN STANLEY CANADA LIMITED
Promoter(s):
SPROTT ASSET MANAGEMENT LP
Project #1848741

Issuer Name:
Universitas plan Trust
Principal Regulator - Quebec
Type and Date:
Preliminary Long Form Prospectus dated June 6, 2012
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
Registered Education Savings Plans
Underwriter(s) or Distributor(s):
UNIVERSITAS MANAGEMENT INC.
Promoter(s):
-
Project #1920398

Issuer Name:
AGF Global Resources Fund (formerly, Acuity Natural Resource Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated June 5, 2012 to the Annual Information Form dated April 19, 2012
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
AGF Investments Inc.
Project #1873154

Issuer Name:
AlphaNorth Growth Fund
AlphaNorth Rollover Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated June 12, 2012
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
A, B, D, and F Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1909375

Issuer Name:
Armada Exploration Corp.
Principal Regulator - British Columbia
Type and Date:
Amendment and Restated Final Long Form Prospectus dated June 7, 2012
NP 11-202 Receipt dated June 12, 2012
Offering Price and Description:
$869,000.00 - 4,300,000 Shares @ $0.20 per Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Andrew Brown
Project #1857903

Issuer Name:
Batero Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated June 14, 2012
NP 11-202 Receipt dated June 15, 2012
Offering Price and Description:
$6,314,555.00 - 9,714,700 Common Shares and 4,857,350 Common Share Purchase Warrants
Issuable on Exercise of 9,714,700 Outstanding Special Warrants
Underwriter(s) or Distributor(s):
Raymond James Ltd.
Cormark Securities Inc.
Promoter(s):
Brandon Rook
Project #1919300

Issuer Name:
BMO Guardian Global Bond Fund
BMO Guardian Dividend Growth Fund
BMO Guardian Global Equity Fund
BMO Guardian Global Technology Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated June 4, 2012 to Final Simplified Prospectuses and Annual Information Form dated June 16, 2011
NP 11-202 Receipt dated June 15, 2012
Offering Price and Description:
Mutual Fund units, F Class units, I Class units and T5 Class units @ Net Asset Value
Underwriter(s) or Distributor(s):
Guardian Group of Funds Ltd.
BMO Investments Inc.
Promoter(s):
BMO Investments Inc.
Project #1748278

Issuer Name:
Capital International - Growth and Income
Capital International - Emerging Markets Total Opportunities
Capital International - Global Equity
Capital International - International Equity
Capital International - U.S. Equity
Capital International - Canadian Core Plus Fixed Income
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated June 14, 2012
NP 11-202 Receipt dated June 14, 2012
Offering Price and Description:
Series A, B, D, F, H and I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1905938

Issuer Name:
Capital Power L.P.
Principal Regulator - Alberta
Type and Date:
Final Base Shelf Prospectus dated June 12, 2012
NP 11-202 Receipt dated June 12, 2012
Offering Price and Description:
$1,000,000,000.00 - Medium Term Notes
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
DESJARDINS SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
MERRILL LYNCH CANADA INC.
NATIONAL BANK FINANCIAL INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
Promoter(s):
-
Project #1919979

Issuer Name:
Castlerock Canadian Stock Fund (formerly Hartford Canadian Stock Fund)
Castlerock Canadian Balanced Fund (formerly Hartford Canadian Balanced Fund)
Castlerock Total Return Fund
Castlerock Global High Income Fund (formerly Hartford Global High Income Fund)
Castlerock Canadian Bond Fund (formerly Hartford Canadian Bond Fund)
Castlerock Canadian Money Market Fund (formerly Hartford Canadian Money Market Fund)
Castlerock Canadian Value Fund (formerly Hartford Canadian Value Fund)
Castlerock Conservative Portfolio (formerly Hartford Conservative Portfolio)
Castlerock Balanced Portfolio (formerly Hartford Balanced Portfolio)
Castlerock Balanced Growth Portfolio (formerly Hartford Balanced Growth Portfolio)
Castlerock Growth Portfolio (formerly Hartford Growth Portfolio)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated May 28, 2012 to Final Simplified Prospectuses and Annual Information Form dated July 27, 2011
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
CI Investments Inc.
Project #1769200

Issuer Name:
Cequence Energy Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated June 13, 2012
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
$26,068,700.00: (1) 11,683,500 Common Shares at $1.20 per Common Share for gross proceeds of $14,020,200.00; (2) 4,850,000 CEE Flow-Through Shares at $1.45 per CEE Flow-Through Share for gross proceeds of $7,032,500.00; (3) 3,800,000 CDE Flow-Through Shares at $1.32 per CDE Flow-Through Share for gross proceeds of $5,016,000.00
Underwriter(s) or Distributor(s):
PETERS & CO. LIMITED
CORMARK SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
STIFEL NICOLAUS CANADA INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
TD SECURITIES INC.
Promoter(s):
-
Project #1920450

Issuer Name:
Lakeview Disciplined Leadership U.S. Equity Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated May 28, 2012 to Simplified Prospectus and Annual Information Form dated July 27, 2011
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1767124

Issuer Name:
Manulife Leaders Balanced Growth Portfolio
Manulife Leaders Balanced Income Portfolio
Manulife Leaders Opportunities Class
Manulife Simplicity Aggressive Portfolio
Manulife Canadian Opportunities Fund
Manulife European Opportunities Fund
Manulife Advantage Fund
Manulife Advantage Fund II
Manulife American Advantage Fund
Manulife Canadian Focused Fund
Manulife Global Advantage Fund
Manulife Canadian Value Fund
Manulife Dividend Fund
Manulife International Value Equity Fund
Manulife Canadian Core Fund
Manulife Canadian Equity Fund
Manulife Sector Rotation Fund
Manulife Leaders Balanced Growth Class
Manulife Leaders Balanced Income Class
Manulife Leaders Opportunities Portfolio
Manulife Canadian Opportunities Class
Manulife Advantage II Class
Manulife Canadian Focused Class
Manulife Canadian Value Class
Manulife Canadian Large Cap Value Class
Manulife Dividend Class
Manulife International Value Class
Manulife International Value Equity Class
Manulife Canadian Core Class
Manulife Canadian Equity Class
Manulife Structured Bond Class
Manulife Total Yield Class
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated May 29, 2012 to Final Simplified Prospectuses and Annual Information Form dated August 19, 2011
NP 11-202 Receipt dated June 13, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Manulife Asset Management Limited
Manulife Asset Management Limited
Promoter(s):
Manulife Asset Management Limited
Project #1771558

Issuer Name:
PowerShares 1-5 Year Laddered Investment Grade Corporate Bond Index ETF
PowerShares Ultra DLUX Long Term Government Bond Index ETF
PowerShares Fundamental High Yield Corporate Bond (CAD Hedged) Index ETF
PowerShares Senior Loan (CAD Hedged) Index ETF
PowerShares Canadian Dividend Index ETF
PowerShares Canadian Preferred Share Index ETF
PowerShares QQQ (CAD Hedged) Index ETF
PowerShares S&P 500 Low Volatility (CAD Hedged) Index ETF
PowerShares FTSE RAFI Canadian Fundamental Index ETF
PowerShares FTSE RAFI US Fundamental (CAD Hedged) Index ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated June 14, 2012
NP 11-202 Receipt dated June 15, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1901578

Issuer Name:
Premium Brands Holdings Corporation
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated June 11, 2012
NP 11-202 Receipt dated June 12, 2012
Offering Price and Description:
$50,000,000.00 - 5.70% Convertible Unsecured Subordinated Debentures
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
LAURENTIAN BANK SECURITIES INC.
PI FINANCIAL CORP.
Promoter(s):
-
Project #1916942

Issuer Name:
The Toronto-Dominion Bank
Type and Date:
Final Base Shelf Prospectus dated June 15, 2012
Receipted on June 15, 2012
Offering Price and Description:
U.S. $15,000,000,000.00 - Senior Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1915773

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Millar Private Wealth Management Inc.	Exempt Market Dealer and Portfolio Manager	May 24, 2012
New Registration	Turn8 Partners Inc.	Portfolio Manager	May 29, 2012
New Registration	Kingship Capital Corp.	Portfolio Manager	June 1, 2012
New Registration	Foster Asset Management Inc.	Portfolio Manager	June 8, 2012
Name Change	From: W.A. Robinson & Associates Ltd. To: W.A. Robinson Asset Management Ltd.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	June 11, 2012
Name Change	From: Ned Goodman Investment Counsel Limited To: Goodman Investment Counsel Inc.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	June 13, 2012
Change in Registration Category	National Bank Financial Ltd.	From: Investment Fund Manager, Investment Dealer, Futures Commission Merchant To: Investment Dealer, Futures Commission Merchant	June 13, 2012
Voluntary Surrender	Helvea Inc.	Exempt Market Dealer	June 14, 2012

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.2 Marketplaces

13.2.1 Instinet Canada Cross Limited – Notice of Proposed Change

INSTINET CANADA CROSS
NOTICE OF PROPOSED CHANGE

Instinet Canada Cross Limited ("ICX") has announced its plans to implement the change described below after August 31 2012. It is publishing this Notice of Proposed Changes in accordance with OSC Staff Notice 21-703 – *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems.*

Description of Proposed Changes and Reasons for Changes

BLX Pricing Process

ICX is proposing reducing the BLX pricing window from ten (10) seconds to one (1) second after a match occurs. The reduction in the pricing window is designed to tighten the window and increase the possibility of matches during price movements where the Subscriber may have entered a limit price. Other key features such as mid-point match, volume thresholds and anti-gaming will remain unchanged.

To review the process:

1. Orders are sent in to BLX and are accumulated. When the minimum threshold for a match is reached the pricing window opens.

2. The BLX price is set by calculating the NBBO midpoint at a random time during a 1-second pricing window (formerly 10 second window). The match executes, with orders filled pro-rata.

3. Prints on ICX are sent to Subscribers, the IP and IIROC.

Impact of the Change

The BLX pricing window time reduction will provide Subscribers with improved matches and hit ratios in the marketplace. Clients expressed the opinion that a tighter pricing window would be beneficial in that the calculated price would more in line with the mid-point NBBO price at the actual time of the match. The benefit to subscribers is greater certainty, understanding and acceptance of the model, as it reflects normal trading behavior. At the same time, BLX is still a non-continuous cross that provides price improvement, can't be pinged and with the 1 second window and size thresholds is more difficult to game or determine footprint.

Consultations

ICX has consulted with industry participants who supported the proposed change.

Existence of Proposed Change in the Market

No other marketplace in Canada features a pricing window similar to ICX's BLX. However, BLX operates with a one second pricing window in other countries.

Any questions regarding these changes should be addressed to Ken Klepacki, Chief Compliance Officer, Instinet Canada Cross: ken.klepacki@instinet.com, T: 416 304-6365.

13.2.2 Instinet Canada Cross Limited – Notice of Proposed Changes and Request for Comment

INSTINET CANADA CROSS LIMITED
NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Instinet Canada Cross Limited ("ICX") announced its plans to implement the changes described below after August 31, 2012. We are publishing this Notice of Proposed Changes in accordance with the requirements set out in OSC Staff Notice 21-703 "Transparency of the Operations of Stock Exchanges and Alternative Trading Systems." Pursuant to OSC Staff Notice 21-703, market participants are invited to provide the Commission with comment on the proposed changes. In particular, OSC staff have concerns with the proposed reduction of the pricing window of the BLX pricing process to one second. We request specific comment on the appropriateness of a call market operating with a one second pricing window.

Comments on the proposed changes should be in writing and submitted by July 23, 2012 to:

Market Regulation Branch
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Fax 416 595 8940
Email: marketregulation@osc.gov.on.ca

And to

Ken Klepacki
Chief Compliance Officer
Instinet Canada Cross Limited
Canadian Pacific Tower
100 Wellington Street West
Toronto-Dominion Centre, Suite 2202, PO Box 134
Toronto, ON M5K 1H1
Email: ken.klepacki@instinet.com

Comments received will be made public on the OSC website. Upon completion of the review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

13.3 Clearing Agencies

13.3.1 OSC Staff Notice of Commission Approval – Material Amendments to CDS Procedures – Modification to the CDSX Interface to the CDCC Fixed Income CCCP

OSC STAFF NOTICE OF COMMISSION APPROVAL

CDS CLEARING AND DEPOSITORY SERVICES INC.

MATERIAL AMENDMENTS TO CDS PROCEDURES – MODIFICATION TO THE CDSX INTERFACE TO THE CDCC FIXED INCOME CCP

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on June 5, 2012, amendments filed by CDS to its procedures relating to the Modification to the CDSX interface to the CDCC fixed income CCP. A copy and description of the procedure amendments were published for comment on April 26, 2012 at (2012) 35 OSCB 4199. No comments were received.

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Index

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