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)

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

June 28, 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

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 18-20, August 13, August 15 and September 18-19, 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
August 28, 2012 2:30 p.m.	**David Charles Phillips and John Russell Wilson** s. 127 Y. Chisholm in attendance for Staff Panel: JDC

September 4-10, September 12-14, September 19-24, and September 26 – October 5, 2012 10:00 a.m.	**Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg** s. 127 H Craig in attendance for Staff Panel: TBA
September 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 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
December 20, 2012 10:00 a.m.	**New Hudson Television Corporation, New Hudson Television L.L.C. & James Dmitry Salganov** s. 127 C. Watson in attendance for Staff Panel: TBA
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

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 (Corrected)

[Editor's note: A version of CSA Consultation Paper 91-406 – Derivatives: OTC Central Counterparty Clearing which did not include final revisions was inadvertently published in (2012), 35 OSCB 5638 (June 21, 2012). The following text is the final version.]

CANADIAN SECURITIES ADMINISTRATORS

CSA CONSULTATION PAPER 91-406

DERIVATIVES: OTC CENTRAL COUNTERPARTY CLEARING

Canadian Securities Administrators Derivatives Committee

June 20, 2012

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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:

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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 derivatives. 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 paper discusses 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:

> *In addition, regulators should consider the accounting rules that reserve favourable treatment for customized risk management transactions. Mandatory clearing and standardization of OTC derivatives should not result in increased volatility in users' financial statements.*[12]

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;
- 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.

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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.*

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]

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-

[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.

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 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:

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[16] For a discussion of Canadian STP initiatives, see *CSA Discussion Paper 24-401 on Straight-through Processing and Request for Comments*, Supplement to the Bulletin concerning securities of the Autorité des marchés financiers, 2004-06-11 vol. 1, No. 19, June 11, 2004 (Discussion Paper 24-401); and *CSA Notice 24-301 – Responses to Comments Received on Discussion Paper 24-401 on Straight-through Processing, Draft Regulation 24-101 respecting Post-trade Matching and Settlement, and Draft Policy Statement to Regulation 24-101 respecting Post-trade Matching and Settlement*, Supplement to the Bulletin concerning securities of the Autorité des marchés financiers, 2005-06-11 vol. 2, No. 6, February 11, 2005.

[17] ISDA Comment Letter.

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

> *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 agrees with the recommended option […] Regulators should consider the following:*
>
> - *market volume of the derivative;*
> - *number of market participants for the derivative;*
> - *size of market participants for the derivative;*
> - *available liquidity of market participants for the derivative;*
> - *factors affecting the derivative, such as daily margin calculation method, payment dates and maturity;*
> - *complexity of the derivative.*[20]

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.

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*

[19] CBA Comment Letter.

[20] Desjardins Comment Letter.

[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.

> *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:

> *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]

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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.

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.

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;*
>
> *(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]

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[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.

[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.

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 input. 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 has been determined to be subject to mandatory clearing, the 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.

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 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

[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

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 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

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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.

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.

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, apply terms and conditions to such rules, including its risk management model, 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 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,

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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.

42 FMI Principles, p. 12.

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, *Regulation 52-110 respecting Audit Committees* ("Regulation 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.

To ensure independence from CCP management, the Committee believes that flexible language, similar to the meaning of independence in Regulation 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?

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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.

47 FMI Principles. p. 26.

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 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]

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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.

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]

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]

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[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.

[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.*

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.

Market regulator approval of CCP access policies and ongoing monitoring of compliance therewith can reduce the risk that a CCP is 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:

> *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*

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56 *Ibid.*

57 FMI Principles, p. 101.

58 COE June 6, 2011 , Art. 8.

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

> *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]

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.

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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).

63 FMI Principles, page 122.

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.

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]

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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.

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*

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.

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*

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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.

69 COE June 6, 2011, Art. 45.

> *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.*
>
> *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.

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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.

72 COE June 6, 2011, Art.46.

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;

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, are 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]

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[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.

[74] FMI Principles, p. 170-71.

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.

The Committee acknowledges that *Regulation 21-101 respecting Marketplace Operation* ("Regulation 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 Regulation 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.

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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).

78 Regulation 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.

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.

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]

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81 FMI Principles, p.128.

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.

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.

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*

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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.

> *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;*
>
> *(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.

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

89 COE June 6, 2011, Art.23 ¶1-2.

90 FMI Principles, p. 25.

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.

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 OSC Notice 11-767 – Notice of Statement of Priorities for Financial Year to End March 31, 2013

OSC NOTICE 11-767 – NOTICE OF STATEMENT OF PRIORITIES FOR FINANCIAL YEAR TO END MARCH 31, 2013

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

In the notice published by the Commission on March 30, 2012, the Commission set out its draft Statement of Priorities and invited public input in advance of finalizing and publishing the 2012 – 2013 Statement of Priorities. One hundred-five (105) responses were received. Many of the comments we received confirmed support for our recently completed strategic plan and the various initiatives we plan to undertake in order to achieve our goals.

The responses commended the overall direction of the OSC goals and priorities and included:

(a) Strong support for the creation of the Office of the Investor and increased focus on investor concerns

(b) Endorsement of OSC's commitment for expansion of the research and data analysis capabilities in order to adopt a data-based approach to identifying issues, decision making and policy development

(c) Positive acknowledgement of the OSC's dedication to keeping pace with national and international developments

(d) Encouragement to move towards better identification, prioritization and coordination of specific initiatives and policy development.

The comments focussed on a wide range of issues. We address notable comments in the following discussion:

(a) Increased accountability was noted as an area that requires further clarity and transparency. It was recommended that the Commission clearly define performance metrics and use these measures to report on the progress of achieving its goals. In addition it was suggested that further information be provided regarding the timing, plans, and performance criteria for the deliverables contained in the Statement of Priorities.

We agree with this comment and wish to note that the Statement of Priorities includes a key priority to improve our accountability. In the coming year we will finalize key performance indicators (KPIs) to better track the outcomes of OSC activities and plan to report more clearly on progress. We have modified the Statement of Priorities to indicate the implementation of KPIs will occur by fiscal year end.

(b) A number of respondents commented on our initiative to re-evaluate the adviser-client relationship to consider whether an explicit statutory fiduciary duty or other standards should apply to all advisers and dealers in Ontario. While some respondents were quite supportive of this initiative, others noted the current common law fiduciary regime is effective and no further work is required.

In consultation with the CSA, we plan to complete a thorough analysis of this issue and a research paper will be published for comment.

(c) While there is overall support for the establishment of the Office of the Investor ("Office"), we received requests for more detailed information about the Office, such as: disclosure of the mandate, goals, composition, and future initiatives. There were also some suggestions regarding the focus and mandate of the Office.

We are in the early stages in establishing the Office including finalizing the terms of reference and mandate. The comments received will be considered as part of this process.

(d) We received comments regarding a mechanism by which the OSC could award compensation to Ontario investors who suffer losses because of violations of the *Securities Act* (Ontario).

We recognize the importance of this matter and have revised the Statement of Priorities to include more focus on applications under s.128 of the *Securities Act* (Ontario).

(e) A significant number of comments focussed on the need to adopt an offering memorandum exemption in Ontario to increase and expand the capital raising capabilities of exempt market dealers.

On June 7, 2012, we published OSC Staff Notice 45-707 – *OSC Broadening Scope of Review of Prospectus Exemptions* (available on the OSC website at *www.osc.gov.on.ca*) indicating our decision to broaden the scope of our exempt market review to consider alternative capital raising exemptions, including the offering memorandum exemption.

(f) Several respondents commented on the initiative to "conduct research and analysis, and publish a discussion paper on the cost of ownership of mutual funds in Canada, identifying investor protection and public interest issues". They noted that the cost of ownership of mutual funds is transparent; however, the same cannot be said about other financial products such as market securities, insurance products, GICs, etc. It was suggested that the OSC collaborate with other regulators for those products that do not come under its jurisdiction. It is our intention to apply our findings to comparable investment fund products.

(g) Many respondents commended the OSC's efforts regarding consultation on regulatory initiatives with market participants and industry, working with the Canadian Securities Administrators (CSA), and with other regulators in Canada and internationally. It was noted that as long as multiple securities regulators exist, it is important to work together to ensure the regulatory process remains cooperative and harmonized to promote effective capital markets, an investor focus and financial stability.

Some comments suggested that more consultation and opportunities for input from market participants and investors is also required. To improve collaboration and consultation we have recently established a number of committees with broad industry participation. We will continue to include market participants on our various advisory committees, consult with industry and other regulators on various securities regulatory matters, and develop stronger relationships with other financial service regulators in Canada and internationally.

In addition, we are pleased to note that the OSC Investor Advisory Panel (IAP) will continue to add the investors' viewpoints and comments on significant policy initiatives.

We considered all of the comments received and have reviewed our draft Statement of Priorities to determine whether any significant initiatives should be added. As noted above, we have revised the Statement of Priorities to include that where appropriate the OSC will make application under s.128 of the *Securities Act* (Ontario) to compensate investors.

We recognize many of the comment letters include useful actions that could be taken while working towards our priorities. Many of these comments will be considered in the course of undertaking the identified initiatives. However, due to a lengthy list of priority issues we had to make some difficult decisions on where we should focus our limited resources in order to achieve our mandate and strategic goals during the coming year.

All of the comment letters and our responses to the comments are available on our website www.osc.gov.on.ca.

The Statement of Priorities will serve as the guide for the Commission's operations. Following delivery of the Statement of Priorities to the Minister, we will also publish on our website a report on our progress against our 2011 – 2012 priorities.

June 28, 2012

ONTARIO SECURITIES COMMISSION
2012-2013
STATEMENT OF PRIORITIES

INTRODUCTION

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

This Statement of Priorities sets out the OSC's strategic goals and the specific initiatives that will be pursued in support of each of these goals in the fiscal year commencing April 1, 2012. It also discusses the environmental factors that the OSC considered in setting these goals.

The OSC remains committed to delivering its regulatory services effectively and with accountability. The recent ruling from the Supreme Court stated that the federal government did not have the authority under the constitution to enact the proposed Canadian Securities Act. Therefore, the OSC continues to work closely with its colleagues in the Canadian Securities Administrators (CSA), and to ensure that the Canadian regulatory system continues to function efficiently and remains responsive to changing market circumstances.

Our Vision

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

Our Mandate

The OSC's mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets. The mandate is established by statute.

OUR ENVIRONMENT

Each year, the OSC develops its business plan and sets goals and priorities to promote the achievement of its vision and the fulfillment of its mandate. The OSC does this in the context of current and forecast economic conditions, evolving market practices, developing trends and issues, as well as changes in public expectations. This year's planning exercise has the benefit of recent internal efforts to develop a vision and a strategic plan for the OSC as a 21st century regulator. The plan focuses on how the OSC sets its policy priorities, conducts its compliance programs and interacts with its stakeholders. This statement of priorities reflects some of these changes.

Today's market reality

Capital markets have changed fundamentally in recent years. We have experienced sharp increases in the breadth of activity as well as changes in the nature of business models and the complexity of products. Securities, insurance and banking products have become more interchangeable and global markets more interconnected than ever before.

The current market reality requires the OSC to address many new issues that have international implications, such as multi-jurisdictional enforcement investigations, a regulatory framework for the over-the-counter (OTC) derivatives, oversight of credit rating agencies and hedge funds, the regulation of emerging market reporting issuers, the proliferation of complex exchange-traded funds (ETFs) and structured products and an ever-changing market infrastructure. These raise complex regulatory, jurisdictional and operational challenges for the OSC.

There continue to be instances where retail and institutional investors have been sold products that were not adequately explained, were not suitable and did not meet their needs. These problems resulted in investor harm and have shone a spotlight on the inadequacies of the existing disclosure regimes and on the need for financial advisers to appropriately inform investors to enable them to make good investment decisions.

One of the greatest challenges now facing the OSC and other securities regulators is to strengthen the capacity and expertise to keep pace with ongoing market developments and risks that are emerging as a result of innovation and global market stresses.

International response

Given the changes to the markets and the lessons learned from the global financial crisis, expectations for financial services regulators have changed quite significantly. The unprecedented use of taxpayer dollars in many jurisdictions to bail out large financial institutions and to protect the local capital markets has created new accountability for regulators to a constituency with little interest in underwriting unnecessarily or overly risky behaviour.

In an effort to fix the underlying causes of the crisis, the G20 countries, along with the Financial Stability Board (FSB) and international standard-setters, such as IOSCO and the Basel Committee on Banking Supervision, are focussed on global support for regulation by way of additional investments in regulatory processes, development of new financial market infrastructures, expanding the perimeter of regulation and strengthening cooperation and regulatory oversight. The call for increased regulation has been challenged by those who question whether regulators can develop the agility required to keep pace with developments in the markets they regulate.

Implications for securities regulation in Ontario

Commitments made to the G20 will require the introduction of a broad set of new policies that cannot simply be imported from other jurisdictions, but will require careful analysis of their impact in the Canadian market. In addition, the implications and consequences of policies introduced in other jurisdictions will need to be carefully monitored and their impact considered in Canada.

The effects of all new policies and changes in other markets will be two-fold in Canada. First, direct compliance with these new rules by either domestic subsidiaries of foreign headquartered players or by local players transacting with foreign entities will cause shifts in the competitive landscape resulting in the potential for regulatory arbitrage. Second, it is possible that initiatives such as the EU Tobin tax and the US Volcker rule, or the application of lower position limits for commodity traders could drive high-frequency trading, proprietary trading and broker activity, or commodities speculation further into Canada's markets.

The greatest challenge facing regulators will not merely be the effective implementation of new rules, but also the development of the regulatory capacity to keep current with new market developments that will emerge over time as a result of financial innovation, or as unforeseen consequences of the implementation of the current proposed rules.

Whether as a result of innovation in the industry, or as required by global events, the OSC faces a fast-changing operating environment and rising stakeholder and public expectations. As the regulator of the largest share of Canada's capital markets, the OSC has an obligation to take these challenges seriously and demonstrate leadership.

The recent Supreme Court of Canada decision on the national securities regulator means that the OSC will continue to meet its mandate by working in the best interests of investors and market participants of Ontario. The OSC will continue to work cooperatively with its CSA colleagues and other regulators to make the regulatory system more efficient.

KEY REGULATORY PRIORITIES FOR 2012 – 2013

In light of the environmental factors outlined above, the OSC has reviewed and affirmed its broad strategic goals as set out below. A three year OSC strategic plan released on February 29, 2012 outlined a number of initiatives and operational programs in order to achieve its mandate.

The OSC has five regulatory goals for 2012 – 2013. Four of the goals remain the same as in previous years with a fifth goal added to respond to the systemic risk concerns raised as part of the global response to the market issues that emerged in 2008.

Goal #1 – Deliver Responsive Regulation

The OSC strives to identify the important issues and deal with them in a timely way. The OSC will continue to be proactive in pursuing regulatory standards that discourage or pre-empt regulatory arbitrage, maintain or improve market confidence, reduce financial crime and safeguard investors. Expanding OSC research and analytical capabilities in support of policy making and operational decisions will better inform policy development.

Key initiatives the OSC plans to undertake in the coming year are to:

- Facilitate shareholder empowerment in director elections by advocating for the elimination of slate voting, the adoption of majority voting policies for director elections and enhancing disclosure of voting results for shareholder meetings

- Improve the proxy voting system by:

- conducting an empirical analysis to review concerns raised about the accountability, transparency and efficiency of the voting system
- facilitating discussions amongst market participants on improving the functioning of the proxy system, taking into account the needs and concerns of retail investors, and
- working with the CSA to review the role of proxy advisers in our capital markets by soliciting feedback from issuers, investors and other market participants

- Develop and publish a consultation paper addressing issues associated with market data in a multi-marketplace environment
- Undertake comparative research on capital raising regimes in other jurisdictions, including gathering economic data focussing specifically on approaches to raising capital for start-up and small businesses. This work will include consultation with issuers, investors, dealers, academics and others
- Consider and consult on alternate capital raising exemptions in Ontario in addition to the accredited investor and $150,000 exemption
- Conduct research and analysis, and publish a discussion paper on the cost of ownership of mutual funds in Canada, identifying investor protection and public interest issues
- Re-evaluate the regulatory and operational requirements associated with closed-end funds (non-redeemable investment funds) by assessing the rationale for rules that differ from the rules governing the more common open-end mutual funds. This work will include consultations with issuers and investors with a view to publishing new rules for comment
- Undertake research and analysis of increasingly complex financial products and investment strategies and collaborate closely with other regulators and exchanges to ensure regulatory approaches towards investment products are consistent and opportunities for regulatory arbitrage minimized.

Goal #2 – Deliver Effective Enforcement and Compliance

Timely and appropriate compliance oversight and enforcement actions are integral to fostering confidence in capital markets and preventing harm to investors. The OSC's compliance and enforcement regimes are dynamic; however, greater focus is needed on preventing non-compliance by issuers and registrants, rather than finding non-compliance after the fact. To address these issues, the OSC will:

- Work with other regulators, oversight bodies, exchanges, emerging markets issuers, auditors, underwriters and investors to address the principal concerns identified in the Emerging Markets Issuer Review (EMIR) completed in 2011 – 2012, as outlined in the OSC Staff Notice 51-719 dated March 20, 2012. This work will include:
  - developing and/or enhancing guidance and practices for boards, auditors and underwriters to address the principal concerns described in the Staff Notice
  - examining listing requirements applicable to Emerging Market issuers
- Conduct more targeted compliance reviews (i.e. "sweeps") and desk reviews of registrants by focussing on high risk areas, know your client and suitability obligations, new registrants and on major issues of concern that have been identified through compliance reviews
- Conduct compliance reviews of website and marketing disclosures by smaller issuers
- Promote vigorous and timely enforcement action by reducing timelines for completing investigations and initiating regulatory proceedings
- Continue to work with national and international enforcement regulators to develop a comprehensive response to emerging market issues
- Increase the use of stronger enforcement mechanisms and increase quasi-criminal prosecutions
- Further develop and implement a more effective, risk-based and proactive approach to both issuer regulation and compliance oversight

- Conduct educational seminars and publish a variety of practice directives and guidance to small and medium enterprises to provide direction on understanding our expectations regarding filings, and to alert them to issues we are focussing on in our review programs.

Goal #3 – Deliver Strong Investor Protection

Key initiatives the OSC plans to undertake to champion investor protection are as follows.

- The OSC will create an Office of the Investor to establish a stronger investor focus and understanding. This Office will:
    - deepen the OSC's understanding of investor issues
    - act as the focus for investor concerns and ensure investor issues are considered in policy and operational activities within the OSC
    - work with the OSC Research and Data Analysis Group to conduct specific research into investor issues and the implications for regulatory responses
    - work with investor advocacy groups and regulators to enhance OSC understanding of investor issues
    - work with the Investor Advisory Panel to support its mandate, and
    - work with the Investor Education Fund to support its efforts
- Re-evaluate the adviser-client relationship to consider whether an explicit statutory fiduciary duty or other standards should apply to all advisers and dealers in Ontario. The research underway will be completed, and a paper on the adviser's duty to clients will be prepared and published in consultation with the CSA
- Where appropriate the OSC will make application under s.128 of the *Securities Act* (Ontario) to compensate investors
- The OSC will help investors get the necessary information to enable them to make better investment decisions by:
    - applying high standards of disclosure through robust prospectus and continuous disclosure reviews
    - developing alternative, tailored disclosure documents – such as: re-examining risk disclosure in the 'Fund Facts' as part of the Point of Sale initiative, and developing similar disclosure documents for other types of investment funds and scholarship plans
    - publishing rules that ensure investors receive from their dealers/advisers reports on the ongoing costs and performance of their investments
- Continue to work with OBSI and the CSA to support a sustainable and robust system of informal dispute resolution for investors.

The need to assist and protect investors is critical given the availability of complex products, greater reliance on the exempt market for distribution, and potential intermediary conflicts of interest in the distribution of products. The OSC will:

- Examine the exempt market to obtain a better understanding of how and why individual investors participate not only in terms of direct investment in issuers, but also through structured investments sold through exempt market dealers
- Re-consider the current regulatory requirements governing shareholders' rights plans to reflect recent market and governance developments.

Goal #4 – Run a Modern, Accountable and Efficient Organization

The OSC continues to pursue its mandate and efforts to improve the efficiency and effectiveness of its operational and policy work. In its efforts to become a more performance-based and accountable organization, the OSC will:

- Prioritize and coordinate policy development. A dedicated committee will be established for the control and prioritization of policy initiatives, to ensure they are aligned with the goals and objectives of the organization and that investors' concerns and operational issues are considered early in the policy process. Greater emphasis will be placed on assessing the implications of policies, testing implementation of regulations and on collaboration with other domestic and international regulators

- Establish an Emerging Risk Committee that will develop a framework for the identification and analysis of risk

- Expand its research and data analysis capabilities to adopt a data-based approach to identifying issues, decision making and policy development. A dedicated group will be created to further enhance the research and analytical functions to bring about a more disciplined approach to policy development, a better understanding of investor behaviour and needs, and improved and timely identification of risks and issues in order to react faster

- Build an attractive, modern, high-performing workplace where every manager is a great talent manager and every employee is fully engaged

- Incorporate more sophisticated analytical tools to improve the efficiency, quality and timeliness of investigation efforts. Expand the use of technology and e-discovery tools to assist in insider trading investigations

- Improve the adjudicative process by moving to electronic hearings. This will facilitate more efficient management of the increased numbers of hearings and related documents

- Develop IT tools to assist in gathering, monitoring and analyzing data, automating areas of work that are now manually intensive and not efficient – e.g. creating online information submission (eForms) to capture submissions electronically to reduce data entry and errors, expedite analysis, and improve the quality of information submitted through initial validation

- Review the existing OSC fee model and propose a new Fee Rule for implementation in April 2013

- Further develop key performance measures to track the outcomes of OSC activities to be implemented by fiscal year end

- Improve internal work processes – such as: a more effective approach to issuer regulation by continuing to improve screening and review protocols for prospectuses and compliance oversight; plus enhancing the risk-based approach to licensing registrants.

Goal #5 – Support and Promote Financial Stability

The OSC aims to build the capabilities required to play a more active role in assessing risks to its own objectives and to financial stability arising from the interaction between securities and other financial services activities. The OSC will:

- Continue the work on the creation of a framework to regulate OTC derivatives participants in order to meet the G20 requirements:

    - complete and publish various concept papers in consultation with the CSA

    - roll-out proposed rules regarding oversight of trade repositories and a requirement to report all derivative trades to an approved trade repository, and

    - publish rules for comment in late 2012

- Increase cooperation by developing more formal and regular working relationships with the CSA and other financial service regulators in Canada and internationally

- Work with IOSCO and the CSA Systemic Risk Committee to implement IOSCO Principle 6 regarding systemic risk, and Principle 7 regarding perimeter of regulation.

2012 – 2013 FINANCIAL OUTLOOK

OSC Revenues and Surplus

Overall, the OSC is forecasting revenues in 2012–2013 to increase by 9.2% from 2011–2012 actual revenues. This forecast reflects the fee increases in place for the coming year and a market growth assumption of 5%. When the OSC reset fee rates for three years in April 2010, fees were set at levels to generate revenues that would be below expected costs. The intent was to reduce the surplus that had been accumulated in the prior three year period. Based on the projected revenues and proposed 2012–2013 OSC Budget, the OSC expects to operate at a deficit in 2012–2013. As a result, the OSC surplus is projected to be $7.0 million as at March 31, 2013.

2012 – 2013 Budget Approach

The 2012–2013 OSC Budget is focused on investment in the key strategies identified in its recently completed three year OSC Strategic Plan. While these initiatives will be staffed in part through redeployment of existing resources, the scope of the initiatives is such that more resources will be needed and are reflected in the budget.

The budget reflects a projected increase of $10.0 million or 11.1% over 2011–2012 spending and 10.2% above the 2011–2012 budget. Salaries and benefits, which comprise $74.8 million or 74.8% of the budget, reflect an increase of $5.4 million or 7.7% over 2011–2012 spending. The increase in salaries and benefits cost reflects:

- new positions approved to achieve the strategic initiatives
- full-year costs for vacancies and staff hired throughout 2011–2012, and
- higher projected restructuring costs.

The 2012–2013 budget includes funding for new staff focused in the following areas to:

- address market structure issues that are increasing both in number and complexity
- establish and staff a new Office of the Investor
- set up an accredited chartered accountant training program, and
- provide analytical and research support to allow the OSC to undertake a more fact based approach.

These initiatives will support the regulatory results the OSC is seeking. The OSC is committed to becoming a 21st century regulator and needs to attract, retain and motivate staff with the required skills and experience. The OSC believes that becoming a leading employer will help it attract skilled staff. Therefore, resources have been allocated to various human resources initiatives with the goal to create the appropriate organizational structure and development environment.

($000's)	2011-2012 Budget	2011-2012 Actual	2012-2013 Budget	2012-2013 Budget to 2011-2012 Budget $ Change	2012-2013 Budget to 2011-2012 Budget % Change	2012-2013 Budget to 2011-2012 Actual $ Change	2012-2013 Budget to 2011-2012 Actual % Change
Revenues	$80,287	$85,638	$93,524	$13,237	16.5	$7,886	9.2
Expenses	90,706	90,025	99,986	9,280	10.2	$9,961	11.1
Deficiency of Revenue compared to Expenses	($10,419)	($4,387)	($6,462)	$3,957		($2,075)	
Capital Expenditures	$2,396	$1,919	$8,057	$5,661		$6,138	

The significant increase in the capital budget primarily reflects the build-out of recently acquired additional space as well as the realignment and refurbishment of the OSC's existing space. The budget also includes considerable investments to support upgrading and expansion of our information technology which will help to facilitate excellence in the execution of the OSC's operations.

1.1.4 OSC Staff Notice 33-737 – Enhanced Transparency of Communications with Registrants

OSC STAFF NOTICE 33-737:
ENHANCED TRANSPARENCY OF COMMUNICATIONS WITH REGISTRANTS

Background

The mandate of the Ontario Securities Commission (the **OSC**) is to protect investors from unfair, improper and fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets. Staff of the OSC is committed to increasing the transparency with which it interacts with its stakeholders, including firms registered under the *Securities Act* (Ontario) (the **Act**), as part of an ongoing effort to further its mandate.

Under Part XI of the Act, the Director is responsible for making decisions concerning the registration status of individuals and firms who are required to be registered under the Act or who are seeking registration under the Act (**registrants**). The Director is an administrative official, and is defined in subsection 1(1) of the Act as the Executive Director of the Commission, a Director or Deputy Director of the Commission, or a person employed by the Commission in a position designated by the Executive Director as a Director.

When staff recommends that the Director refuse, amend, or suspend an individual's registration, or impose terms and conditions on an individual's registration, staff will send the registrant a letter providing written notice of its recommendation and brief reasons for it (the **Letter of Brief Reasons**). Section 31 of the Act then gives the registrant the right to be heard by the Director before a decision is made concerning staff's recommendation.

Historically, the OSC would send the Letter of Brief Reasons only to the individual registrant. The OSC would send a brief written notice to the registrant's sponsoring firm indicating staff's recommendation and advising the firm of the individual's right to be heard. In these notices, staff did not include any of the reasons underlying its recommendation, noting only that reasons had been communicated to the individual registrant.

What's New

Registrants are advised that, effective immediately, staff will now also be sending a copy of the Letter of Brief Reasons to the sponsoring firm. This copy will be sent to the sponsoring firm at the same time that the Letter of Brief Reasons is sent to the registrant.

Reason for Change in Process

In staff's view, providing registered firms with the Letter of Brief Reasons will promote the accuracy and completeness of information provided in respect of individuals they sponsor, thereby assisting firms in fulfilling their obligations under s. 5.1 of National Instrument 33-109 *Registration Information*.

Staff is of the view that investor protection will be enhanced by communicating important information about individual registrants and applicants to the registered firms responsible under Ontario securities law for supervising these individuals.

Questions

If you have any questions regarding the contents of this notice, please refer them to any of the following:

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June 28, 2012

1.2 Notices of Hearing

1.2.1 Peter Beck et al.

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

AND

IN THE MATTER OF
PETER BECK, SWIFT TRADE INC. (continued as 7722656 Canada Inc.), BIREMIS, CORP., OPAL STONE FINANCIAL SERVICES S.A., BARKA CO. LIMITED, TRIEME CORPORATION and CALM OCEANS L.P.

AMENDED NOTICE OF HEARING

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127(1) and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on a date to be determined by the Commission:

TO CONSIDER whether, in the opinion of the Commission, it is in the public interest, pursuant to sections 127 and 127.1 of the Act, for the Commission to order that:

a. trading in any securities by the Respondents cease permanently or for such period as the Commission may order, pursuant to paragraph 2 of section 127(1);

b. acquisition of any securities by the Respondents is prohibited permanently or for such period as the Commission may order, pursuant to paragraph 2.1 of section 127(1);

c. any exemptions contained in Ontario securities law do not apply to the Respondents permanently or for such period as the Commission may order, pursuant to paragraph 3 of section 127(1);

d. the Respondents submit to a review of their practices and procedures and institute such changes as may be ordered by the Commission, pursuant to paragraph 4 of section 127(1);

e. the Respondents be reprimanded, pursuant to paragraph 6 of section 127(1);

f. Peter Beck resign any and all positions that he holds as a director or officer of an issuer or registrant pursuant to paragraph 7 and 8.1 of section 127(1);

g. Peter Beck be prohibited from becoming or acting as a director or officer of any issuer or registrant pursuant to paragraph 8 and 8.2 of section 127(1);

h. the Respondents be prohibited from becoming or acting as a registrant or as a promoter, pursuant to paragraph 8.5 of section 127(1);

i. each Respondent pay an administrative penalty of not more than $1 million for each failure by that Respondent to comply with Ontario securities law, pursuant to paragraph 9 of section 127(1);

j. each Respondent disgorge to the Commission any amounts obtained as a result of non-compliance by that Respondent with Ontario securities law, pursuant to paragraph 10 of section 127(1);

k. the Respondents be ordered to pay the costs of the Commission investigation and hearing, pursuant to section 127.1; and

l. such other orders as the Commission deems appropriate.

BY REASON OF the allegations set out in the Amended Statement of Allegations of Staff of the Commission dated June 19, 2012 and such additional allegations as counsel may advise and the Commission may permit;

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

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

DATED at Toronto this 19th day of June, 2012.

"John Stevenson"

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

AND

IN THE MATTER OF
PETER BECK, SWIFT TRADE INC. (continued as 7722656 Canada Inc.), BIREMIS, CORP., OPAL STONE FINANCIAL SERVICES S.A., BARKA CO. LIMITED, TRIEME CORPORATION and CALM OCEANS L.P.

AMENDED STATEMENT OF ALLEGATIONS OF STAFF OF THE ONTARIO SECURITIES COMMISSION

1. Staff of the Ontario Securities Commission ("**Staff**") make the following allegations with respect to Peter Beck ("**Beck**"); Swift Trade Inc. (continued as 7722656 Canada Inc.)("**Swift Trade**"); Biremis, Corp. ("**Biremis**"); Opal Stone Financial Services S.A. ("**Opal Stone**"); Barka Co. Limited ("**Barka**"); Trieme Corporation ("**Trieme**"); and Calm Oceans L.P. (a limited partnership referred to herein as "**Anguilla LP**") (collectively, the "**Swift Trade Group**" or "**Group**").

I. Overview of Allegations

2. Beck is the directing mind of the Swift Trade Group which operates a high-volume, multi-national, securities day-trading business with a culture of regulatory non-compliance. Beck and his family incorporated or otherwise constituted each of the members of the Group, and organized their business operations using a complex, repeatedly changing structure. The organization of the Group's business operations inhibits transparency and impedes regulatory oversight of the Group's trading activities. The Group has operated with a deficient system of controls and supervision, and in breach of the requirement to be registered under Ontario securities law. Members of the Group have also failed to comply with other obligations applicable to them as registrants under Ontario securities law.

3. The Swift Trade Group has, according to Swift Trade, rapidly expanded the size of its day-trading operations. Beck started his day-trading operations in 1998, from a single office in Toronto. In 2008, the Group traded approximately 22 billion shares on global markets, using 4,500 (unregistered) individuals as its traders, operating from 190 offices around the world (including Canada, China, Europe, India, Israel, Kazakhstan, Nicaragua, Panama, and Russia). The Group directs its trading activities through technology located in Toronto. Key personnel in Toronto facilitate and support trading activities of the Group.

4. The lack of transparency in the Swift Trade Group's trading operations was exemplified in Swift Trade's interactions with Staff in connection with a compliance review by Staff (the "**Compliance Review**") and a review (the "**Consultant's Review**") by a consultant retained by Staff (the "**Consultant**"). Swift Trade failed to produce, or facilitate the production of, complete and accurate records pertaining to the trading operations of the Group, in response to repeated requests by Staff, and by the Consultant, even though it had been given lengthy periods of time to do so.

   (i) The Compliance Review occurred in and around March, 2009 and related to compliance by Swift Trade, in 2008, with Ontario securities law. During the Compliance Review, Staff identified a number of significant deficiencies related to Swift Trade's compliance, many of which had the effect of obscuring Staff's regulatory oversight of Swift Trade's securities trading operations. These deficiencies included: instances where Swift Trade's records of fund transfers conflicted with Swift Trade's contractual arrangements for the flow of funds between members of the Swift Trade Group; failures by Swift Trade to reconcile its accounting records with the records of third-parties; and business transactions of Swift Trade that were incorrectly recorded.

   (ii) The Consultant's Review was initiated in response to deficiencies identified in the Compliance Review and the lack of transparency in the Swift Trade Group's operations. The purpose of the Consultant's Review was to obtain a comprehensive understanding of the Group's business operations and affairs. The nature and scope of the Consultant's Review was specified in terms and conditions (the "**ST Terms and Conditions**") that were imposed on Swift Trade's registration by Staff, on December 21, 2009, for an aggregate period of 12 months. Pursuant to the ST Terms and Conditions, the Consultant repeatedly requested certain critical information about the Group's operations (detailed below) – but this information was not produced.

5. In December 2010, Swift Trade participated in a series of corporate actions that resulted in its dissolution one week prior to the expiry of the ST Terms and Conditions. It did so without giving Staff advance notice – and without completing the production of information requested by the Consultant pursuant to the ST Terms and Conditions.

6. The results of the Compliance Review, the Consultant's Review and the investigation conducted by Staff have disclosed that Beck and other members of the Swift Trade Group operate with a culture of non-compliance, in breach of Ontario securities law and contrary to the public interest as follows:

   (i) Since at least 2008, and up to its dissolution, Swift Trade failed to establish, maintain and enforce policies and procedures necessary to establish a system of adequate controls and supervision to provide reasonable assurance that it complies with Ontario securities law, and to manage its risks in accordance with prudent business practices. The following deficiencies were specifically noted:

      (a) In 2008, Swift Trade was deficient in the management of its financial affairs in that it failed to record its business transactions and financial affairs completely and accurately.

      (b) Swift Trade failed to perform adequate monitoring of client trading activities for possible abusive or deceptive trading.

      (c) Swift Trade failed to maintain or produce, upon request, complete and accurate financial records, including records which were necessary for Staff and the Consultant to complete their respective reviews.

      (d) Swift Trade failed to implement adequate supervisory controls over the activities of its successive Directors of Finance, its designated compliance officer and its Chief Compliance Officer.

   (ii) Since at least 2007, members of the Swift Trade Group have been engaging in extensive day-trading activities in breach of the dealer registration requirement (the "**Dealer Registration Requirement**") contained in section 25 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**")[92].

   (iii) Since September 28, 2009, certain members of the Swift Trade Group have repeatedly extended credit or provided margin to their clients, contrary to section 13.12 of National Instrument 31-103 *Registration Requirements and Exemptions* ("**NI 31-103**").

II. The Respondents

7. What follows is a description of each of the members comprising the Swift Trade Group:

Peter Beck

8. From December, 2009 up until Swift Trade's dissolution in December, 2010, Beck was registered under the Act as the ultimate designated person (the "**UDP**") and dealing representative for Swift Trade.[93] Before that, Beck had been registered under the Act as the trading officer for Swift Trade since September, 2002, and he was also the designated compliance officer of Swift Trade from November 2004 to August 2006. Beck resides in Ontario.

9. Since 1998, Beck has been registered with the Financial Industry Regulatory Authority ("**FINRA**") or its predecessor, the National Association of Securities Dealers ("**NASD**"). Beck has been registered as a General Securities Representative and General Securities Principal of Biremis since 2004.

10. Beck has been the subject of two regulatory proceedings in the U.S. The first proceeding related to the involvement of Beck and an affiliate of Swift Trade (Swift Trade Securities USA Inc.) in certain "wash trading" activity. The second proceeding related to Beck's failure to investigate the employment history of an individual who was employed as the Controller for Biremis and who was subsequently convicted for crimes committed in Ontario. This individual also served as the Director of Finance for Swift Trade in 2008 (the "**2008 Director of Finance**").

Swift Trade Inc.

11. Swift Trade was a corporation incorporated under the laws of Ontario in 2002. Swift Trade was registered under the Act as an "exempt market dealer" (an "**EMD**") from September 28, 2009 until its dissolution in December, 2010. Before that, Swift Trade had been registered under the Act as a "limited market dealer" ("LMD**")** since September 18, 2002.

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92 Effective September 28, 2009, subsection 25(1) of the Act prohibits a person or company from engaging in the business of trading in securities unless the person or company is registered in accordance with Ontario securities law. Before that, subsection 25(1) of the Act prohibited a person or company from trading in a security unless the person or company was registered.

93 The registration category of UDP came into effect on September 28, 2009 with the coming into force of NI 31-103. Swift Trade was first registered under its previous name, "Biremis Corporation", but subsequently changed its name to "Swift Trade Inc."

12. In December 2010, Swift Trade dissolved. Immediately prior to its dissolution, Swift Trade participated in a series of corporate actions which resulted in its continuation as 7722656 Canada Inc. On December 13, 2010, 7722656 Canada Inc. dissolved itself.

13. Until its dissolution, Swift Trade facilitated extensive day-trading operations from its office in Toronto (the "**ST Toronto Office**").[94] Since at least March, 2007, Swift Trade has had only two clients, Barka and Trieme (collectively "**ST Related Clients**"), neither of whom was at arm's-length with Swift Trade. Swift Trade is a subsidiary of a holding company, BRMS Holdings Inc. ("**BRMS**"). Beck is the Director and majority shareholder of BRMS. Beck was also the President and Director of Swift Trade.

Biremis, Corp.

14. Biremis is a corporation incorporated under the laws of Massachusetts in 2004. It does not maintain a functioning office in the U.S. Instead, Biremis operates out of the ST Toronto Office.[95] Biremis is registered with the U.S. Securities and Exchange Commission as a "broker-dealer" and is a licensed member of FINRA. Biremis day-trades large volumes of securities for its only client, Opal Stone, on Canadian marketplaces (the "**Canadian Marketplaces**"), and on marketplaces located outside of Canada (the "**International Marketplaces**"), which are predominantly located in the U.S. Swift Trade was a client of Biremis up until May, 2009. Biremis was an affiliate of Swift Trade prior to Swift Trade's dissolution. Biremis is a subsidiary of BRMS. Beck is the President and Director of Biremis. Beck and other senior officers of Biremis, including the current Controller and the current Chief Compliance Officer of Biremis, all reside in Ontario and maintain offices at the ST Toronto Office.

15. From 2008 to 2010, inclusive, Biremis has been the subject of four regulatory proceedings in the U.S. where it settled allegations made by FINRA. One of the proceedings related to the failure to investigate the employment history of its Controller as referred to in paragraph 10 above. The other three matters related to deficiencies in Biremis' transmission of certain electronic trade related data that it was required to send to FINRA.

Opal Stone Financial Services S.A.

16. Opal Stone is a corporation incorporated under the laws of Uruguay in 2007. It facilitates securities day-trading by clients who trade from locations in Ontario, across Canada and in countries around the world. Opal Stone is not registered under the Act or with any securities regulatory authority. Although it has an office located in Costa Rica, it retains the services of three non-arm's length administrative services companies that operate out of the ST Toronto Office (and also other locations): Orbixa, Omira Corporation S.A. (an affiliate of Biremis, incorporated in Costa Rica) and BlueChive. Swift Trade was a client of Opal Stone from May, 2009 up until its dissolution in December, 2010. Beck's father settled a private family trust which wholly owns Opal Stone. In or around 2007, Beck was the President of Opal Stone.

Barka Co. Limited

17. Barka is a corporation incorporated under the laws of Cyprus in 2004. Beck established Barka for his father. Barka was a non-arm's length client of Swift Trade. The sole purpose of Barka is to engage in the business of securities day-trading. In 2009, Barka retained 355 (unregistered) individual traders to trade on its behalf from 18 trading offices located in Ontario and across Canada. Beck's wife was the sole beneficial shareholder of Barka upon its incorporation. Since then, beneficial ownership of Barka has been held, at different times, by Beck's father, a trust that had no beneficiaries, and the estate of Beck's father.

Trieme Corporation

18. Trieme is a corporation incorporated under the laws of Ontario in 2005. Trieme was incorporated for the sole purpose of trading securities on its own behalf. It was a non-arm's length client of Swift Trade. Trieme has operated at least two trading offices and retained at least 24 individual (unregistered) traders to trade on its behalf. Trieme ceased all trading activities on November 30, 2010. Beck is the Director and sole shareholder of Trieme.

Anguilla LP

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[94] Swift Trade uses equipment located at the ST Toronto Office and elsewhere in Toronto. Swift Trade retained the services of two Ontario companies that also operate out of the ST Toronto Office: an affiliate, Orbixa Management Services Inc. ("Orbixa"), and BlueChive Processing Corporation ("BlueChive"). Orbixa is a subsidiary of BRMS Holdings Inc. Beck is the Director and the majority shareholder of BRMS Holdings Inc. Although his mother-in-law is its President and owner, Beck controls BlueChive.

[95] Biremis used and continues to use equipment located at the ST Toronto Office and elsewhere in Toronto. Biremis retained and continues to retain the services of Orbixa, which operates out of the ST Toronto Office.

19. Calm Oceans L.P. (referred to herein as "**Anguilla LP**") is a limited partnership organized under the laws of Anguilla.[96] Barka is a limited partner. Anguilla LP has retained the individual traders in Ontario who previously traded on behalf of Barka and Trieme, to trade on its behalf.

III. Breaches of Ontario Securities Law and Conduct Contrary to the Public Interest

20. The Swift Trade Group's culture of non-compliance exposes parties with whom it trades, and the capital markets in which it trades, to potential harm. In this regard, the results of the Compliance Review, the Consultant's Review and Staff's investigation have disclosed that, since at least 2008, members of the Swift Trade Group have operated contrary to Ontario securities law.

A. Financial Management Deficiencies

21. Since at least 2008, and up to its dissolution, Swift Trade failed to establish, maintain and enforce policies and procedures necessary to establish a system of adequate controls and supervision to provide reasonable assurance that it complies with Ontario securities law, and also to manage its risks in accordance with prudent business practices. In failing to establish, maintain and enforce such system of controls and supervision, Swift Trade breached Ontario securities law and acted contrary to the public interest.

22. Swift Trade's conduct was contrary to the requirements of Ontario securities law and in particular, sections 1.2, 1.3 and 3.1 of the then applicable OSC Rule 31-505 *Conditions of Registration* ("**OSC Rule 31-505**"). Since September 28, 2009, requirements for registered firms to establish, maintain and enforce adequate policies and procedures that establish a system of controls and supervision have been set out in section 11.1 of NI 31-103. Swift Trade's conduct was also contrary to the public interest.

23. In 2008, Swift Trade failed to properly record its business transactions and financial affairs completely and accurately and thereby inhibited regulatory oversight. These failures included:

    (i) Failure to reconcile its accounting records with those of third-party service providers. In particular, the 2008 Director of Finance failed to reconcile:

        (a) Its records of settlement amounts for trades executed by it for its ST Related Clients with its own bank statements;

        (b) Records of amounts actually paid to the individual traders, and their trade location managers, for ST Related Clients with internal records showing amounts owed to such traders and their managers;

        (c) Its records of ST Related Client security deposits with the actual amounts shown in its bank statements;

        (d) Bank balances recorded in its general ledger with the actual balances shown in its bank statements.

    (ii) Incorrect accounting entries. In particular: investments totalling approximately $550,000 actually belonging to Swift Trade's parent company, BRMS, were recorded in Swift Trade's accounting records as belonging to Swift Trade.

24. Until its dissolution, Swift Trade had a high rate of turn-over in its finance personnel. In the six years prior to its dissolution, Swift Trade had four different Directors of Finance.

25. In 2009 and 2010, Swift Trade's policies and procedures and supervisory controls remained deficient. In those two years, Swift Trade had two successive Directors of Finance. Neither of these Directors of Finance was able to provide complete or satisfactory responses when questioned about the Swift Trade Group's structure and operations by Staff and the Consultant during the Compliance Review and the Consultant's Review.

26. With respect to the matters referred to in paragraphs 23 to 25 above, Swift Trade and Beck also failed to adequately supervise Swift Trade's Directors of Finance.

27. Beck also failed to adequately supervise Swift Trade's process for hiring the 2008 Director of Finance, who had resigned from his previous employment where his conduct had been under investigation by his employer. This individual was subsequently convicted in Ontario of two counts of breach of public trust and one count of theft. At the

[96] The General Counsel for members of the Swift Trade Group has referred to this entity as "Anguilla LP".

same time, Beck also hired this individual to act as the Controller for Biremis, without adequately investigating his employment history.

28. Beck's failure to investigate this individual's employment history before hiring him as Biremis' Controller was the subject of FINRA's proceedings against Beck in late 2010. FINRA alleged that Biremis, acting through Beck, failed to establish, maintain and enforce a supervisory system and/or written supervisory procedures that were reasonably designed to investigate the background of prospective employees, follow-up on any red flags and achieve compliance with its registration and reporting obligations.

B. Failure to Perform Adequate Trade Reviews

29. In 2008, Swift Trade failed to perform adequate reviews of trading by ST Related Clients for possible instances of manipulative or deceptive trading activities, contrary to the requirements of Ontario securities law, and in particular, the then applicable OSC Rule 31-505 – sections 1.2, 1.3 and 3.1 of the Rule – and contrary to the public interest. In particular:

(i) In 2008, Swift Trade's compliance personnel were inadequately staffed to monitor trade orders involving billions of shares submitted by hundreds of individual traders for execution on Canadian Marketplaces and International Marketplaces. The compliance personnel consisted of only two individuals, each with limited compliance experience. One of these individuals served as the designated compliance officer (the "**2008 CCO**") of Swift Trade, and also as the Chief Compliance Officer for Biremis.

(ii) Swift Trade's 2008 CCO performed inadequate trade reviews for potential illegal trades known as "wash trades".[97] She relied upon reports with incorrect time stamps, despite the fact that such time stamps are critical for a wash trade analysis. She also limited her reviews by examining possible illegal trade patterns occurring within one trading day, instead of over multiple trading days.

(iii) Swift Trade's compliance personnel maintained unclear and insufficient records of trade review findings, including findings that may have suggested the occurrence of "spoofing", "layering"[98] or other questionable trading being executed by Swift Trade on behalf of the hundreds of individual traders trading on behalf of its ST Related Clients.

30. Swift Trade had a high rate of turn-over in compliance personnel. In the six years preceding its dissolution, Swift Trade had six different individuals act as its designated or registered chief compliance officer.[99]

31. During the Compliance Review, the 2008 CCO (who continued in that role during the Compliance Review) could not demonstrate to Staff that she possessed adequate knowledge about the complex structure and operations of the Swift Trade Group or the trade supervision issues noted above.

32. For the period from 2009 to 2010, compliance personnel in Toronto performed certain trade reviews for Swift Trade and Biremis and, in some instances, Opal Stone. Again, these trade reviews were inadequate for the purpose of identifying possible illegal and abusive trading on Canadian Marketplaces. By failing to perform adequate trade reviews, Swift Trade was in breach of the requirements of Ontario securities law, and in particular, the provisions of the then applicable OSC Rule 31-505 (referred to in paragraph 29 above) and/or section 11.1 of NI 31-103.[100] By failing to perform adequate trade reviews, Swift Trade also acted contrary to the public interest. Similarly, by failing to perform adequate trade reviews, Biremis and Opal Stone also acted contrary to the public interest.

33. In particular, in response to certain complaints received by Staff, Staff identified for Swift Trade patterns of irregular trading activity in relation to 11 securities originating from the Swift Trade Group on Canadian Marketplaces which occurred in the period from January, 2009 to March, 2010. This activity included possible spoofing and layering.

34. The compliance personnel in Toronto had failed to detect these patterns of irregular trading activity in 10 of the 11 securities identified by Staff. In the one instance where the compliance personnel had detected irregular trading, they limited the scope of their enquiries and also failed to adequately record the results of these limited enquiries.

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97 "Wash trade" is the term commonly used to describe a trade where, following the trade, there is no change in beneficial or economic ownership of the securities traded, resulting in a misleading appearance of trading activity.

98 "Spoofing" and "layering" are terms commonly used to describe activities that aim to affect the "bid" and/or "offer" price for a security. Such activities are designed to temporarily manipulate the price of a security in order to deceive other market participants into executing disadvantageous trades.

99 The registration category of chief compliance officer came into force on September 28, 2009 with the coming into force of NI 31-103. Before that, registered dealers were required to designate a registered partner or officer of the dealer to perform this function.

100 Requirements for registered firms to establish and enforce adequate supervisory controls and policies and procedures are set out in Part 11 of NI 31-103, which came into effect on September 28, 2009.

35. Swift Trade was unable, upon the request of Staff, to demonstrate that it performed adequate trade reviews for specific periods in 2009 and 2010.

36. With respect to the matters referred to in paragraphs 29 to 35 above, Swift Trade and Beck also failed to supervise Swift Trade's designated compliance officer and registered compliance officer from 2008 to 2010.

37. By failing to perform adequate trade reviews, Swift Trade, and other members of the Swift Trade Group increase the risk that they also failed to detect and prevent possible abusive and illegal trading activity in the billions of shares that were traded annually, by the thousands of (unregistered) traders, on behalf of their clients. This risk, in turn, undermines the integrity of the capital markets in Ontario and elsewhere.

C. Failure to Maintain or Produce Complete and Accurate Records

38. Swift Trade was unable to produce any of the following records that were requested by Staff in their Compliance Review or by the Consultant in the Consultant's Review (the "**Missing Records**"):

    (i) Any brokerage statements pertaining to trades on European and Asian Marketplaces, and certain brokerage statements pertaining to trades on Canadian Marketplaces;

    (ii) Documents supporting or explaining fund transfers from and to bank accounts of the Swift Trade Group and payments to individual traders;

    (iii) Records relating to the performance of accounting reconciliations of trading profits attributable to the individual traders and their trading office managers, who act on behalf of the ST Related Clients and clients of Opal Stone, as detailed above; and

    (iv) Certain financial statements and general ledgers for Swift Trade, Barka, Trieme, Opal Stone, Orbixa and BlueChive.

39. By failing to produce the Missing Records, which it was required to keep under section 19 of the Act, Swift Trade failed to comply with subsection 19(3) of the Act.

40. Under the ST Terms and Conditions, Swift Trade was required to provide and facilitate access to the books, records and documents of the Swift Trade Group and also Orbixa and BlueChive. During the Consultant's Review, the Consultant was limited by Swift Trade's failure to provide the Missing Records that were requested by the Consultant.

41. With respect to the matters referred to in paragraph 38 above, during the corresponding periods from 2008 to 2010, Swift Trade and Beck also failed to supervise Swift Trade's designated compliance officer and chief compliance officer in the performance by these officers of their regulatory obligations.

D. Breach of the Dealer Registration Requirement in Section 25 of the Act

42. Since at least 2008, the Swift Trade Group has engaged, and certain members of the Group continue to engage in, the trading of billions of shares based on trade orders submitted by thousands of (unregistered) individual day-traders located around the world. All trade orders of these individual traders are transmitted and received electronically through servers in Toronto and routed for execution on Canadian Marketplaces and on International Marketplaces.

43. The allegations below concern the transmission and execution of sale orders by members of the Swift Trade Group on International Marketplaces, where such sale orders were not transmitted and executed through appropriately registered dealers under the Act. Such trading activity continues to be conducted by certain members of the Group. None of the members of the Group were then ? or are now ? appropriately registered under the Act to engage in these trading activities.

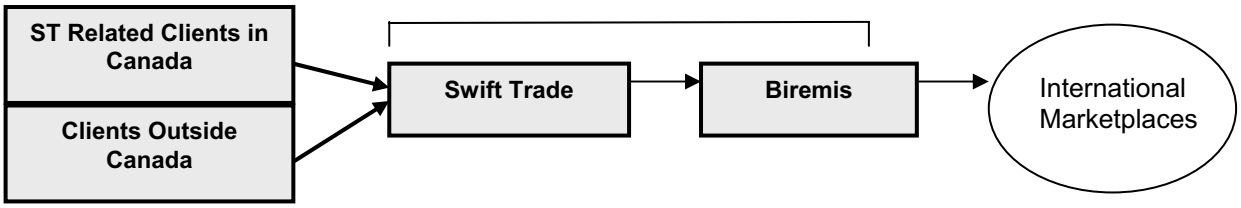
Changing Trade Flows

44. Members of the Swift Trade Group have entered into agreements setting out the relationships and responsibilities for the transmission and execution of trade orders (the "**Trade Flows**") on Canadian Marketplaces and on International Marketplaces. Through the technology involved, these Trade Flows happen on a virtually instantaneous basis. The diagrams below depict the Group's repeatedly changing Trade Flows.

Prior to September, 2007

45. Prior to September, 2007, all trade orders were transmitted by the individual traders for each client to Swift Trade (operating from the ST Toronto Office) and then by Swift Trade to Biremis (also operating from the ST Toronto Office) for execution on International Marketplaces, as follows:

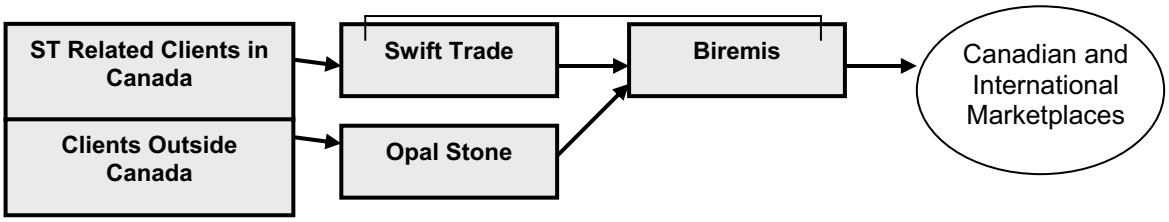
Trade routing technology operating in Ontario



September, 2007 to May, 2009

46. Between September, 2007 and May, 2009, the Trade Flows involved Opal Stone, and included trades that were executed on Canadian Marketplaces, as follows:

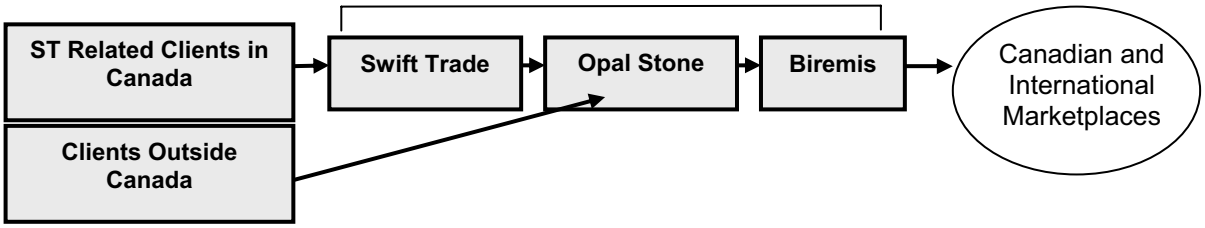
Trade routing technology operating in Ontario



May, 2009 to December, 2010

47. Between May, 2009 and December, 2010, the Trade Flows changed again, as follows:

Trade routing technology operating in Ontario



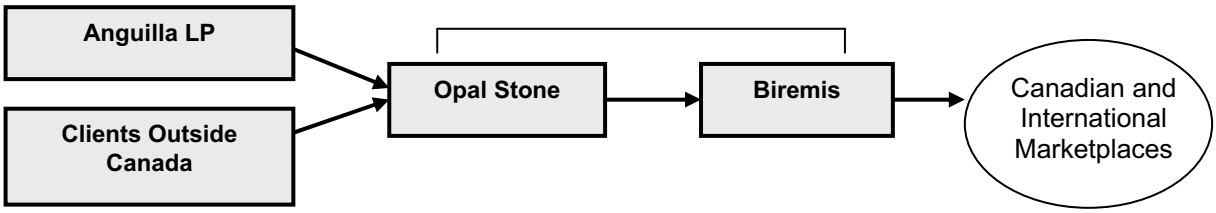
Since December, 2010

48. In or about December, 2010, the ST Related Clients terminated their trading relationship with Swift Trade and entered into direct relationships with Opal Stone.

49. In or about December, 2010, Barka discontinued using individual traders to trade on its behalf and its former traders began trading on behalf of a new limited partnership, Anguilla LP. As noted above, Barka is a limited partner in Anguilla LP. Trieme also ceased its trading activities, and its former traders were retained by Anguilla LP to trade on its behalf.

50. Staff understands that, as of December, 2010, the Trade Flows changed again, as follows:

Trade routing technology operating in Ontario



51. In all of the above Trade Flows, regardless of the location of the traders submitting the trade orders, the trade orders were transmitted by traders to servers located in Ontario used by Biremis. Biremis then routed these trade orders for execution on either Canadian Marketplaces or International Marketplaces. In each case, Biremis attached its electronic identification marker on the trade orders.

Breaches of the Dealer Registration Requirement in Particular

52. The nature of the breaches of the Dealer Registration Requirement by the various members of the Swift Trade Group associated with the various Trade Flows are as follows:

(i) **Biremis**

(a) Since at least 2007, Biremis has been receiving sale orders from clients, including clients with trading offices located in Ontario, using electronic day-trading systems located in Ontario. Biremis has then been executing these orders on International Marketplaces in circumstances for which it had no exemption from the Dealer Registration Requirement.

(b) Biremis is not and has never been registered under the Act. By engaging in these trading activities, Biremis is in breach of the Dealer Registration Requirement.

(ii) **Opal Stone**

(a) Since at least 2007, Opal Stone has been receiving sale orders from its clients, (including, since May, 2009, clients with trading offices located in Ontario), using electronic day-trading systems located in Ontario. Such sale orders have then been processed through Biremis in Ontario for execution over International Marketplaces in circumstances for which Opal Stone has had no exemption from the Dealer Registration Requirement.

(b) Opal Stone is not and has never been registered under the Act. By engaging in these trading activities, Opal Stone is in breach of the Dealer Registration Requirement.

(iii) **Swift Trade**

(a) From May, 2009 until its dissolution in December, 2010, Swift Trade was a client of Opal Stone. Swift Trade received and transmitted orders to sell securities from ST Related Clients for execution on International Marketplaces. Swift Trade then processed these orders through Opal Stone and Biremis for execution on International Marketplaces in circumstances for which it had no exemption from the Dealer Registration Requirement.

(b) By engaging in these trading activities, Swift Trade acted outside the scope of its registration and breached the Dealer Registration Requirement.

(iv) **ST Related Clients: Barka and Trieme**

(a) From May, 2009 (when Swift Trade became a client of Opal Stone) until just prior to Swift Trade's dissolution in December, 2010, the ST Related Clients transmitted to Swift Trade orders to sell securities which were executed on International Marketplaces. Swift Trade processed these orders through Opal Stone and Biremis for execution on International Marketplaces in circumstances for which neither the ST Related Clients nor Swift Trade had any available exemption from the Dealer Registration Requirement.

(b) Neither Barka nor Trieme has ever been registered under the Act. By engaging in these trading activities, these ST Related Clients breached the Dealer Registration Requirement.

(v) **Anguilla LP**

(a) Since December, 2010, Anguilla LP has been transmitting orders to sell securities which are eventually executed through Biremis on International Marketplaces. Staff understands that Opal Stone has been processing these orders for execution through Biremis on International Marketplaces in circumstances for which Anguilla LP has no available exemption from the dealer registration requirement in the Act.

(b) Anguilla LP has never been registered under the Act. By engaging in these trading activities, Anguilla LP is in breach of the Dealer Registration Requirement.

E. Prohibited Conduct in Extending Credit or Providing Margin to a Client

53. During the period from September 28, 2009 to November 30, 2010, shortly before Swift Trade's dissolution, Swift Trade, while registered as an EMD, extended credit or provided margin to clients on a frequent and daily basis. Such conduct is contrary to section 13.12 of NI 31-103, which prohibits a registrant from lending money, extending credit or providing margin to a client. This prohibition came into effect on September 28, 2009 and is intended to prevent registrants from exposing themselves to associated solvency risks. These solvency risks may detrimentally impact clients, counterparties and the integrity of the capital markets.

54. It is Staff's position, as detailed above, that Biremis and Opal Stone were required to be registered under the Act and, as such, were subject to the prohibition against extending credit or providing margin to clients contained in section 13.12 of NI 31-103.[101] Since September 28, 2009, Biremis and Opal Stone have extended credit or provided margin to clients in breach of section 13.12 of NI 31-103.

55. For certain trades that were directed in accordance with the Trade Flow depicted in paragraph 47, above, Biremis extended credit to its client, Opal Stone, in breach of section 13.12 of NI 31-103. Opal Stone, in turn, extended credit to its client, Swift Trade, in breach of section 13.12 of NI 31-103. Swift Trade, in turn, extended credit to the ST Related Clients, in breach of section 13.12 of NI 31-103. They did so by allowing their respective clients to engage in trading activities that resulted in exposure to open security positions for each firm. In each case, this exposure was in excess of the value of amounts held on account of each of their respective clients.

F. Beck's Non-Compliance with Ontario Securities Law

56. Beck has not complied with Ontario securities law because:

(i) as a director or officer of each of Swift Trade, Biremis and Trieme, Beck authorized, permitted or acquiesced in the non-compliance with Ontario securities law by these companies in the circumstances described above, and as such is deemed by section 129.2 of the Act to also have not complied with Ontario securities law; and

(ii) as the registered UDP of Swift Trade, in the period from December, 2009 until the dissolution of Swift Trade in December, 2010, Beck failed to adequately supervise the activities of Swift Trade and each individual acting on its behalf to ensure their compliance with Ontario securities law, contrary to section 5.1 of NI 31-103.

IV. Conclusion

57. By reason of the foregoing, Beck, Swift Trade, Biremis, Opal Stone, Barka, Trieme and Anguilla LP engaged in significant breaches of Ontario securities law and engaged in conduct contrary to the public interest.

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

DATED AT TORONTO this 19th day of June, 2012

[101] Subsection 1(1) of the Act defines a "registrant" as a person or company registered or required to be registered under the Act. As a result, a person or company required to be registered under the Act is also subject to requirements of Ontario securities law that apply to registrants.

1.2.2 Peter Beck et al. – ss. 127, 127.1

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

AND

**IN THE MATTER OF
PETER BECK, SWIFT TRADE INC. (continued as 7722656 Canada Inc.), BIREMIS, CORP., OPAL STONE FINANCIAL SERVICES S.A., BARKA CO. LIMITED, TRIEME CORPORATION and CALM OCEANS L.P.**

AND

**IN THE MATTER OF
A SETTLEMENT AGREEMENT
BETWEEN STAFF AND THE RESPONDENTS**

**NOTICE OF HEARING
(Sections 127 and 127.1 of the Securities Act)**

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Thursday, June 21, 2012 at 9:00 a.m., or as soon thereafter as the hearing can be held:

TO CONSIDER whether, in the opinion of the Commission, it is in the public interest, pursuant to sections 127 and 127.1 of the Act, for the Commission to order that:

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the Settlement Agreement between Staff of the Commission and Swift Trade Inc. (continued as 7722656 Canada Inc.), Biremis, Corp., Opal Stone Financial Services S.A., Barka Co. Limited, Trieme Corporation and Calm Oceans L.P. (the “Respondents”);

BY REASON OF the allegations set out in the Amended Statement of Allegations of Staff of the Commission dated June 19, 2012 and such additional allegations as counsel may advise and the Commission may permit;

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

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

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

”John Stevenson”
Secretary to the Commission

1.2.3 Peter Beck et al. – ss. 127, 127.1

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

AND

**IN THE MATTER OF
PETER BECK, SWIFT TRADE INC. (continued as 7722656 Canada Inc.), BIREMIS, CORP., OPAL STONE FINANCIAL SERVICES S.A., BARKA CO. LIMITED, TRIEME CORPORATION and CALM OCEANS L.P.**

AND

**IN THE MATTER OF
A SETTLEMENT AGREEMENT
BETWEEN STAFF AND THE RESPONDENTS**

**AMENDED NOTICE OF HEARING
(Sections 127 and 127.1 of the Securities Act)**

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") at the offices of the Commission at 20 Queen Street West, 17th Floor Hearing Room on Thursday, June 21, 2012 at 9:00 a.m., or as soon thereafter as the hearing can be held:

TO CONSIDER whether, in the opinion of the Commission, it is in the public interest, pursuant to sections 127 and 127.1 of the Act, for the Commission to order that:

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the Settlement Agreement between Staff of the Commission and Peter Beck, Swift Trade Inc. (continued as 7722656 Canada Inc.), Biremis, Corp., Opal Stone Financial Services S.A., Barka Co. Limited, Trieme Corporation and Calm Oceans L.P. (the “Respondents”);

BY REASON OF the allegations set out in the Amended Statement of Allegations of Staff of the Commission dated June 19, 2012 and such additional allegations as counsel may advise and the Commission may permit;

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

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

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

“John Stevenson”
Secretary to the Commission

1.3 News Releases

1.3.1 Canadian Securities Regulators Seek Comments on OTC Central Counterparty Derivatives Clearing Framework

FOR IMMEDIATE RELEASE
June 20, 2012

CANADIAN SECURITIES REGULATORS SEEK COMMENTS ON
OTC CENTRAL COUNTERPARTY DERIVATIVES CLEARING FRAMEWORK

Montréal – The Canadian Securities Administrators (CSA) published today for comment CSA Consultation Paper 91-406 *Derivatives: OTC Central Counterparty Clearing*, which sets out the CSA Derivatives Committee's recommendations for central counterparty clearing of over-the-counter (OTC) derivatives transactions through regulated central counterparties (CCPs).

The paper details recommendations on issues such as: the process for determining which OTC derivatives should be subject to mandatory CCP clearing; the regulation and governance of CCPs; clearing member access; and risk management.

"The importance of bringing central clearing to OTC markets has been recognized by the G-20 as one of the reform elements in the ongoing effort to reduce systemic risk in the financial markets," said Bill Rice, Chairman of the CSA and Chairman and CEO of the Alberta Securities Commission. "This paper is part of the CSA's commitment to creating a Canadian solution to the question of central clearing,"

The paper is part of a series of papers by the CSA outlining policies designed to reduce systemic risk and improve the regulatory framework for OTC derivatives in Canada, Market participants are invited to submit their comments until September 21, 2012. All responses received will be published on the Autorité des marchés financiers (www.lautorite.qc.ca) and the Ontario Securities Commission (www.osc.gov.on.ca) websites.

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

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

For more information:

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Ontario Securities Commission
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306-787-5842

Janice Callbeck
PEI Securities Office
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902-368-6288

Doug Connolly
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Newfoundland and Labrador
709-729-2594

Helena Hrubesova
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867-667-5466

Louis Arki
Nunavut Securities Office
867-975-6587

Donn MacDougall
Northwest Territories
Securities Office
867-920-8984

1.3.2 Canadian Securities Regulators Seek Comments on the Potential Regulation of Proxy Advisory Firms

FOR IMMEDIATE RELEASE
June 21, 2012

CANADIAN SECURITIES REGULATORS SEEK COMMENTS ON THE POTENTIAL REGULATION OF PROXY ADVISORY FIRMS

Montréal – The Canadian Securities Administrators (CSA) today published for comment CSA Consultation Paper 25-401 *Potential Regulation of Proxy Advisory Firms*. The purpose of this consultation paper is to address specific concerns 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 CSA is seeking feedback on the following concerns that market participants, primary issuers and their advisors raised about proxy advisory firms:

- potential conflicts of interest;
- potential perceived lack of transparency;
- potential inaccuracies and limited engagement with issuers;
- potential corporate governance implications; and
- the extent of reliance by institutional investors on the recommendations provided by proxy advisory firms.

“This consultation is aimed at providing the CSA with more information from market participants to assist us in our analysis into the need for potential regulation of proxy advisory firms,” said Bill Rice, Chair of the CSA and Chair and CEO of the Alberta Securities Commission. “The feedback will help us determine the validity of the concerns raised, consider their impact on the integrity of Canadian capital markets, and assess whether there is a need for a securities regulatory response.”

The CSA also seeks comments on a range of possible securities regulatory responses and frameworks, if it is determined that a securities regulatory response is warranted.

The *CSA Consultation Paper 25-401* is available on CSA members’ websites. The comment period is open until August 20, 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:

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Janice Callbeck
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Office of the Attorney General
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Doug Connolly
Financial Services Regulation Div.
Newfoundland and Labrador
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Helena Hrubesova
Yukon Securities Office
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Donn MacDougall
Northwest Territories
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1.3.3 Peter Beck, Swift Trade et al. Settle with the Ontario Securities Commission

FOR IMMEDIATE RELEASE
June 21, 2012

PETER BECK, SWIFT TRADE ET AL. SETTLE
WITH THE ONTARIO SECURITIES COMMISSION

TORONTO – The Ontario Securities Commission (OSC) today approved a settlement agreement reached between Staff and Peter Beck (Beck), Swift Trade Inc. (continued as 7722656 Canada Inc.) (Swift Trade), Biremis Corp. (Biremis), Opal Stone Financial Services S.A. (Opal Stone), Barka Co. Limited (Barka), Trieme Corporation (Trieme) and Calm Oceans L.P. (Calm Oceans) (collectively, the Swift Trade Group).

Beck was the co-founder and President of Swift Trade. He was the directing mind of the company and at various times, he, or a member of his family, had a direct or indirect ownership interest in each of the other Respondents.

In the settlement agreement, Swift Trade, under the direction of Beck, admitted to breaching the *Securities Act* (Ontario) in relation to supervisory, internal control and other compliance obligations, as well as requirements to provide information to the Commission. Beck also admitted to having not complied with Ontario securities law as a director or officer of Swift Trade.

In particular, admissions were made to the following breaches of Ontario securities law:

- Beck and Swift Trade failed to hire, retain and supervise adequate finance and compliance personnel;
- Swift Trade was deficient in the management of its financial affairs; and,
- Swift Trade had inadequate compliance practices for the period of 2008 to 2010, and it failed to perform, or demonstrate that it had performed, adequate reviews of trading for possible instances of manipulative or deceptive trading activities.

Beck and the other members of the Swift Trade Group also acknowledged that, at various times, from 2007 until 2011, they acted contrary to the public interest in relation to the dealer registration requirement by receiving and/or transmitting sale orders for execution on international marketplaces without the use of appropriately registered dealers.

Under the terms of the settlement agreement, Beck and the other members of the Swift Trade Group must pay an administrative penalty of $100,000, plus $300,000 towards the costs of Staff's investigation. Furthermore, each member of the Swift Trade Group is banned from becoming or acting as a registrant for periods varying from two to six years, and Swift Trade, Biremis, Opal Stone, Barka and Trieme are banned from trading or acquiring securities for periods varying from four to six years. Beck was reprimanded and is banned, for a period of two years, from becoming or acting as a director or officer of a registrant.

Beck and other members of the Swift Trade Group have also given an undertaking to the Commission that any orders to purchase or sell securities that pass through Ontario will proceed directly through a registered investment dealer. Additionally, none of the members will use, from any location in Ontario, their own trading related servers to receive or transmit orders to purchase or sell securities. They have also undertaken to abide by certain restrictions relating to the control of any Ontario registrants for periods that correspond to their respective prohibitions.

A copy of the Settlement Agreement and Order of the Commission in this matter are available on the OSC website at www.osc.gov.on.ca.

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

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1.4 Notices from the Office of the Secretary

1.4.1 Peter Beck et al.

FOR IMMEDIATE RELEASE
June 20, 2012

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

AND

IN THE MATTER OF
PETER BECK, SWIFT TRADE INC. (continued as 7722656 Canada Inc.), BIREMIS, CORP., OPAL STONE FINANCIAL SERVICES S.A., BARKA CO. LIMITED, TRIEME CORPORATION and CALM OCEANS L.P.

TORONTO – The Office of the Secretary issued an Amended Notice of Hearing on July 19, 2012 setting the matter down to be heard on a date to be determined by the Commission.

A copy of the Amended Notice of Hearing dated June 19, 2012 and the Amended Statement of Allegations filed by Staff of the Ontario Securities Commission dated June 19, 2012 are available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.2 Peter Beck et al.

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

AND

IN THE MATTER OF
PETER BECK, SWIFT TRADE INC. (continued as 7722656 Canada Inc.), BIREMIS, CORP., OPAL STONE FINANCIAL SERVICES S.A., BARKA CO. LIMITED, TRIEME CORPORATION and CALM OCEANS L.P.

TORONTO – The Office of the Secretary issued an Amended Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Peter Beck, Swift Trade Inc. (continued as 7722656 Canada Inc.), Biremis, Corp., Opal Stone Financial Services S.A., Barka Co. Limited, Trieme Corporation and Calm Oceans L.P.

The hearing will be held on June 21, 2012 at 9:00 a.m. in Hearing Room B on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Amended Notice of Hearing dated June 20, 2012 and Notice of Hearing dated June 20, 2012 are available at **www.osc.gov.on.ca**.

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1.4.3 Peter Beck et al.

FOR IMMEDIATE RELEASE
June 21, 2012

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

AND

IN THE MATTER OF
PETER BECK, SWIFT TRADE INC. (continued as 7722656 Canada Inc.), BIREMIS, CORP., OPAL STONE FINANCIAL SERVICES S.A., BARKA CO. LIMITED, TRIEME CORPORATION and CALM OCEANS L.P.

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Peter Beck, Swift Trade Inc. (continued as 7722656 Canada Inc.), Biremis, Corp., Opal Stone Financial Services S.A., Barka Co. Limited, Trieme Corporation and Calm Oceans L.P..

A copy of the Order dated June 21, 2012 and the Settlement Agreement dated June 20, 2012 are available at **www.osc.gov.on.ca**.

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1.4.4 Firestar Capital Management Corp. et al.

FOR IMMEDIATE RELEASE
June 22, 2012

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

AND

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

TORONTO – The Commission issued an Order in the above named matter which provides that (i) the hearing be adjourned to August 15, 2012 at 2:00 p.m., or such other date and time as agreed to by the parties and confirmed by the Office of the Secretary, for the purpose of continuing the confidential pre-hearing conference; and (ii) the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until August 16, 2012, or until further order of the Commission.

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

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1.4.5 Bunting & Waddington Inc. et al.

FOR IMMEDIATE RELEASE
June 22, 2012

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

AND

IN THE MATTER OF
BUNTING & WADDINGTON INC.,
ARVIND SANMUGAM, JULIE WINGET and
JENIFER BREKELMANS

TORONTO – The Commission issued an Order in the above named matter which provides that this matter be adjourned to October 18, 2012 at 10:00 a.m. for continuation of the confidential pre-hearing conference to provide the panel with a status update and, if necessary, to hear any proper motions of Sanmugam.

The pre-hearing conference will be held *in camera*.

A copy of the Order dated June 19, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.6 New Hudson Television Corporation et al.

FOR IMMEDIATE RELEASE
June 25, 2012

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

AND

IN THE MATTER OF
NEW HUDSON TELEVISION CORPORATION,
NEW HUDSON TELEVISION L.L.C. &
JAMES DMITRY SALGANOV

TORONTO – The Commission issued an Order in the above named matter which provides that (i) pursuant to subsection 127(8) of the Act, the Amended Temporary Order is extended to December 21, 2012; and (ii) the hearing to consider any further extension of the Amended Temporary Order will be held on December 20, 2012 at 10:00 a.m., or such other date and time as set by the Office of the Secretary.

A copy of the Temporary Order dated June 22, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
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1.4.7 Simply Wealth Financial Group Inc. et al.

FOR IMMEDIATE RELEASE
June 25, 2012

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

AND

IN THE MATTER OF
SIMPLY WEALTH FINANCIAL GROUP INC.,
NAIDA ALLARDE, BERNARDO GIANGROSSO,
K&S GLOBAL WEALTH CREATIVE STRATEGIES INC.,
KEVIN PERSAUD, MAXINE LOBBAN AND
WAYNE LOBBAN

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

A copy of the Reasons and Decision dated June 21, 2012 is available at **www.osc.gov.on.ca**.

OFFICE OF THE SECRETARY
JOHN P. STEVENSON
SECRETARY

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1.4.8 David Charles Phillips and John Russell Wilson

FOR IMMEDIATE RELEASE
June 25, 2012

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS AND
JOHN RUSSELL WILSON

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing of this matter is adjourned to Tuesday, August 28, 2012 at 2:30 p.m.

A copy of the Order dated June 25, 2012 is available at **www.osc.gov.on.ca**.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Wand Capital Corporation – s. 1(10)

Headnote

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

Applicable Legislative Provisions

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

June 20, 2012

Wand Capital Corporation
c/o Adria W. Leung
Cassels Brock & Blackwell LLP
40 King Street West
Scotia Plaza, Suite 2100
Toronto, Ontario
M4H 3C2

Dear Sir:

Re: Wand Capital Corporation (the Applicant) application for a decision under the securities legislation of Ontario and Alberta (the Jurisdictions)

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

2.1.2 BMO Investments Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption granted from the requirements of paragraphs 2.5(2)(a), and 2.5(2)(c) of National Instrument 81-102 to allow four specified top NI 81-102 mutual funds to invest up to 10% of their net assets in bottom fund. Bottom fund is an Ontario-domiciled mutual fund that has Qualified Foreign Institutional Investor status in China. Relief is analogous to the exemption provided in paragraph 2.5(3)(b) of NI 81-102. Exemption granted on the basis that bottom fund will comply with Parts 2, 4 and 6 of NI 81-102 and Part 14 of NI 81-106, concentration restriction for top funds and bottom fund portfolio disclosure available to top fund securityholders.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations.
National Instrument 81-102 Mutual Funds, ss. 2.5(2)(a), 2.5(2)(c), 2.5(3)(3)(b), 19.1.
National Instrument 81-106 Investment Fund Continuous Disclosure.

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
BMO INVESTMENTS INC. (the "Manager"),
BMO GREATER CHINA CLASS,
BMO EMERGING MARKETS FUND and
BMO HARRIS INTERNATIONAL EQUITY
PORTFOLIO and BMO HARRIS EMERGING
MARKETS EQUITY PORTFOLIO
(individually, a "Top Fund" and collectively, the
"Top Funds", together with the Manager, the "Filers")

DECISION

Background

1. The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "Legislation") exempting the Top Funds from the prohibition contained in paragraphs 2.5(2)(a) and (c) of National Instrument 81-102 *Mutual Funds* ("NI 81-102") to permit each Top Fund to invest in BMO China A-Share Fund (the "Pooled Fund"), a mutual fund trust that is governed under the laws of Ontario, the units of which will be offered for sale in reliance upon applicable prospectus exemptions (the "Exemption Sought").

2. The conditions contained in paragraphs 2.5(2)(a) and (c) of NI 81-102 prevent a mutual fund from investing in another mutual fund the securities of which are not, and never have been, offered under a simplified prospectus in accordance with NI 81-101 *Mutual Fund Prospectus Disclosure* ("NI 81-101") or that is not governed by NI 81-102.

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

   (i) the Ontario Securities Commission ("OSC") is the principal regulator for this application in accordance with section 4.2(a) of Multilateral Instrument 11-102 *Passport System* ("MI 11-102") and section 3.6(3)(a) of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdiction*s ("NP 11-203"); and

   (ii) the Filers have provided notice that section 4.7(1) of MI 11-102 is intended to be relied upon in each of the other jurisdictions in which relief is sought, namely British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Exemption Requested

4. In keeping with its investment objective, any Top Fund wishing to gain indirect exposure to the China A-share market may do so by investing in units of the Pooled Fund, provided the Exemption Sought is granted.

Interpretation

5. Defined terms contained in National Instrument 14-101 *Definitions*, National Instrument 31-103 *Registration Requirements and Exemptions and Ongoing Registration Obligations*, the *Securities Act* (Ontario) (the "OSA") or the securities legislation of each of the provinces and territories of Canada (individually, a "Jurisdiction" and collectively, the "Jurisdictions") have the same meaning if used in this decision, unless otherwise defined.

Representations

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

BMO Investments Inc.

7. The Manager is a corporation amalgamated under the laws of Canada and is a wholly-owned indirect subsidiary of Bank of Montreal.

8. The Manager is registered as an investment fund manager in Ontario. It is registered as a mutual fund dealer in each jurisdiction of Canada and is a member of the Mutual Fund Dealers Association of Canada.

Top Funds

9. The Manager, or an affiliate of the Manager, is or will be the investment fund manager of the Top Funds and the trustee of the Top Funds that are organized as trusts. Unless it has received exemptive relief therefrom, each of the Top Funds complies with NI 81-102 and has prepared and filed fund facts, a simplified prospectus and an annual information form prepared in accordance with NI 81-101.

10. Securities of the various series of each of BMO Greater China Class and BMO Emerging Markets Fund are currently qualified for sale by fund facts, an amended and restated simplified prospectus, and amended and restated annual information form dated April 11, 2012 amended the fund facts, simplified prospectus and annual information form dated March 26, 2012 and the fund facts, simplified prospectus and annual information form dated May 28, 2012. Securities of the various series of each of the BMO Harris International Equity Portfolio and BMO Harris Emerging Markets Equity Portfolio are currently qualified for sale by fund facts, simplified prospectus and annual information form dated October 24, 2011, each as may be amended from time to time, and which have been filed and receipted in each jurisdiction of Canada.

11. Each of the Top Funds is a reporting issuer in each jurisdiction of Canada and is not in default under the securities legislation in force in any jurisdiction of Canada.

12. The investment objective of each of the Top Funds is set forth below:

    BMO Greater China Class – "to achieve long-term capital growth by investing primarily in equity securities of companies in Greater China, which includes the People's Republic of China, Hong Kong SAR and Taiwan, as well as in equity securities of companies that benefit from exposure to Greater China."

    BMO Emerging Markets Fund – "to increase the value of your investment over the long term by investing in companies located in countries undergoing rapid industrialization. As part of this fund's investment objective, it invests primarily in equities of companies in emerging countries like Brazil, Chile, Greece, India, Malaysia, Mexico, Pakistan, South Africa, South Korea, Taiwan and Turkey. It may also invest in fixed income securities."

    BMO Harris International Equity Portfolio – "to provide long-term capital appreciation by investing in a diversified portfolio of primarily equity securities of issuers throughout the world, other than in Canada and the United States."

    BMO Harris Emerging Markets Equity Portfolio – "to achieve long-term growth through capital appreciation through primarily investing in securities of companies in emerging markets or companies with a connection to emerging markets."

13. The Filers are seeking to permit the Top Funds to invest in the Pooled Fund.

14. Section 2.5 of NI 81-102 would permit the Top Funds to invest in the Pooled Fund, but for the fact that securities of the Pooled Fund are not qualified for distribution under NI 81-101 and the Pooled Fund is not governed by NI 81-102. However, the Pooled Fund will be fully compliant with Parts 2, 4 and 6 of NI 81-102. The Pooled Fund will not use derivatives which, were it governed by NI 81-102, would permit it to determine the series net asset value of its units on a weekly basis.

The Limits on Access to the Chinese Securities Markets

15. Historically, foreign investors interested in investing in China have only been able to invest in a very limited number of Hong Kong Stock Exchange listed securities.

16. By contrast, China's "A-share market" extends to both the Shanghai Stock Exchange and the Shenzhen Stock Exchange, which together offer the opportunity to invest in over 14 times as many listed companies.

17. The ability to invest in the securities ("A-shares") of locally-listed Chinese issuers will provide the Top Funds with much broader and more balanced exposure to the Chinese economy.

Qualified Foreign Institutional Investor Status

18. Foreign fund management institutions, insurance companies, securities companies and other asset management institutions may be permitted to

invest in the China A-share market by applying to the China Securities Regulatory Commission ("CSRC") to be licensed as a Qualified Foreign Institutional Investor ("QFII") and applying to the State Administration of Foreign Exchange ("SAFE") for an investment quota ("Investment Quota").

19. Under the QFII regulations, a QFII may invest in shares listed and traded on a stock exchange, bonds listed and traded on a stock exchange, securities, investment funds, warrants listed and traded on a stock exchange and other financial instruments approved by the CSRC.

20. The Manager has obtained a QFII licence from CSRC and has been granted an Investment Quota by SAFE. The majority of the Pooled Fund's assets will be invested through this Investment Quota.

21. By providing indirect access to the A-Share market and other securities that are available only to those able to invest under a QFII licence, an investment in the Pooled Fund provides the Top Funds with an unique investment opportunity in a foreign jurisdiction that imposes significant investment restrictions on other foreign investors, making this situation analogous to the one contemplated in the exemption from paragraphs 2.5(2)(a) and (c) that is set out in paragraph 2.5(3)(b) of NI 81-102.

The QFII Program

22. A QFII is required to remit the entire investment principal for its Investment Quota into an account held in the People's Republic of China ("PRC") with a local Chinese sub-custodian bank within six months of the Investment Quota approval date. Following such remittance, the current practice under the QFII program, for an open-ended fund, imposes a period of three months during which the investment principal may not be repatriated (the "Repatriation Restriction Period") commencing from the day when the full amount equal to the Investment Quota is remitted into the PRC. Thereafter, repatriations are possible subject to the PRC laws and practice affecting a QFII's ability to move the proceeds of its investments outside of the PRC. Throughout the Repatriation Restriction Period, and thereafter, the Pooled Fund may freely trade the A-Shares of any issuer providing the proceeds are reinvested in A-Shares of another issuer.

23. Net realized profits for any fiscal year of a QFII fund can be repatriated at calendar year end provided that an annual audit is undertaken by a Chinese certified public accountant on the QFII's transaction history at the local Chinese sub-custodian bank and subject to payment of all applicable taxes and SAFE approval. The purpose of the audit is solely to determine the amount of the QFII fund's net realized profits that may be repatriated. All repatriations of gains and income on A-shares and other investment products (if any) require the approval of SAFE. The Manager will address this issue through the overall investment strategies of the Pooled Fund.

Investment Restrictions of the QFII Program

24. QFIIs are also subject to the following investment restrictions:

    (a) A QFII may not acquire more than 10% of the outstanding shares of the same kind of a single issuer;

    (b) The total holdings of the A-shares of a single issuer by all QFIIs under common control may not exceed 20% of such issuer's total issued shares; and

    (c) A QFII may not make investments for the purpose of exercising control or management.

The Pooled Fund

25. The Pooled Fund is an Ontario-domiciled mutual fund trust in which the Top Funds would invest to obtain indirect exposure to the China A-share market.

26. The portfolio manager of the Pooled Fund will be Fullgoal Fund Management Co., Ltd. ("Fullgoal"), a company in which Bank of Montreal owns a minority interest. Fullgoal is a limited liability company formed in accordance with the Company Law of the PRC, the Securities Investment Fund Law of the PRC, the Procedures for the Administration of Securities Investment Fund Management Companies, the Guidelines (Trial) for Corporate Governance of Securities Investment Fund Management Companies and other relevant PRC laws and regulations as well as the relevant requirements of the CSRC. Its head office is located in Pudong New Area, Shanghai. Fullgoal is one of the first ten fund companies established in China and has significant experience and expertise managing investments in the PRC. It will be offering its investment advisory services in reliance upon the international adviser exemption set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

27. The Pooled Fund's investment objective is to achieve long-term capital appreciation through investing primarily in the securities of issuers established in, operating in, or that derive the majority of their revenue from with the People's Republic of China.

28. It is expected that the Pooled Fund's portfolio will be broadly diversified. The Pooled Fund will invest primarily in A-shares listed and quoted on the Shanghai and Shenzhen Stock Exchanges and other QFII eligible investments, including Chinese government and corporate debt securities. The Pooled Fund may invest the balance of its net assets in H-shares and Red Chip shares listed and quoted on the Hong Kong Stock Exchange and in cash and cash equivalents.

29. The Manager has entered into an investment advisory agreement with Fullgoal that requires Fullgoal to exercise its professional judgment (i.e., the degree of care, diligence and skill of a reasonable and prudent investment adviser) in carefully selecting investments for the Pooled Fund and the agreement provides for ongoing compliance and oversight of Fullgoal's activities by the Manager. Consistent with its oversight of the portfolio managers of all of the mutual funds it manages, the Manager has robust policies and procedures that it will apply in performing regular due diligence reviews of Fullgoal and monitoring the holdings of the Pooled Fund, to ensure compliance with the NI 81-102 investment restrictions and the QFII investment restrictions.

30. Units of the Pooled Fund will be offered to, among others, institutional and high net worth investors, open-ended retail mutual funds, exempt offered mutual funds and managed accounts managed by the Manager or by an affiliate of the Manager maintained for persons who constitute accredited investors or permitted purchasers as well as various BMO entities.

31. The Pooled Fund's units will be redeemable on each valuation day for the Pooled Fund (which is expected to be daily) in accordance with the provisions of the Pooled Fund's Declaration of Trust and as will be disclosed in the offering memorandum that will be provided to prospective investors in the Pooled Fund.

32. A redemption discount of 5% will be imposed if units are redeemed within the Repatriation Restriction Period. This redemption discount will be disclosed to prospective investors in the offering memorandum.

Rationale for the Exemption Requested

33. The Manager believes that it is in the best interests of the Top Funds to permit them to make investments in units of the Pooled Fund in order to gain indirect exposure to locally-listed Chinese stocks. Through the Pooled Fund's purchase of A-Shares the Top Funds will benefit from investment opportunities that they would not otherwise be able to access.

34. The investment objectives and strategies of the Pooled Fund make it a suitable investment option for the Top Funds.

Decision

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

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

(a) The Pooled Fund will comply with Parts 2, 4 and 6 of NI 81-102 and Part 14 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

(b) The Pooled Fund will make available to securityholders of the Top Funds, upon request and without charge, the top twenty-five holdings of the Pooled Fund as at the end of the first and third quarters of the financial year of the Pooled Fund, and the full investment portfolio of the Pooled Fund as at the end of the second quarter and the end of the financial year of the Pooled Fund.

(c) The Top Funds will comply with the conditions set out in section 2.5 of NI 81-102 in investing in the Pooled Fund, except for paragraphs 2.5(2)(a) and (c) and will include the disclosure mandated for mutual funds investing in other mutual funds in their respective prospectuses;

(d) A Top Fund will not invest in the Pooled Fund if, immediately after the investment, more than 10% of its net assets, taken at market value at the time of investment, would be invested in the Pooled Fund; and

(e) During the Repatriation Restriction Period, the Top Funds will treat the investment in the Pooled Fund as being an "illiquid asset" for the purposes for determining compliance with section 2.4 of NI 81-102.

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

2.1.3 First Asset Investment Management Inc. and First Asset Morningstar Emerging Markets Composite Bond Index ETF

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from subsection 2.1(1) and paragraphs 2.5(2)(a) and (c) of NI 81-102 to permit an exchange traded mutual fund to enter into forward agreements providing exposure to the portfolio of a reference fund – Reference fund is not subject to NI 81-101 and NI 81-102, nor qualified for distribution in the same jurisdictions as the exchange traded mutual fund, contrary to paragraphs 2.5(2)(a) and (c) of NI 81-102 – Exchange traded mutual fund prohibited by subsection 2.1(1) from being 100% exposed to the portfolio of the reference fund through the forward agreement – Units of the reference fund sold only to the counterparty under the forward agreement on an exempt basis – National Instrument 81-102 Mutual Funds.

Applicable Legislative Provisions

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

June 18, 2012

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

AND

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

AND

IN THE MATTER OF
FIRST ASSET INVESTMENT MANAGEMENT INC.
(the Filer)

AND

IN THE MATTER OF
FIRST ASSET MORNINGSTAR EMERGING MARKETS
COMPOSITE BOND INDEX ETF
(the Fund)

DECISION

Background

The securities regulatory authority or regulator in the Jurisdiction (**Decision Maker**) has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdiction (the **Legislation**) for an exemption under section 19.1 of the National Instrument 81-102 – *Mutual Funds* (**NI 81-102**) from sections 2.1(1), 2.5(2)(a) and 2.5(2)(c) of NI 81-102 in respect of one or more forward purchase and sale agreements to be entered into for the purpose of providing the Fund with exposure to the portfolio of First Asset Morningstar Emerging Markets Bond Fund (the **Reference Fund**) (the **Exemption Sought**).

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

(a) the Ontario Securities Commission (**OSC**) is the principal regulator for the application herein; and

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

Interpretation

Terms defined in National Instrument 14-101 – *Definitions*, MI 11-102 and NI 81-102 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 a corporation governed by the laws of Ontario and is the investment fund manager, trustee and portfolio manager of the Fund and is the investment fund manager, trustee and portfolio manager of the Reference Fund. The head office of the Filer is located in Toronto, Ontario. The Filer is registered as an investment fund manager, a portfolio manager and an exempt market dealer under the *Securities Act* (Ontario).

The Fund

2. The Fund is organized as a trust and is a mutual fund within the meaning of the Legislation and similar legislation in each Passport Jurisdiction. The Fund is subject to NI 81-102, subject to any exemptions therefrom that have been, or may in the future be, granted by the securities regulatory authorities.

3. The Fund is qualified by a long form prospectus dated January 19, 2012. Upon the issuance of a receipt on January 20, 2012 for its final long form prospectus, the Fund became a reporting issuer in the Province of Ontario and each Passport Jurisdiction.

4. Pursuant to an amended and restated declaration of trust dated June 4, ,2012 and an amendment to the prospectus of the Fund dated June 5, 2012,

the Fund changed its name from "XTF Morningstar Emerging Markets Composite Bond Index ETF" to "First Asset Morningstar Emerging Markets Composite Bond Index ETF".

5. The Fund is, and is generally described as, an exchange-traded fund. The units of the Fund are listed on the Toronto Stock Exchange.

6. Neither the Filer nor the Fund is in default of any of its obligations under the Legislation or similar legislation in any Passport Jurisdiction.

7. The Fund's investment objective is to provide investors with economic exposure, to the extent possible, to the performance of the Morningstar Emerging Market Composite Bond Index, net of expenses.

8. The Fund will seek to achieve its investment objective by investing the net proceeds of its continuous offering in a portfolio of common shares of Canadian public companies listed on the TSX that qualify as "Canadian securities" for purposes of the Tax Act (the "**Common Share Basket**"). The Fund will gain exposure to the portfolio of the Reference Fund by selling the Common Share Basket forward pursuant to one or more forward purchase and sale agreements (collectively, the **Forward Agreement**) with a Canadian chartered bank or an affiliate thereof (the **Counterparty**) with an approved credit rating, as defined in NI 81-102. Generally, the Forward Agreement will provide 100% exposure to the portfolio of the Reference Fund such that the return to the Fund and its unitholders is based on the return of the portfolio of the Reference Fund.

The Reference Fund

9. The Reference Fund is organized as a trust and is qualified by a non-offering long form prospectus dated May 4, 2012 filed with the OSC and Autorité des marchés financiers. Upon the issuance of a receipt on May 9, 2012 for its final non-offering prospectus, the Reference Fund became a reporting issuer in the Province of Ontario and Québec.

10. The Reference Fund does not intend to list its units on a stock exchange. Units of the Reference Fund will only be offered in reliance on exemptions from the applicable prospectus requirements. The only holder of units of the Reference Fund will be the Counterparty to the Forward Agreement with the Fund.

11. The Reference Fund is a mutual fund within the meaning of the Legislation and similar legislation in each Passport Jurisdiction because the holder of its units is entitled to receive, on demand, an amount computed by reference to the net asset value of the Reference Fund.

12. The Reference Fund is not in default of any of its obligations under the Legislation or similar legislation in any Passport Jurisdiction.

13. The Reference Fund does not and will not distribute any units under its final non-offering prospectus. Accordingly, the Reference Fund is a mutual fund to which National Instrument 81-106 – *Investment Fund Continuous Disclosure* (**NI 81-106**) applies, but will not be subject to the requirements of either National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**). or NI 81-102.

14. The Reference Fund's investment objective is to replicate, to the extent possible, the Morningstar Emerging Markets Composite Bond Index, net of expenses. Accordingly, the investment objective and strategy of the Reference Fund is consistent with the Fund's investment objective.

15. Although the Reference Fund is a mutual fund for the purposes of Ontario and Québec securities law, it is not subject to NI 81-102 but will make investments as if it were subject to NI 81-102, subject to any exemptions therefrom that have been, or may in the future be, granted by the securities regulatory authorities to the Fund.

16. In the absence of the Exemption Sought, the Fund would not be permitted to invest through the Forward Agreement in the Reference Fund because:

    a. the indirect investment by the Fund of more than 10% of its net assets in securities of the Reference Fund would be contrary to the requirement in s. 2.1(1) of NI 81-102;

    b. the Reference Fund is not subject to NI 81-101 or NI 81-102, contrary to the requirement of 2.5(2)(a) of NI 81-102; and,

    c. the securities of the Reference Fund are not listed on any stock exchange and are not qualified for distribution in the Jurisdiction and the Passport Jurisdictions, contrary to the requirement in s. 2.5(2)(c) of NI 81-102.

Decision

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

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

(a) the exposure of the Fund to the portfolio of the Reference Fund is in accordance with the fundamental investment objective of the Fund;

(b) the indirect investment by the Fund in securities of the Reference Fund is made in compliance with the requirements of NI 81-102 other than the requirements of sections 2.1(1), 2.5(2)(a) and 2.5(2)(c) of NI 81-102;

(c) the Reference Fund is a reporting issuer in the Jurisdiction and in Quebec subject to the requirements of NI 81-106;

(d) the Fund is subject to NI 81-102 and the Reference Fund operates in accordance with NI 81-102;

(e) the prospectus of the Fund discloses that the Fund will obtain exposure to securities of the Reference Fund and, to the extent applicable, the risks associated with such an investment; and

(f) no securities of the Reference Fund are distributed in Canada other than to the Counterparty under the Forward Agreement.

"Sonny Randhawa"
Manager, Investment Funds Branch
Ontario Securities Commission

2.1.4 Franklin Templeton Investments Corp. and Wellington West Franklin Templeton Balanced Retirement Income Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval for fund merger under 5.5 of NI 81-102 – relief needed because merger will not meet pre-approval criteria – the merger will not be tax deferred – securityholders of terminating fund provided with timely and adequate disclosure regarding the merger

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.6. 5.7(1)(b), 19.1.

June 21, 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
FRANKLIN TEMPLETON INVESTMENTS CORP.
(the "Manager") AND WELLINGTON WEST
FRANKLIN TEMPLETON BALANCED RETIREMENT
INCOME FUND (the "Terminating Fund" and with the
Manager, the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "Legislation") for approval of the merger (the "Merger") of the Terminating Fund into the Continuing Fund (as defined below) under section 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* ("NI 81-102") (the "Exemption Sought").

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

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("MI 11-102") is intended to be relied upon in British Columbia, Alberta, Saskatchewan and Manitoba (the "Non-Principal Jurisdictions").

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. The following additional terms shall have the following meanings:

"Continuing Fund" means Quotential Balanced Growth Portfolio;

"Effective Date" means the close of business on June 22, 2012 or as soon as practicable thereafter;

"Fund" or "Funds" means, individually or collectively, the Terminating Fund and the Continuing Fund;

"Tax Act" means the *Income Tax Act* (Canada);

Representations

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

1. The Manager is a corporation existing under the laws of Ontario having its registered head office in Toronto, Ontario.

2. The Manager is the manager of each of the Funds.

3. Each of the Funds is an open-ended mutual fund trust established under the laws of Ontario by a declaration of trust.

4. Units of the Terminating Fund are currently qualified for sale by a simplified prospectus, annual information form and fund facts document dated June 29, 2011, which have been filed and receipted in the Jurisdiction and each of the Non-Principal Jurisdictions.

5. Units of the Continuing Fund are currently qualified for sale by a simplified prospectus, annual information form and fund facts document dated June 20, 2011, as amended on December 7, 2011, which have been filed and receipted in Ontario and each of the Non-Principal Jurisdictions, as well as Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

6. The Continuing Fund and Terminating Fund are reporting issuers in Ontario and each of the Non-Principal Jurisdictions and are not in default under the securities legislation in force in such Jurisdictions.

7. Other than circumstances in which the principal regulator or the securities regulatory authority of a Non-Principal Jurisdiction has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices set out in NI 81-102.

8. The net asset value for each series of the Funds is calculated on a daily basis on each day that the Toronto Stock Exchange is open for trading.

9. Provided the necessary unitholder and regulatory approvals are obtained, the Terminating Fund will merge into the Continuing Fund at the close of business on the Effective Date.

10. Pursuant to the Merger, unitholders of the Terminating Fund will receive units with the same value and in the same series of the Continuing Fund as they currently own in the Terminating Fund.

11. No sales charges will be payable in connection with the exchange of units of the Terminating Fund into units of the Continuing Fund.

12. The Merger cannot be carried out as a "qualifying exchange" within the meaning of section 132.2 of the Tax Act or a tax-deferred transaction under subsection 85(1), 85.1(1) or 97(1) of the Tax Act because the Terminating Fund does not currently qualify as a "mutual fund trust" under the Tax Act.

13. Unitholders of the Terminating Fund approved the Merger at a meeting held on June 15, 2012.

14. The independent review committee ("IRC") of the Funds has reviewed and made a positive recommendation with respect to the Merger, having determined that the Merger, if implemented, achieves a fair and reasonable result for the Funds. The recommendation of the IRC has been included in the notice of meeting as required by section 5.1(2) of National Instrument 81-107.

15. If the approval of the unitholders of the Terminating Fund is not received at the special meeting in respect of the Merger, the Merger will not proceed. However, in the view of the Manager, because continued operation of the Terminating Fund is no longer viable, if the Merger is not approved by the unitholders, the Terminating Fund will be wound up and terminated on or about July 27, 2012.

16. All costs attributable to the Merger (consisting primarily of legal, proxy solicitation, printing and mailing costs) will be borne by the Manager and will not be borne by the Terminating Fund or the Continuing Fund.

17. Unitholders of the Terminating Fund will continue to have the right to redeem units of the Terminating Fund for cash at any time up to the close of business on June 21, 2012. The management information circular mailed to unitholders of the Terminating Fund discloses that a unitholder's deferred sales charge schedule is not changed or eliminated as a result of the Merger, and that investors who redeem their units of the Terminating Fund may be subject to redemption charges as outlined in the simplified prospectus.

18. Effective as of the close of business on April 2, 2012, the Terminating Fund ceased distribution of units. Following the Merger, all systematic withdrawal programs that were established with respect to the Terminating Fund, will be re-established in the Continuing Fund, unless a unitholder advises the Manager otherwise. Unitholders may change or cancel any systematic program at any time and unitholders of the Terminating Fund who wish to establish one or more systematic programs in respect of their holdings in the Continuing Fund may do so following the Merger.

19. A material change report and press release, which gave notice of the proposed Merger, were filed via SEDAR on April 3, 2012.

20. A notice of meeting, management information circular (the "Circular") and a proxy in connection with meetings of unitholders were mailed to unitholders of the Terminating Fund on or about May 22, 2012 and were filed via SEDAR.

21. The Circular that was mailed to unitholders of the Terminating Fund sets out:

    a) information about the differences between the units of the Terminating Fund and the units of the Continuing Fund including investment objectives, net asset values, management fees and management expense ratios;

    b) information about the investment objectives and strategies of the Continuing Fund sufficient to consider the Merger;

    c) information about the tax consequences of the Merger;

    d) the various ways in which unitholders of the Terminating Fund can obtain, at no cost, the most recent simplified prospectus, the annual information form, the audited financial statements for the period ended December 31, 2011 and the unaudited semi-annual financial statements for the period ended June 30, 2011 of the Continuing Fund; and

    e) the opinion of the IRC of the Funds that the Merger achieves a fair and reasonable result for the Terminating Fund and the Continuing Fund.

22. The current Fund Facts for Series A of the Continuing Fund were also mailed to unitholders of the Terminating Fund.

23. Following the Merger, the Continuing Fund will continue as a publicly offered open- end mutual fund governed by the laws of Ontario.

24. The proposed Merger will be implemented pursuant to the following steps:

    Step 1: Prior to the Effective Date, all securities in the portfolio of the Terminating Fund will be liquidated. As a result, the Terminating Fund will temporarily hold cash or money market instruments and will not be invested in accordance with its investment objectives for a brief period of time prior to the Merger.

    Step 2: One day prior to the Effective Date, the terminating Fund will distribute to its unitholders sufficient net income and net realized capital gains so that it will not be subject to tax under Part 1 of the Tax Act for its current taxation year.

    Step 3: On the Effective Date, the Terminating Fund will transfer all of its assets, which will consist of cash or money market instruments (less an amount required to satisfy the liabilities of the Terminating Fund), to the Continuing Fund, in exchange for Series A units of the Continuing Fund. The Series A units of the Continuing Fund received by the Terminating Fund will have an aggregate net asset value equal to the value of the Terminating Fund's net assets, which units will be issued by the Continuing Fund at the Series A net asset value per unit as of the close of business on the Effective Date.

    Step 4: Immediately following the above-noted transfer, the Terminating Fund will distribute Series A units of the Continuing Fund held in its portfolio to its unitholders in exchange for their Series A units of the Terminating Fund on a dollar-for-dollar basis, so that following the distribution, the unitholders of the Terminating Fund will become direct unitholders of the Continuing Fund.

    Step 5: As soon as reasonably possible following the Merger, the Terminating Fund will be wound up.

25. Approval of the Merger is required because the Merger does not satisfy all of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102, as the Merger will not be effected a "qualifying exchange" or a tax-deferred transaction under the Tax Act.

26. Except as noted herein, the Merger 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.

27. The Filers submit that the Merger will result in the following benefits to unitholders of the Funds:

    a) The Continuing Fund qualifies as a "mutual fund trust" for tax purposes while the Terminating Fund does not qualify. Once a mutual fund qualifies as a mutual fund trust for tax purposes it is no longer subject to alternative minimum tax, Part X.2 tax and Part XII.2 tax. In addition, it becomes entitled to a capital gains refund, which in certain situations has the effect of mitigating double taxation on capital gains realized by the fund;

    b) The Merger will eliminate the administrative and regulatory costs of operating the Terminating Fund as a separate mutual fund; and

    c) The Continuing Fund will have a portfolio of greater value, potentially allowing for increased portfolio diversification opportunities.

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.

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

2.1.5 Sara Lee Corporation

Headnote

NP 11-203 – relief from prospectus requirements to allow U.S. parent company to spin off shares of its subsidiary to investors by way of distribution in kind – distribution not covered by legislative exemptions – U.S. parent company is a public company in the U.S. but is not a reporting issuer in Canada – U.S. parent company has a de minimis presence in Canada. Following the spin off, subsidiary will become independent public company based in the Netherlands and will not be a reporting issuer in Canada – no investment decision required from Canadian shareholders in order to receive shares from distribution.

Applicable Legislative Provisions

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

June 22, 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
SARA LEE CORPORATION
(THE "FILER")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for an exemption from the prospectus requirements of section 53 of the *Securities Act* (Ontario) (the "**Act**") in connection with the distribution by the Filer of all of the outstanding shares of common stock of DE US, Inc. ("**DE US**"), a wholly-owned subsidiary of the Filer, on a *pro rata* basis and by way of a dividend in specie, to the Filer's shareholders (the "**Exemption Sought**").

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

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

(b) the Filer has provided notice that Section 4.7(1) of MI 11-102 is intended to be relied upon in each of the other provinces and territories of Canada.

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 a Maryland corporation engaged in the business of manufacturing and marketing brand-name products for consumers throughout the world, focussed primarily in the meats, bakery and beverage categories. The Filer's principal executive offices are located at 3500 Lacey Road, Downers Grove, Illinois.

2. The Filer is not a reporting issuer under the securities laws of any province or territory of Canada. The Filer has no intention of becoming a reporting issuer under the securities laws of any province or territory of Canada.

3. The Filer's common shares (the "**Filer Shares**") are widely held and trade on the New York Stock Exchange, the Chicago Stock Exchange and the London Stock Exchange (collectively, the "**Exchanges**"). Filer Shares are not listed on any Canadian stock exchange.

4. As of May 1, 2012, there were 615 registered holders of Filer Shares resident in Canada (the "**Canadian Shareholders**") holding approximately 312,931 Filer Shares, representing approximately 1.1% of the registered shareholders of the Filer worldwide and approximately 0.05% of the outstanding Filer Shares as of such date. As such, the proportion of Filer Shares held by residents in Canada is *de minimis*.

5. Based on information obtained as of October 6, 2011 in connection with the transactions proposed herein, there were 1,313 beneficial holders of Filer Shares resident in Canada, representing approximately 1.1% of all beneficial holders of Filer Shares. The Filer does not expect the percentage of beneficial shareholders resident in Canada to have materially changed since that date. As such, the number of beneficial holders of Filer Shares resident in Canada is *de minimis*.

6. The Filer is proposing to spin-out (the "**Spin-off Transaction**") its international coffee and tea businesses into an independent public company (DutchCo) through a series of transactions. These transactions are expected, in addition to certain related transactions, to result in (1) the distribution (the "**Stock Dividend**") by the Filer, pro rata to its shareholders of all of the shares of common stock (the "**DE Shares**") of DE US, which will be 100% of the DE Shares outstanding immediately prior to

such distribution, (2) the subsequent merger (the "**Merger**") of DE US with a wholly owned subsidiary of D.E Master Blenders 1753 N.V ("**DutchCo**"), with DE US surviving the merger as a subsidiary of DutchCo, and (3) the exchange of DutchCo ordinary shares (the "**DutchCo Shares**") for the previously distributed DE Shares.

7. DE US is a Delaware corporation and a wholly owned subsidiary of the Filer that at the time of the Stock Dividend will hold, through its subsidiaries, the assets and liabilities associated with the Filer's international coffee and tea businesses.

8. DutchCo is a private company with limited liability incorporated under the laws of the Netherlands and will convert to a public company with limited liability prior to completion of the separation. All of the currently outstanding ordinary shares of DutchCo are owned by a wholly owned subsidiary of the Filer. The Filer intends to cause its subsidiary to transfer the Filer's interest in DutchCo to DE US prior to the effective time of the Merger, at which time DutchCo will be an independent public company based in the Netherlands.

9. In connection with the Spin-off Transaction, DutchCo filed with the SEC on June 1, 2012 amendment no. 7 to a registration statement on Form F-1 under the U.S. *Securities Act of 1933* (as subsequently amended, restated and supplemented, the "**Registration Statement**"). The final prospectus filed as part of the Registration Statement will contain audited consolidated financial statements of DutchCo, and it will be made available to shareholders of the Filer for information purposes. The SEC declared the Registration Statement effective on June 1, 2012.

10. Fractional shares of DutchCo Shares will not be distributed. An exchange agent will aggregate the amount of fractional shares that would otherwise have been distributed into whole shares of DutchCo and will sell such shares into the open market within ten business days after the distribution date at prevailing share prices and distribute the cash proceeds in U.S. dollars, net of brokerage fees and other costs, from the sale to the exchange agent. The exchange agent will distribute such net proceeds pro rata to each Filer Shareholder who would otherwise have been entitled to receive a fractional share of DutchCo.

11. Shareholders of the Filer will not be required to pay for the DE Shares or DutchCo Shares received pursuant to the Stock Dividend, or to surrender or exchange Filer Shares or take any other action to be entitled to receive their DE Shares, or the DutchCo Shares that they will receive in exchange for their DE Shares. The Stock Dividend and the Merger will occur automatically and without any investment decision on the part of the Filer Shareholders.

12. After the completion of the Spin-off Transaction, the Filer will continue to be listed and traded on the Exchanges.

13. DutchCo will apply to have the DutchCo Shares listed on the NYSE Euronext in Amsterdam. DutchCo will also be registered with the SEC as a foreign private issuer.

14. Sara Lee's coffee and tea business is being spun out into a Netherlands corporation because the coffee and tea business in headquartered in the Netherlands and is principally administered there.

15. Prior to the completion of the Spin-off Transaction, neither DE US nor DutchCo are or intend to become reporting issuers in any province or territory in Canada or list their securities on any stock exchange in Canada. To the knowledge of the Filer, DutchCo has no intention of becoming a reporting issuer in any province or territory in Canada or listing its securities on any stock exchange in Canada after the completion of the Spin-off Transaction.

16. The Spin-off Transaction will be effected under the laws of the United States, Delaware, Maryland and the Netherlands.

17. Because the Stock Dividend will be by way of a dividend of DE Shares to the Filer Shareholders, no shareholder approval of the proposed transaction is required (or being sought) under Maryland law.

18. All materials relating to the Spin-off Transaction sent by or on behalf of the Filer and DutchCo to registered shareholders of the Filer in the United States will be sent concurrently to the registered shareholders resident in Canada. The prospectus that forms part of the Registration Statement will be sent to registered shareholders resident in Canada after the SEC declares the Registration Statement effective.

19. Following the completion of the Spin-off Transaction and Stock Dividend, the Filer and DutchCo, respectively, will send concurrently to the registered holders of Filer Shares and DutchCo Shares, respectively, resident in Canada the same disclosure materials required to be sent under applicable U.S. or Netherlands laws, as the case may be, that each sends to registered holders of Filer Shares and DutchCo Shares with addresses, as shown on their respective books to be, in the United States or the Netherlands, as applicable.

20. The Canadian Shareholders who receive DE Shares (and ultimately DutchCo Shares) as a dividend pursuant to the Spin-off Transaction will have the benefit of the same rights and remedies in respect of the disclosure documentation received in connection with the Spin-off Transaction and the Stock Dividend that are available to Filer Shareholders in the United States.

21. The Canadian Shareholders who receive DE Shares (and ultimately DutchCo Shares) following completion of the Spin-off Transaction will have the same rights and remedies under Netherlands law as securityholders resident in the Netherlands in the event of a misrepresentation in the continuous disclosure documents of DutchCo.

22. The Stock Dividend to Canadian Shareholders would be exempt from the Prospectus Requirements pursuant to subsection 2.31(2) of National Instrument 45-106 – *Prospectus and Registration Exemptions* ("**NI 45-106**") but for the fact that DE US is not a reporting issuer under the Act.

23. The distribution of DutchCo Shares in exchange for DE Shares in connection with the Merger is exempt from the Prospectus Requirements under section 2.11 of NI 45-106 because it will be effected pursuant to a statutory procedure under Delaware law.

24. The Filer, DE US and DutchCo are not in default of any securities legislation in any of the provinces or territories of Canada.

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 the first trade in DutchCo Shares issued in connection with the Merger subsequent to the issuance of the Stock Dividend will be deemed to be a distribution unless the conditions in section 2.6 or subsection 2.14(1) of National Instrument 45-102 Resale of Securities are satisfied.

"Paulette L. Kennedy"
Ontario Securities Commission

"Margot C. Howard"
Ontario Securities Commission

2.1.6 Clairvest Group Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Reporting issuer seeking relief so that it can continue to file financial statements in accordance with old Canadian GAAP (rather than IFRS) for periods relating to the Applicant's financial year beginning on April 1, 2011 and ending on March 31, 2012 and the Applicant's financial year beginning on April 1, 2012 and ending on March 31, 2013 and the Applicant's financial year beginning on April 1, 2013 and ending on March 31, 2014 (collectively, the "Applicant's Deferred Financial Years"). – In particular, the issuer is seeking relief from the requirements in Part 3 of National Instrument 52-107 that would apply to financial statements for periods relating to the issuer's deferred financial years – The issuer is also seeking relief from the IFRS-related amendments to the continuous disclosure, prospectus, certification and audit committee rules (collectively, the rules) that came into force on January 1, 2011 and that would apply to periods relating to the issuer's deferred financial years – The issuer is an "investment company" as defined in Accounting Guideline 18 Investment Companies (AcG-18) in the Handbook of the Canadian Institute of Chartered Accountants – At its meeting on February 29, 2012, the Canadian Accounting Standards Board decided that investment companies, as defined in and applying AcG-18, will only be required to adopt IFRS for annual periods beginning on or after January 1, 2014 – Since Part 3 of National Instrument 52-107 and the IFRS-related amendments to the rules do not have a provision providing for a three-year deferral of the transition to IFRS for investment companies subject to NI 52-107 and the rules, the issuer has applied for the relief – Relief granted, subject to a number of conditions.

Applicable Legislative Provisions

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards, Parts 3 and 4 (NI 52-107).
National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102).
National Instrument 41-101 General Prospectus Requirements (NI 41-101).
National Instrument 44-101 Short Form Prospectus Distributions (NI 44-101).
National Instrument 44-102 Shelf Distributions (NI 44-102).
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109).
National Instrument 52-110 Audit Committees (NI 51-110).

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

AND

IN THE MATTER OF
CLAIRVEST GROUP INC.

DECISION

Background

The Ontario Securities Commission has received an application from Clairvest Group Inc. (the "Applicant") for a decision under Ontario securities legislation (the "Legislation")for an exemption (the "Exemption Sought") from:

1. the requirements of Part 3 of National Instrument 52-107 – *Acceptable Accounting Principles and Auditing Standards* ("**NI 52-107**") that apply to financial statements, financial information, operating statements and pro forma financial statements for periods relating to the Applicant's financial year beginning on April 1, 2011 and ending on March 31, 2012, the Applicant's financial year beginning on April 1, 2012 and ending on March 31, 2013 and the Applicant's financial year beginning on April 1, 2013 and ending on March 31, 2014 (collectively, the "**Applicant's Deferred Financial Years**");

2. the amendments to National Instrument 51-102 – *Continuous Disclosure Obligations* ("**NI 51-102**") related to International Financial Reporting Standards ("**IFRS**") that came into force on January 1, 2011 and that apply to documents required to be prepared, filed, delivered or sent under NI 51-102 for periods relating to the Applicant's Deferred Financial Years;

3. the IFRS-related amendments to National Instrument 41-101 – *General Prospectus Requirements* ("**NI 41-101**") that came into force on January 1, 2011 and that apply to a preliminary prospectus, an amendment to a preliminary prospectus, a final prospectus or an amendment to a final prospectus of the Applicant which includes or incorporates by reference financial statements of the Applicant in respect of periods relating to the Applicant's Deferred Financial Years;

4. the IFRS-related amendments to National Instrument 44-101 – *Short Form Prospectus Distributions* ("**NI 44-101**") that came into force on January 1, 2011 and that apply to a preliminary short form prospectus, an amendment to a preliminary short form prospectus, a final short form prospectus or an amendment to a final short form prospectus of the Applicant which includes or incorporates by reference financial statements of the Applicant in respect of periods relating to the Applicant's Deferred Financial Years;

5. the IFRS-related amendments to National Instrument 44-102 – *Shelf Distributions* ("**NI 44-102**") that came into force on January 1, 2011 and that apply to a preliminary base shelf prospectus, an amendment to a preliminary base shelf prospectus, a base shelf prospectus, an amendment to a base shelf prospectus or a shelf prospectus supplement of the Applicant which includes or incorporates by reference financial statements of the Applicant in respect of periods relating to the Applicant's Deferred Financial Years;

6. the IFRS-related amendments to National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**") that came into force on January 1, 2011 and that apply to annual filings and interim filings for periods relating to the Applicant's Deferred Financial Years; and

7. the IFRS-related amendments to National Instrument 52-110 – *Audit Committees* ("**NI 52-110**") that came into force on January 1, 2011 and that apply to periods relating to the Applicant's Deferred Financial Years.

Representations

The Applicant has represented to the Commission that:

1. The Applicant is a corporation governed by the *Business Corporations Act* (Ontario), with its registered and principal office address located at 22 St. Clair Avenue East, Suite 1700, Toronto, Ontario M4T 2S3.

2. The Applicant is a reporting issuer in Ontario.

3. The Applicant is a private equity investor whose common shares trade on the Toronto Stock Exchange under the symbol "CVG".

4. The Applicant's financial year end is March 31.

5. The Applicant is an "investment company" as defined in Accounting Guideline 18 – Investment Companies ("**AcG-18**") in the Handbook of the Canadian Institute of Chartered Accountants (the "**Handbook**"). The Applicant applies AcG-18 in the preparation of its financial statements in accordance with Part V of the Handbook – Canadian GAAP for public enterprises that is the pre-changeover accounting standards ("**pre-changeover Canadian GAAP**").

6. The Applicant is not an investment fund as that term is defined in the *Securities Act* (Ontario).

7. As part of the changeover to IFRS in Canada, the Canadian Accounting Standards Board ("**AcSB**") has incorporated IFRS into the Handbook as Canadian GAAP for publicly accountable enterprises. As a result, the Handbook contains two sets of standards for public companies:

   (a) Part I of the Handbook – Canadian GAAP applicable to publicly accountable enterprises that applies for financial years beginning on or after January 1, 2011, and

   (b) pre-changeover Canadian GAAP.

8. On October 1, 2010, the AcSB published amendments to Part 1 of the Handbook that provided a one-year deferral of the transition to IFRS for investment companies. The amendments required investment companies, as defined in and applying AcG-18, to adopt IFRS for annual periods beginning on or after January 1, 2012. Subsequently, at its meeting on January 12, 2011, the AcSB decided to extend the deferral for an additional year and in March 2011, issued amendments to Part 1 of the Handbook so that investment companies, as defined in and applying AcG-18, would only be required to adopt IFRS for annual periods beginning on or after January 1, 2013. On February 29, 2012, the deferral was extended for a third time by amendments to Part 1 of the Handbook issued by the AcSB requiring investment companies, as defined in and applying AcG-18, to adopt IFRS for annual periods beginning on or after January 1, 2014.

9. As part of the changeover to IFRS, NI 52-107 was repealed and replaced effective January 1, 2011. In the new version of NI 52-107,

   (a) Part 3 contains requirements based on IFRS and applies to financial statements, financial information, operating statements and pro forma financial statements for periods relating to financial years beginning on or after January 1, 2011, and

   (b) Part 4 contains requirements based on pre-changeover Canadian GAAP and applies to financial statements, financial information, operating statements and pro forma financial statements for periods relating to financial years beginning before January 1, 2011.

10. As part of the changeover to IFRS, IFRS-related amendments were made to NI 51-102, NI 41-101, NI 44-101, NI 44-102, NI 52-109 and NI 52-110 (collectively, the "**Rules**") and these amendments came into force on January 1, 2011. Among other things, the amendments replace Canadian GAAP terms and phrases with IFRS terms and phrases and contain IFRS-specific requirements. The amendment instruments for the Rules contain transition provisions that provide that the IFRS-related amendments only apply to documents required to be filed under the Rules for periods relating to financial years beginning on or after January 1, 2011. Therefore, during the IFRS transition period,

    (a) issuers filing financial statements prepared in accordance with pre-changeover Canadian GAAP will be required to comply with the versions of the Rules that contain Canadian GAAP terms and phrases, and

    (b) issuers filing financial statements that comply with IFRS will be required to comply with the versions of the Rules that contain IFRS terms and phrases and IFRS-specific requirements.

11. On October 8, 2010, the Canadian Securities Administrators ("**CSA**") published CSA Staff Notice 81-320 – *Update on International Financial Reporting Standards for Investment Funds*, as revised on March 23, 2011 and March 30, 2012, which indicated that, given the October 1, 2010, March 2011 and February 29, 2012 amendments to the Handbook providing for a deferral of the transition to IFRS for investment companies, the CSA would defer finalizing IFRS-related amendments to the rules related to investment funds, with the stated goal of having the necessary IFRS-related amendments for investment funds in force by January 1, 2014.

12. NI 52-107 and the Rules apply to the Applicant. Since Part 3 of NI 52-107 and the IFRS-related amendments to the Rules do not have a provision providing for a three-year deferral of the transition to IFRS for investment companies subject to NI 52-107 and the Rules, the Applicant has applied for the Exemption Sought.

13. During the Applicant's Deferred Financial Years, the Applicant will comply with section 1.13 of Form 51-102F1 – *Management's Discussion & Analysis* ("**MD&A**") by providing an updated discussion of the Applicant's preparations for changeover to IFRS in its annual and interim MD&A. In particular, the Applicant will discuss the expected effect on the financial statements, or state that the effect cannot be reasonably estimated.

14. The Applicant's interim financial statements for the interim periods ended June 30, 2011, September 30, 2011 and December 31, 2011 (the "**Interim Financial Statements**") were not prepared in accordance with IFRS pursuant to Part 3 of NI 52-107.

15. At the time the Applicant filed the Interim Financial Statements, it believed that the CICA's deferral of IFRS for companies qualifying to apply AcG-18 was accepted by the CSA for documents filed under the Rules. Upon further review of the Rules, the Applicant acknowledges that it should have filed for the Exemption Sought prior to the filing of the Interim Financial Statements.

16. The Applicant acknowledges that if the Exemption Sought is granted, the Applicant:

    (a) will be subject to Part 3 of NI 52-107 and the IFRS-related amendments to the Rules for periods relating to financial years beginning on or after January 1, 2014, and

    (b) will not have the benefit of the 30 day extension to the deadline of filing the first interim financial report in the year of adopting IFRS in respect of an interim period beginning on or after January 1, 2011, as set out in the IFRS-related amendments to NI 51-102, since that extension does not apply if the first interim financial report is in respect of an interim period ending after March 30, 2012.

Decision

The Ontario Securities Commission is satisfied that the decision meets the test set out in the Legislation.

The Exemption Sought is granted provided that:

1. the Applicant continues to be an investment company, as defined in and applying AcG-18;

2. the Applicant provides the communication as described and in the manner set out in paragraph 13 above;

3. the Applicant complies with the requirements in Part 4 of NI 52-107 for all financial statements (including interim financial statements), financial information, operating statements and pro forma financial statements for periods relating to the Applicant's Deferred Financial Years, as if the expression "January 1, 2011" in subsection 4.1(2) were read as "January 1, 2014";

4. the Applicant complies with the version of NI 51-102 that was in effect on December 31, 2010 (together with any amendments to NI 51-102 that are not related to IFRS and that come into force after January 1, 2011) for all documents required to be prepared, filed, delivered, or sent under NI 51-102 for periods relating to the Applicant's Deferred Financial Years;

5. the Applicant complies with the version of NI 41-101 that was in effect on December 31, 2010 (together with any amendments to NI 41-101 that are not related to IFRS and that come into effect after January 1, 2011) for any preliminary prospectus, amendment to a preliminary prospectus, final prospectus or amendment to a final prospectus of the Applicant which includes or incorporates by reference financial statements of the Applicant in respect of periods relating to the Applicant's Deferred Financial Years;

6. the Applicant complies with the version of NI 44-101 that was in effect on December 31, 2010 (together with any amendments to NI 44-101 that are not related to IFRS and that come into effect after January 1, 2011) for any preliminary short form prospectus, amendment to a preliminary short form prospectus, final short form prospectus or amendment to a final short form prospectus of the Applicant which includes or incorporates by reference financial statements of the Applicant in respect of periods relating to the Applicant's Deferred Financial Years;

7. the Applicant complies with the version of NI 44-102 that was in effect on December 31, 2010 (together with any amendments to NI 44-102 that are not related to IFRS and that come into effect after January 1, 2011) for any preliminary base shelf prospectus, amendment to a preliminary base shelf prospectus, base shelf prospectus, amendment to a base shelf prospectus or shelf prospectus supplement of the Applicant which includes or incorporates by reference financial statements of the Applicant in respect of periods relating to the Applicant's Deferred Financial Years;

8. the Applicant complies with the version of NI 52-109 that was in effect on December 31, 2010 (together with any amendments to NI 52-109 that are not related to IFRS and that come into effect after January 1, 2011) for all annual filings and interim filings for periods relating to the Applicant's Deferred Financial Years;

9. the Applicant complies with the version of NI 52-110 that was in effect on December 31, 2010 (together with any amendments to NI 52-110 that are not related to IFRS and that come into effect after January 1, 2011) for periods relating to the Applicant's Deferred Financial Years;

10. if, notwithstanding this order, the Applicant decides not to rely on the Exemption Sought and files an interim financial report prepared in accordance with IFRS for an interim period in a deferred financial year, the Applicant must, at the same time:

    a) restate, in accordance with IFRS, any interim financial statements for any

previous interim period in the same deferred financial year (each, a "**Previous Interim Period**") that were originally prepared in accordance with pre-changeover Canadian GAAP and filed pursuant to this order, and

b) file a restated interim financial report prepared in accordance with IFRS for each Previous Interim Period, together with corresponding restated interim MD&A and certificates required by NI 52-109. For greater certainty, any restated interim financial report for a Previous Interim Period must comply with applicable securities legislation (including Part 3 of NI 52-107 and the amendments to Part 4 of NI 51-102 that came into force on January 1, 2011) and any restated interim financial report for the first interim period in the deferred financial year must include the opening IFRS statement of financial position at the date of transition to IFRS; and

11. if, notwithstanding this order, the Applicant decides not to rely on the Exemption Sought and files annual financial statements prepared in accordance with IFRS for a deferred financial year, the Applicant must, at the same time (unless previously done pursuant to paragraph 10 immediately above):

a) restate, in accordance with IFRS, any interim financial statements for any Previous Interim Period that were originally prepared in accordance with pre-changeover Canadian GAAP and filed pursuant to this order, and

b) file a restated interim financial report prepared in accordance with IFRS for each Previous Interim Period, together with corresponding restated interim MD&A and certificates required by NI 52-109. For greater certainty, any restated interim financial report for a Previous Interim Period must comply with applicable securities legislation (including Part 3 of NI 52-107 and the amendments to Part 4 of NI 51-102 that came into force on January 1, 2011) and any restated interim financial report for the first interim period in the deferred financial year must include the opening IFRS statement of financial position at the date of transition to IFRS.

DATED this 13th day of June, 2012

"Cameron McInnis"
Chief Accountant
Ontario Securities Commission

2.1.7 AlphaPro Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from subsection 2.1(1) and paragraphs 2.5(2)(a), (b) and (c) of NI 81-102, the fund on funds restrictions, to permit commodity pools to enter into a forward agreement providing exposure to commodity pools investing in, or gaining exposure to exchange traded mutual funds tracking the performance of, physical commodities. Also relief granted allowing payment of brokerage commission in relation to the sales and purchases of securities of the related underlying fund(s), provided that the requirements of section 2.5 of NI 81-102, except for paragraph 2.5(2)(e) – National Instrument 81-102 Mutual Funds are complied with.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.5(2)(a) and (e), 19.1.
National Instrument 81-104 Commodity Pools.

June 25, 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
ALPHAPRO MANAGEMENT INC.
(the Filer)

AND
THE TOP FUNDS
(as defined below)

DECISION

BACKGROUND

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption (the **Exemption Sought**) relieving the existing mutual funds listed at Schedule "A" (the **Existing Top Funds**) and such mutual funds that may be managed by the Filer or its affiliates in the future (the **Future Top Funds**, and together with the Existing Top Funds, the **Top Funds** and individually, a **Top Fund**) that are subject to National Instrument 81-102 – *Mutual Funds* (**NI 81-102**), from the prohibitions in:

(a) paragraph 2.5(2)(a) of NI 81-102 to permit each Top Fund to invest in exchange traded mutual funds that are not subject to National Instrument 81-101 – *Mutual Fund Prospectus Disclosure* (**NI 81-101**); and

(b) paragraph 2.5(2)(e) of NI 81-102 to permit each Top Fund to pay brokerage commissions in relation to its purchase and sale on a recognized exchange of securities of exchange traded mutual funds that are managed by the Filer, or an affiliate or associate of the Filer

(collectively, the **Exemption Sought**)

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

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

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

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:

About the Filer

1. The Filer is a corporation incorporated pursuant to the laws of Canada.

2. The Filer, or an affiliate of the Filer, acts as, or will act as, the investment fund manager of the Top Funds.

3. The Filer is not in default of the securities legislation of any of the provinces or territories of Canada.

About the Top Funds

4. The Top Funds are, or will be, open end mutual funds established as trusts under the laws of the Province of Ontario.

5. The Top Funds are, or will be, governed by the provisions of NI 81-102; or NI 81-102 and National Instrument 81-104 – *Commodity Pools* (**NI 81-104**).

6. Each Top Fund distributes, or will distribute, securities pursuant to a simplified prospectus and annual information form prepared under NI 81-101 or to a long form prospectus prepared under Form 41-101F2 – *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**).

7. The Top Funds are, or will be, reporting issuers in some or all of the provinces and territories of Canada.

8. The Existing Top Funds are not in default of any requirements of the securities legislation of any province or territory of Canada.

9. The Filer would like to be able to invest the assets of the Top Funds in the exchange traded funds set out in Schedule "B" (the **Existing Underlying ETFs**) and such other exchange traded mutual funds that may be established by the Filer or its affiliates or associates in the future (the **Future Underlying ETFs**, and together with the Existing Underlying ETFs, the **Underlying ETFs** or individually an **Underlying ETF**).

10. The investment by a Top Fund in securities of an Underlying ETF will be made in accordance with the fundamental investment objective of the Top Fund and will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Top Funds.

About the Underlying ETFs

11. The Filer or an affiliate is or will be the investment fund manager of the Underlying ETFs.

12. Each Underlying ETF is, or will be:

    (a) an open end mutual fund subject to NI 81-102 and National Instrument 41-101 – *General Prospectus Requirements* (**NI 41-101**);

    (b) a reporting issuer in each of the provinces and territories of Canada; and

    (c) listed on the Toronto Stock Exchange (the TSX) or another "recognized exchange" in Canada as that term is defined in securities legislation.

13. The Existing Underlying ETFs are not in default of any requirements of the securities legislation of any province or territory of Canada.

14. Each Underlying ETF distributes, or will distribute, its securities pursuant to a long form prospectus prepared under Form 41-101F2.

15. Each Underlying ETF does not or will not, at the time of purchase by a Top Fund, hold more than 10% of the market value of its net assets in securities of any other mutual fund other than the securities of a money market fund or a mutual fund that issues index participation units.

16. Each Underlying ETF issues, or will issue, units which are qualified for distribution in each of the provinces and territories of Canada.

17. Each Underlying ETF is not, or will not be, a commodity pool governed by NI 81-104.

18. The Underlying ETFs do not or will not issue "index participation units" as defined in NI 81-102.

19. No Underlying ETF has, or will have, a net market exposure greater than 100% of its net asset value.

20. Each Underlying ETF does not or will not pay management or incentive fees which to a reasonable person would duplicate a fee payable by the Top Funds for the same service.

21. Where the investment fund manager of a Top Fund (the **Top Fund Manager**) determines that the management fees and incentive fees (the **Fees**) payable by an Underlying ETF to its investment fund manager (the **Underlying ETF Manager**) would duplicate a fee payable by the Top Fund for the same service, either

    (a) The Underlying ETF Manager will pay a management fee rebate to the Top Fund that is equal to the Fees paid to it by that Underlying ETF and the Top Fund Manager will pay an amount equal to those Fees to the Underlying ETF Manager; or

    (b) The Top Fund Manager will pay to the Top Fund an amount equal to the Fees payable to the Underlying ETF Manager in respect of the Top Fund's investment in the Underlying ETF.

22. Holders of units of an Underlying ETF may:

    (a) sell units of an Underlying ETF on the TSX or another recognized exchange in Canada on which units of an Underlying ETF are listed for trading;

    (b) redeem units of that Underlying ETF in any number for cash at a redemption price of 95% of the closing price for the unit on the applicable exchange on the effective day of redemption; or

    (c) redeem or exchange a prescribed number of units (a **PNU**) of the Underlying ETF for cash or securities equal to the net asset value of each PNU tendered for redemption or exchange, respectively.

23. Each Underlying ETF may, from time to time, retain:

    (a) National Bank Financial Inc., an associate of the Filer, to act as its designated broker, distributor and securities lending agent;

    (b) Natcan Investment Management Inc., an associate of the Filer, to act as portfolio sub-adviser; and

    (c) Horizons Investment Management Inc., an affiliate of the Filer, to act as its manager, trustee, or portfolio manager.

24. The Existing Underlying ETFs primarily achieve, and Future Underlying ETFs will primarily achieve, their investment objectives through direct holdings of cash and securities and, in some circumstances, through investment in specified derivatives for hedging and non-hedging purposes, in accordance with their investment objectives and strategies and with NI 81-102.

25. All brokerage costs related to trades in securities of the Underlying ETFs will be borne by the Top Funds in the same manner as any other portfolio transaction made on an exchange.

26. If a Top Fund makes a trade in securities of an Underlying ETF with or through an affiliate or associate of the Filer acting as dealer, the Filer will comply with its obligations under National Instrument 81-107 *Independent Review Committee for Investment Funds* in respect of any proposed related party transactions. Lastly, all such related party

transactions will be disclosed to securityholders of the relevant Top Fund in its management report of fund performance.

Reasons for the Exemption Sought

27. An investment in an Underlying ETF by a Top Fund is an efficient and cost effective alternative to administering one or more investment strategies directly or engaging a sub-adviser to implement an investment strategy for a Top Fund.

28. Absent the Exemption Sought, an investment by a Top Fund in an Underlying ETF would be prohibited by paragraph 2.5(2)(a) of NI 81-102 solely because the Underlying ETF is not governed by NI 81-101.

29. An investment by a Top Fund in an Underlying ETF would not qualify for the exemption in paragraph 2.5(3) of NI 81-102 from paragraph 2.5(2)(a) of NI 81-102 because the Underlying ETF does not issue index participation units.

30. The only material difference between the Underlying ETFs and any other mutual fund governed by NI 81-102 is the method of distribution. If the Exemption Sought is granted the Top Funds will be permitted to purchase units of a mutual fund that is listed on the TSX (or other recognized exchange) in the same manner that they are permitted to invest in a mutual fund that is not listed on the applicable exchange.

31. It is anticipated that many of the trades conducted by the Top Funds would not be of the size necessary for the Top Fund to be eligible to purchase or redeem a PNU directly from the Underlying ETF. As a result, it is anticipated that the majority of trading in respect of units of the Underlying ETFs will be conducted in the secondary market using the facilities of a recognized exchange.

32. Absent the Exemption Sought, when the Top Funds trade securities of an Underlying ETF on a recognized exchange, paragraph 2.5(2)(e) would not permit the Top Fund to pay any brokerage fees incurred in connection with the trade.

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) A Top Fund does not short sell securities of an Underlying ETF; and

(b) the Underlying ETFs do not rely on exemptive relief from

(i) the requirements of section 2.3 of NI 81-102 regarding the purchase of physical commodities;

(ii) the requirements of sections 2.7 and 2.8 of NI 81-102 regarding the purchase, sale or use of specified derivatives, with the exception of the relief from paragraphs 2.7(1)(a) and 2.8(1) of NI 81-102 granted to certain Underlying ETFs pursuant to the In the Matter of AlphaPro Management Inc. decision dated November 18, 2010; and

(iii) paragraphs 2.6(a) and (b) of NI 81-102 with respect to the use of leverage.

“Sonny Randhawa”
Manager, Investment Funds Branch
Ontario Securities Commission

SCHEDULE "A"

EXISTING TOP FUNDS

Fund Name	Manager Trustee	Portfolio Manager	Portfolio Sub-Advisor
Horizons Dividend ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Leon Frazer & Associates Inc.
Horizons North America Value ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Patient Capital Management Inc.
Horizons North America Growth ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons S&P/TSX 60 Equal Weight Index ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Global Dividend ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Guardian Capital LP
Horizons Balanced ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Hillsdale Investment Management Inc.
Horizons Corporate Bond ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Natcan Investment Management Inc. [2]
Horizons Preferred Share ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Natcan Investment Management Inc. [2]
Horizons Floating Rate Bond ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Natcan Investment Management Inc. [2]
Horizons Gartman ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	The Gartman Letter, L.C.
Horizons Seasonal Rotation ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons S&P/TSX 60 130/30™ Index ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons Enhanced Income Equity ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Enhanced Income Energy ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Enhanced Income Financials ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Enhanced Income Gold Producers ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Enhanced Income U.S Equity (USD) ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Enhanced Income International Equity ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Tactical Bond ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Income Plus ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Barclays Capital Inc.

[1] Affiliate of the Manager

[2] Affiliate of a minority shareholder of the Manager

SCHEDULE "B"

EXISTING UNDERLING ETFs

Fund Name	Manager Trustee	Portfolio Manager	Portfolio Sub-Adviser
Horizons Dividend ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Leon Frazer & Associates Inc.
Horizons Global Dividend ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Guardian Capital LP
Horizons North American Value ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Patient Capital Management Inc.
Horizons North American Growth ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Balanced ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Hillsdale Investment Management Inc.
Horizons Corporate Bond ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Natcan Investment Management Inc.[2]
Horizons Preferred Share ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Natcan Investment Management Inc.[2]
Horizons Floating Rate Bond ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Natcan Investment Management Inc.[2]
Horizons Enhanced Income Equity ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Enhanced Income Energy ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Enhanced Income Financials ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Enhanced Income Gold Producers ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Enhanced Income U.S Equity (USD) ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Enhanced Income International Equity ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Australian Dollar Currency ETF	Horizons ETFs Management (Canada) Inc. [1]	Horizons Investment Management Inc.[1]	n/a
Horizons U.S. Dollar Currency ETF	Horizons ETFs Management (Canada) Inc. [1]	Horizons Investment Management Inc.[1]	n/a

[1] Affiliate of the Manager
[2] Affiliate of a minority shareholder of the Manager

2.1.8 AlphaPro Management Inc. and Horizons ETFs Management (Canada) Inc.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted to current, new and future commodity pools from margin deposit limit contained in paragraphs 6.8(1) and 6.8(2)(c) of National Instrument 81-102. Exemption granted to permit current, new and future commodity pools to invest in derivatives in Canada and in the U.S. through the Filer that, in turn, will use dealer in Canada or U.S. future commission merchants. Exemption conditional on the amount of margin deposited not exceeding 30% of the net assets of the funds and on all margin deposited with dealers being held in segregated accounts.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 6.8(1), 6.8(2)(c, 19.1.

June 25, 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
ALPHAPRO MANAGEMENT INC.
HORIZONS ETFs MANAGEMENT (CANADA) INC.
(the Filers)

AND

THE FUNDS
(as defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers on behalf of the exchange-traded mutual funds set out in Schedule "A" and Schedule "B" (the **Existing Funds**) and such other exchange-traded mutual funds as the filers may establish in the future (the Future Funds, and together with the Existing Funds, the **Funds**) for a decision (the **Exemption Sought**) under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for exemptive relief from the following provisions of National Instrument 81-102 – *Mutual Funds* (**NI 81-102**):

1. paragraph 6.8(1) of NI 81-102, to permit each Fund to deposit more than 10 percent of the net assets of the Fund, taken at market value at the time of deposit, with a qualified dealer as margin for specified transactions in Canada; and

2. paragraph 6.8(2)(c) of NI 81-102, to permit each Fund to deposit more than 10 percent of the net assets of the Fund, taken at market value at the time of deposit, with a dealer as margin for specified transactions outside Canada.

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

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in all of the provinces and territories of Canada other than Ontario (together with Ontario, the Jurisdictions).

Representations

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

General

1. Each Fund is, or will be, a mutual fund trust established as a trust under the laws of the Province of Ontario.

2. The Funds are, or will be, reporting issuers in each of the Jurisdictions.

3. AlphaPro Management Inc. (**AlphaPro**) has filed:

   (a) a preliminary prospectus dated January 4, 2012 in respect of five new exchange-traded mutual funds: Horizons Gold Yield ETF, Horizons Silver Yield ETF, Horizons Crude Oil Yield ETF, Horizons Natural Gas Yield ETF and Horizons Diversified Commodity Yield ETF, further details of each of which are set out in Schedule "A" under the heading "New AlphaPro Funds"; and

   (b) a preliminary prospectus dated January 6, 2012 in respect of Horizons Auspice Managed Futures Index ETF, a new exchange-traded mutual fund, further details of which are set out in Schedule "A" under the heading "New AlphaPro Funds".

4. Each of the Funds is, or will be, a commodity pool a such term is defined in National Instrument 81-104 – *Commodity Pools* (**NI 81-104**).

5. Each of the Funds is, or will be, governed by the provisions of NI 81-102, subject to the exceptions relating to commodity pools, as such exemptions are outlined in NI 81-104.

6. In order to achieve its investment objective, each Fund may invest in equity and/or fixed income securities, currencies, commodities and/or financial instruments, including specified derivatives.

7. AlphaPro is the manager and trustee of the Funds identified in Schedule "A" and Horizons ETFs Management (Canada) Inc. is the manager of the Funds identified on Schedule "B".

8. Horizons Investment Management Inc. (the **Investment Manager**) acts as the Investment Manager of the Funds and is a corporation incorporated under the laws of Ontario. The Investment Manager is an affiliate of each of the Applicants.

9. As set out in Schedule "A" and Schedule "B", in respect of certain of the Funds, the Investment Manager has in turn retained a sub-advisor to make and execute investment decisions on behalf of the Funds (collectively, the **Sub-Advisors** and each a **Sub Advisor**).

10. The investment strategies of the Funds will, except to the extent that the Exemption Sought is granted and other exemptive relief is applicable, be limited to the investment practices permitted by NI 81-102 and NI 81-104.

NI 81-102, Subsections 6.8(1) and 6.8(2)(c)

11. With respect to investing a Fund's assets, the Investment Manager or Sub-Advisor, as applicable, may engage in specified derivative transactions in Canada and outside of Canada.

12. The Investment Manager or Sub-Advisor, as applicable, is authorized to establish, maintain, change and close brokerage accounts on behalf of the Funds. In order to facilitate specified derivatives transactions, the Funds have established, or intend to establish, accounts (each an Account) with futures commissions dealers and merchants (**Dealers**).

13. Each Dealer in the United States of America (each a **US Dealer**) is regulated by the Commodity Futures Trading Commission (the **CFTC**) and the National Futures Association (the **NFA**) in the United States, and is required to segregate all assets held on behalf of clients, including each Fund. Each US Dealer is subject to audits and must have insurance to guard against employee fraud. Each US Dealer has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of $50 million. Each US Dealer has an exchange assigned to it as its designated self-regulatory organization (the **DSRO**). As a member of a DSRO, each US Dealer must meet capital requirements, comply with the conduct rules of the CFTC, NFA and its DSRO, and participate in an arbitration process with a complainant.

14. The Dealers are members of the clearing corporations and exchanges that the standardized futures in the portfolio of the Funds are primarily traded through. The clearing corporation is obliged to apply its surplus funds and the security deposits of its members to reimburse funds owed to clients from failed members.

15. The Dealers require, for each Account, that cash and/or government securities be deposited with the Dealer(s) as collateral for specified derivatives transactions (**Margin**). Margin represents the minimum amount of funds that must be deposited with a Dealer to initiate trading in specified derivatives transactions or to maintain the Dealer's open position in standardized futures.

16. Dealers are required to hold all Margin, including cash and government securities, in segregated accounts and the Margin is not available to satisfy claims against the Dealer made by creditors of the Dealer.

17. Margin will be deposited with Dealers in respect of standardized futures traded on exchanges.

18. Levels of Margin are established at the Dealers' discretion. However, the Funds expect to operate generally with an approximate average margin utilization of 20% of the net asset value of each Fund, and a maximum margin utilization of 30% of the net asset value of each Fund. At no time will more than 30% of the net assets of a Fund be deposited with Dealers as Margin.

19. The Requested Relief would allow the Funds to invest in standardized futures more extensively with any one Dealer.

20. Any use of leverage by a Fund will be in accordance with the applicable investment objectives and investment restrictions of the Fund.

Decision

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

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

(a) the Funds shall only use margin such that the amount of Margin held by any one dealer or dealers in aggregate within Canada or outside Canada on behalf of a Fund does not exceed 30% of the net assets of the Fund, taken at market value as at the time of the deposit; and

(b) all Margin deposited with any dealers within Canada or outside Canada is and will be held in segregated accounts and is not, and will not be available to satisfy claims against such dealers made by creditors of the dealers.

"Sonny Randhawa"
Manager, Investment Funds Branch
Ontario Securities Commission

SCHEDULE "A"

ALPHAPRO FUNDS

Fund Name	Manager and Trustee	Portfolio Manager	Portfolio Sub-Advisor
Horizons Gartman ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	The Gartman Letter, L.C.
Horizons Seasonal Rotation ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Tactical Bond ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Income Plus ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Barclays Capital Inc.
Horizons S&P/TSX 60 130/30™ Index ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons Gold Yield ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Silver Yield ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Crude Oil Yield ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Natural Gas Yield ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Diversified Commodity Yield ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	Auspice Capital Advisors Ltd.
Horizons Auspice Managed Futures Index ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a
Horizons Morningstar Hedge Fund Index ETF	AlphaPro Management Inc.	Horizons Investment Management Inc.[1]	n/a

[1] Affiliate of the Manager
[2] Affiliate of a minority shareholder of the Manager

SCHEDULE "B"

HEMI FUNDS

Fund Name	Manager Trustee	Portfolio Manager	Portfolio Sub-Adviser
Horizons COMEX® Copper ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons COMEX® Gold ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons COMEX® Silver ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons Winter-Term NYMEX® Crude Oil ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons Winter-Term NYMEX® Natural Gas ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro COMEX® Gold Bullion Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro COMEX® Gold Bullion Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro NYMEX® Crude Oil Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
BetaPro NYMEX® Crude Oil Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro NYMEX® Natural Gas Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro NYMEX® Natural Gas Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro US Dollar Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro US Dollar Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro US 30-year Bond Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro US 30-year Bond Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC

Fund Name	Manager Trustee	Portfolio Manager	Portfolio Sub-Adviser
Horizons BetaPro COMEX® Silver Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro COMEX® Silver Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro COMEX® Copper Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro COMEX® Copper Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro COMEX® Gold Inverse ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro COMEX® Silver Inverse ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro NYMEX® Natural Gas Inverse ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro NYMEX® Crude Oil Inverse ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro COMEX® Long Gold/Short Silver Spread ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro COMEX® Long Silver/Short Gold Spread ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro NYMEX® Long Natural Gas/Short Crude Oil Spread ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro NYMEX® Long Crude Oil/Short Natural Gas Spread ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P 500 VIX Short-Term Futures™ ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P 500 VIX Short-Term Futures™ Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P 500 VIX Short-Term Futures™ Inverse ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX 60™ Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC

Fund Name	Manager Trustee	Portfolio Manager	Portfolio Sub-Adviser
Horizons BetaPro S&P/TSX 60™ Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX Global Base Metals™ Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX Global Base Metals™ Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX Capped Financials™ Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX Capped Financials™ Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX Capped Energy™ Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX Capped Energy™ Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX Global Gold™ Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX Global Gold™ Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P 500® Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P 500® Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro NASDAQ-100® Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro NASDAQ-100® Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro MSCI Emerging Markets Bull Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro MSCI Emerging Markets Bear Plus ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX 60™ Inverse ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC

Fund Name	Manager Trustee	Portfolio Manager	Portfolio Sub-Adviser
Horizons BetaPro S&P/TSX Capped Financials™ Inverse ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX Capped Energy™ Inverse ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P/TSX Global Gold™ Inverse ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC
Horizons BetaPro S&P 500® Inverse ETF	Horizons ETFs Management (Canada) Inc.	Horizons Investment Management Inc.[1]	ProShare Advisors LLC

[1] Affiliate of the Manager
[2] Affiliate of a minority shareholder of the Manager

2.2 Orders

2.2.1 Aeroquest International Limited – s. 1(6) of the OBCA

Headnote

Filer deemed to have ceased to be offering its securities to the public under the OBCA.

Applicable Legislative Provisions

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT (ONTARIO)
R.S.O. 1990, c. B.16, AS AMENDED
(the OBCA)

AND

IN THE MATTER OF
AEROQUEST INTERNATIONAL LIMITED
(the Applicant)

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an "offering corporation" as defined in the OBCA, and has an authorized capital consisting of an unlimited number of common shares (**Common Shares**)

2. The head office of the Applicant is located at 7687 Bath Road, Mississauga, Ontario, L4T 3T1.

3. On May 14, 2012, the Applicant completed a plan of arrangement with Geotech Ltd. (**Geotech**) in accordance with the OBCA pursuant to which Geotech acquired all of the issued and outstanding common shares of the Applicant.

4. As of the date of this decision, all of the outstanding securities of the Applicant, including debt securities, which are beneficially owned, directly or indirectly, are held by Geotech as sole securityholder.

5. The Common Shares have been de-listed from the Toronto Stock Exchange, effective as of the close of trading on May 15, 2012.

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

7. The Applicant has no intention to seek public financing by way of an offering of securities.

8. The Applicant is not a reporting issuer or the equivalent in any jurisdiction in Canada.

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

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public for the purpose of the OBCA.

DATED on June 19th, 2012

"Suresh Thakrar"
Commissioner

"James D. Carnwath"
Commissioner

2.2.2 Peter Beck et al. – ss. 127, 127.1

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

AND

IN THE MATTER OF
PETER BECK, SWIFT TRADE INC. (continued as 7722656 Canada Inc.), BIREMIS, CORP., OPAL STONE FINANCIAL SERVICES S.A., BARKA CO. LIMITED, TRIEME CORPORATION and CALM OCEANS L.P.

ORDER
(Sections 127 and 127.1 of the Securities Act)

WHEREAS on March 23, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in connection with a Statement of Allegations dated March 23, 2011, to consider whether it is in the public interest to make orders, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), against Peter Beck ("Beck"); Swift Trade Inc. (continued as 7722656 Canada Inc.)("Swift Trade"); Biremis, Corp. ("Biremis"); Opal Stone Financial Services S.A. ("Opal Stone"); Barka Co. Limited ("Barka"); Trieme Corporation ("Trieme"); and a limited partnership sometimes referred to as "Anguilla LP", legally known as Calm Oceans L.P. ("Calm Oceans");

AND WHEREAS on July 19, 2011, the Commission issued a Notice of Hearing to consider whether, in the opinion of the Commission, it is in the public interest for the Commission to issue a Temporary Order as specified therein, pursuant to subsections 127(1) and (5) of the Act;

AND WHEREAS on June 19, 2012, the Commission issued an amended Notice of Hearing and related Amended Statement of Allegations to amend the title of proceedings to replace the reference to Anguilla LP with Calm Oceans;

AND WHEREAS the Respondents and Staff of the Commission ("Staff") entered into a settlement agreement dated June, 2012 (the "Settlement Agreement") in which they agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated March 23, 2011, as subsequently amended, including the hearing referenced by the Notice of Hearing dated July 19, 2011, subject to the approval of the Commission;

AND WHEREAS on June 20, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and the Respondents;

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

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

IT IS ORDERED THAT:

A. This Settlement Agreement is approved;

B. Beck is hereby reprimanded, pursuant to clause 6 of subsection 127(1) of the Act;

C. The Respondents shall pay:

(i) pursuant to clause 9 of subsection 127(1) of the Act, an administrative penalty in the aggregate amount of $100,000 (jointly and severally), for the allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(ii) pursuant to section 127.1 of the Act, the aggregate amount of $300,000 on a joint and several basis, representing a portion of Staff's investigation and hearing costs in this matter;

D. Each of Swift Trade, Biremis, and Opal Stone be prohibited, for a period of 6 years from the date of approval of the Settlement Agreement, from:

(i) becoming or acting as a registrant, pursuant to clause 8.5 of subsection 127(1) of the Act;

(ii) trading in any securities in Ontario, pursuant to clause 2 of subsection 127(1) of the Act; and

(iii) acquiring any securities in Ontario, pursuant to clause 2.1 of subsection 127(1) of the Act;

E. Each of Barka and Trieme be prohibited, for a period of 4 years from the date of approval of the Settlement Agreement, from:

(i) becoming or acting as a registrant, pursuant to clause 8.5 of subsection 127(1) of the Act;

(ii) trading in any securities in Ontario, pursuant to clause 2 of subsection 127(1) of the Act; and

(iii) acquiring any securities in Ontario, pursuant to clause 2.1 of subsection 127(1) of the Act;

F. where, for the purposes of the above subparagraphs (D)(ii) and (iii) and (E)(ii) and (iii), "trading" or "acquiring" shall, for greater certainty, include,

1. at any location in Ontario, receiving or transmitting an order to purchase or sell securities (regardless of the location from which the order originates, whether inside or outside of Ontario), and

2. at any location outside of Ontario,

a. receiving an order to buy or sell securities from a person or company located in Ontario, or

b. transmitting an order to buy or sell securities to a person or company located in Ontario,

provided that, for greater certainty, Barka and Trieme may each continue to act as limited partners of Calm Oceans and/or partners or investors in any successor of Calm Oceans, and, in that capacity, perform related activities that do not constitute “trading” or “acquiring”, such as receiving trading-related profits from, or funding trading-related losses incurred by, Calm Oceans or its successors; and

despite the foregoing, Trieme may, for investment purposes, acquire debt securities through or from a registered dealer, and trade such debt securities solely through or to a registered dealer in the circumstances described in section 8.5 of NI 31-103;

G. Calm Oceans be prohibited, for a period of 4 years from the date of approval of the Settlement Agreement, from:

(i) becoming or acting as a registrant, pursuant to clause 8.5 of subsection 127(1) of the Act;

provided that, for greater certainty, the prohibition referred to in the above subparagraph (G)(i) shall not affect its ability to trade in Ontario in reliance on applicable exemptions from registration;

H. Beck be:

(i) ordered to resign all positions that he holds as a director or officer of a registrant, pursuant to clause 8.1 of subsection 127(1) of the Act; and

(ii) prohibited, for a period of 2 years, from the date of approval of the Settlement Agreement, from becoming or acting as a:

(A) registrant, pursuant to clause 8.5 of subsection 127(1) of the Act;

(B) director or officer of a registrant, pursuant to clause 8.2 of subsection 127(1) of the Act which, for greater certainty, shall include acting as an integral part of the mind and management of a registrant or performing functions similar to those normally performed by an officer or director for a registrant;

provided that, for greater certainty, the prohibition referred to in the above subparagraph (H)(ii) shall not prevent Beck or companies he owns or family trusts related to him or accounts of his from (i) trading securities in Ontario in reliance on applicable exemptions from registration except where herein, or otherwise, prohibited, or (ii) acting on behalf of technology providers to registrants in the support and development of software and the design and maintenance of network infrastructure.

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

“Christopher Portner”

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

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

AND

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

TEMPORARY ORDER
(Section 127)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND WHEREAS on July 27, 2011 Staff requested that the hearing be adjourned for one month for the purpose of exploring settlement with certain Respondents;

AND WHEREAS on July 27, 2011, the Commission ordered that the Temporary Orders in place as against Firestar Capital, Kamposse, Firestar Investment, and Mitton be further continued until August 30, 2011 and the hearing to consider whether to continue the Temporary Orders be adjourned to August 29, 2011;

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

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the August 29, 2011 hearing;

AND WHEREAS on August 29, 2011, counsel for Firestar Capital and Firestar Investment advised the Panel that he had only recently been retained and requested additional time to consider his client's position and Staff did not oppose a short adjournment;

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

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

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the October 3, 2011 hearing;

AND WHEREAS on October 3, 2011, Staff requested that the hearing be adjourned to November 23, 2011, for the purpose of continuing to explore settlement with certain Respondents;

AND WHEREAS on October 3, 2011, the Commission ordered that the Temporary Orders in place as against Firestar Capital, Kamposse, Firestar Investment and Mitton be further continued until November 24, 2011, and the hearing to consider whether to continue the Temporary Orders be adjourned to November 23, 2011;

AND WHEREAS on November 23, 2011, Staff and counsel for Firestar Capital and Firestar Investment appeared before the Commission and no one appeared on behalf of the remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the November 23, 2011 hearing;

AND WHEREAS on November 23, 2011, the Commission ordered that the Temporary Orders in place as against Firestar Capital, Kamposse, Firestar Investment and Mitton be further continued until January 31, 2012, and the hearing to consider whether to continue the Temporary Orders be adjourned to January 30, 2012;

AND WHEREAS on December 9, 2011, a settlement agreement between Staff and Mitton was approved by the Commission;

AND WHEREAS on January 30, 2012, Staff appeared before the Commission and no one appeared on behalf of the remaining Respondents;

AND WHEREAS the Commission was satisfied that Staff took reasonable efforts to serve the remaining Respondents with notice of the January 30, 2012 hearing;

AND WHEREAS on January 30, 2012, the Commission ordered that that the hearing be adjourned to March 29, 2012 at 10:00 a.m. for the purposes of a pre-hearing conference and that the Temporary Orders in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until March 30, 2012;

AND WHEREAS on March 29, 2012, Staff and counsel to Firestar Capital and Firestar Investment appeared and commenced the pre-hearing conference and no one appeared on behalf of Kamposse;

AND WHEREAS on March 29, 2012, the Commission ordered that that the hearing be adjourned to June 20, 2012 at 9:00 a.m. for the purposes of continuing

the confidential pre-hearing conference and that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until June 21, 2012;

AND WHEREAS on June 20, 2012, Staff and counsel to Firestar Capital Management Corporation (Firestar Capital) and Firestar Investment Management Group Inc. (Firestar Investment) appeared and continued the pre-hearing conference, but no one appeared on behalf of Kamposse;

AND WHEREAS on June 20, 2012, Staff requested that the Temporary Orders as against Firestar Capital, Kamposse, and Firestar Investment be extended, which was opposed by counsel to Firestar Capital and Firestar Investment ;

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

IT IS ORDERED that the hearing be adjourned to August 15, 2012 at 2:00 p.m., or such other date and time as agreed to by the parties and confirmed by the Office of the Secretary, for the purpose of continuing the confidential pre-hearing conference;

IT IS FURTHER ORDERED that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until August 16, 2012, or until further order of the Commission.

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

"Edward P. Kerwin"

2.2.4 Bunting & Waddington Inc. et al.

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

AND

IN THE MATTER OF
BUNTING & WADDINGTON INC.,
ARVIND SANMUGAM, JULIE WINGET and
JENIFER BREKELMANS

ORDER

WHEREAS on March 22, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Notice of Hearing") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on March 22, 2012, to consider whether it is in the public interest to make certain orders against Bunting & Waddington Inc. ("B&W"), Arvind Sanmugam ("Sanmugam"), Julie Winget ("Winget") and Jenifer Brekelmans ("Brekelmans") (collectively, the "Respondents");

AND WHEREAS on April 13, 2012, Staff filed Affidavits of Service evidencing service of the Notice of Hearing and the Statement of Allegations on the Respondents;

AND WHEREAS on April 16, 2012, a first appearance hearing was held before the Commission and Staff, Winget and counsel for Brekelmans appeared in person, Sanmugam attended via teleconference and no one appeared for B&W;

AND WHEREAS Staff advised that it was preparing the disclosure in this matter and anticipated that it would deliver the disclosure in two to three weeks;

AND WHEREAS on April 16, 2012, the Commission ordered that the hearing is adjourned to such date and time as set by the Office of the Secretary and agreed to by the parties, for a confidential pre-hearing conference;

AND WHEREAS on May 29, 2012, the Commission ordered that a confidential pre-hearing conference be held on June 19, 2012;

AND WHEREAS on June 19, 2012, a confidential pre-hearing conference was held before the Commission and Staff, Winget and counsel for Brekelmans appeared in person, Sanmugam attended via teleconference and no one appeared for B&W;

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

IT IS ORDERED that the hearing of this matter be adjourned to October 18, 2012 at 10:00 a.m. for continuation of the confidential pre-hearing conference to provide the panel with a status update and, if necessary, to hear any proper motions of Sanmugam;

IT IS FURTHER ORDERED that Sanmugam shall file the motions that he wishes the panel to consider by October 4, 2012;

IT IS FURTHER ORDERED that the other parties shall file their responses to the filed motions, if any, by October 11, 2012.

DATED at Toronto this 19th day of June, 2012.

"Edward P. Kerwin"

2.2.5 New Hudson Television Corporation et al. – ss. 127(1), 127(8)

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

AND

IN THE MATTER OF
NEW HUDSON TELEVISION CORPORATION,
NEW HUDSON TELEVISION L.L.C. &
JAMES DMITRY SALGANOV

TEMPORARY ORDER
(Subsections 127(1) & 127(8))

WHEREAS on June 8, 2011, 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 all trading in New Hudson Television Corporation ("NHTV Corp.") securities and New Hudson Television L.L.C. ("NHTV LLC") securities shall cease; that NHTV Corp. and NHTV LLC and their representatives cease trading in all securities; and that any exemptions contained in Ontario securities law do not apply to NHTV Corp. and NHTV LLC (the "Temporary Order");

AND WHEREAS on June 8, 2011, the Commission ordered that the Temporary Order shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on June 16, 2011, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on June 22, 2011 at 9:00 a.m. (the "Notice of Hearing");

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

AND WHEREAS Staff of the Commission ("Staff") have served NHTV Corp., NHTV LLC and James Dmitry Salganov ("Salganov") (collectively, the "Respondents") with copies of the Temporary Order and the Notice of Hearing, as evidenced by the Affidavit of Charlene Rochman, sworn on June 20, 2011, and filed with the Commission;

AND WHEREAS on June 22, 2011, Staff appeared before the Commission, but no one attended on behalf of any of the Respondents;

AND WHEREAS on June 22, 2011, Staff informed the Commission that Salganov is the sole Director of NHTV

Corp. and NHTV LLC and that he consented to a further extension of the Temporary Order in an email dated June 20, 2011;

AND WHEREAS on June 22, 2011, Staff sought to amend the Temporary Order to include Salganov, thereby making Salganov subject to the Temporary Order;

AND WHEREAS on June 22, 2011 it was ordered that:

(i) the Temporary Order was amended to provide that pursuant to clause 2 of subsection 127(1) of the Act, James Dmitry Salganov shall cease trading in securities of NHTV Corp. and NHTV LLC;

(ii) pursuant to subsection 127(8) of the Act, the Temporary Order as amended by (i), above (the "Amended Temporary Order") was extended to December 20, 2011; and

(iii) the hearing to consider any further extension of the Amended Temporary Order would be held on December 19, 2011 at 9:00 a.m.;

AND WHEREAS on December 19, 2011, Staff appeared before the Commission to request an extension of the Amended Temporary Order, but no one attended on behalf of any of the Respondents;

AND WHEREAS on December 19, 2011, Staff informed the Commission that the Respondents consent to a further extension of the Amended Temporary Order for six months;

AND WHEREAS on December 19, 2011 it was ordered that:

(i) pursuant to subsection 127(8) of the Act, the Amended Temporary Order was extended to June 25, 2012; and

(ii) the hearing to consider any further extension of the Amended Temporary Order would be held on June 22, 2012 at 10:00 a.m.;

AND WHEREAS on June 22, 2012, Staff appeared before the Commission to request an extension of the Amended Temporary Order, but no one attended on behalf of any of the Respondents;

AND WHEREAS the Commission is satisfied that the Respondents have been served with copies of the Order of the Commission dated December 19, 2011 and notice of this hearing;

AND WHEREAS Staff informed the Commission that the Respondents consent to a further extension of the Amended Temporary Order for six months;

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

IT IS HEREBY ORDERED THAT:

(i) pursuant to subsection 127(8) of the Act, the Amended Temporary Order is extended to December 21, 2012; and

(ii) the hearing to consider any further extension of the Amended Temporary Order will be held on December 20, 2012 at 10:00 a.m., or such other date and time as set by the Office of the Secretary.

DATED at Toronto this 22nd day of June, 2012.

"Edward P. Kerwin"

2.2.6 David Charles Phillips and John Russell Wilson – ss. 127, 127.1

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS AND
JOHN RUSSELL WILSON

ORDER
Sections 127 and 127.1

WHEREAS on June 4, 2012, the Ontario Securities Commission issued a Notice of Hearing and Staff's Statement of Allegations against David Charles Phillips ("Phillips") and John Russell Wilson ("Wilson");

AND WHEREAS pursuant to the Notice of Hearing an attendance in this matter was held on June 25, 2012;

AND WHEREAS the Commission heard submissions from Staff of the Commission and from counsel for Phillip and counsel for Wilson;

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

IT IS HEREBY ORDERED:

1. that the hearing of this matter is adjourned to Tuesday, August 28, 2012 at 2:30 p.m.

DATED at Toronto this 25th day of June, 2012.

"James D. Carnwath"

2.2.7 Chicago Mercantile Exchange Inc. – s. 147

Headnote

Application under section 147 of the *Securities Act* (Ontario) (OSA) to exempt on an interim basis Chicago Mercantile Exchange Inc. from recognition as a clearing agency under subsection 21.2(0.1) of the OSA.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21.2(0.1), 147.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S. 5,
AS AMENDED (THE OSA)

AND

IN THE MATTER OF
CHICAGO MERCANTILE EXCHANGE INC.

ORDER
(Section 147 of the OSA)

WHEREAS Chicago Mercantile Exchange Inc. (**CME**) has filed an application dated June 8, 2012 (**Application**) with the Ontario Securities Commission (**Commission**) pursuant to section 147 of the OSA requesting an interim order exempting CME from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the OSA (**Order**);

AND WHEREAS CME has represented to the Commission that:

1.1 CME is a corporation organized under the laws of the State of Delaware in the United States (**US**) and is a wholly owned subsidiary of the CME Group Inc. (**CME Group**), a publicly traded for-profit corporation organized under the laws of Delaware and listed for trading on the NASDAQ National Market;

1.2 CME is a derivatives clearing organization (**DCO**) within the meaning of that term under the US Commodity Exchange Act (**CEA**). CME is subject to regulatory supervision by the US Commodity Futures Trading Commission (**CFTC**), a US federal regulatory agency, and is obligated under the CEA to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces a DCO's adherence to the CEA and the regulations thereunder on an ongoing basis, including but not limited to, the DCO core principles relating to compliance with the core principles, financial resources, participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, rule enforcement and system safeguards;

1.3 CME provides clearing and settlement services for exchange-traded futures and options on futures, as well as for OTC derivatives transactions. The OTC derivatives products relate to the following asset classes: agricultural commodities; credit; energy; environmental commodities; equities; foreign exchange (**FX**); interest rates; and metals. CME also clears agricultural swaps, credit default swaps (**CDS**), FX contracts, and interest rate swaps (**IRS**);

1.4 CME's clearing members consist of banks, securities houses/investment banks, commodity brokers and traders and, to a very limited extent, industrial companies;

1.5 CME does not have any offices or maintain other physical installations in Ontario or any other Canadian province or territory, except for a CME Group marketing office in Calgary, Alberta, whose activities are limited to marketing and development of energy products;

1.6 A clearing firm may become eligible to clear OTC derivatives products by becoming a clearing member of CME to clear only OTC derivatives products, including CDS and IRS, but not any exchange-traded futures and/or options on futures, on its own behalf, and on behalf of its branches and affiliated companies (**OTC Derivatives Clearing Member**);

1.7 All OTC Derivatives Clearing Members must complete an application for membership and make deposits into a CME guaranty fund;

1.8 CME implements and maintains a system of financial safeguards designed to anticipate potential market exposures and ensure sufficient resources are available to cover future obligations;

1.9 To become an OTC Derivatives Clearing Member, a clearing firm must deposit a US$5,000,000 membership deposit with CME and meet any other requirements for clearing OTC derivatives;

1.10 All OTC Derivatives Clearing Members, including those that are incorporated/domiciled in non-US jurisdictions, must be subject to a legal and insolvency regime acceptable to CME. CME has sought Canadian legal advice in respect of obtaining an analysis of Canada's legal and insolvency regime in accordance with CFTC requirements. Additionally, clearing members from non-US-jurisdictions must generally use the US branch of CME's settlement banks for performance bond deposits and variation margin. CME also accepts in certain circumstances, among other things, gold, foreign currency and foreign sovereign debt for performance bond deposits and variation margin, which may be held by CME outside of the US;

1.11 CME ClearPort is a web-based graphical user interface owned, maintained and operated by CME to view and submit bilaterally negotiated transactions (*e.g.*, OTC derivatives products) into CME for clearing and settlement services by clearing firms and their customers in the US;

1.12 CME proposes to offer direct clearing access in Ontario for purposes of submission for clearing IRS, CDS, and other OTC derivatives products (collectively, the **Clearing Products**), via CME ClearPort, to certain Canadian financial institutions (within the meaning of such term in subsection 1.1(3) of National Instrument 14-101 *Definitions*) that have a head office or principal place of business in Ontario (the **Ontario Clearing Members**);

1.13 CME will file a full application to the Commission for a subsequent order recognizing CME as a clearing agency under subsection 21.2(0.1) of the OSA or exempting it from the requirement to be recognized as a clearing agency under section 147 of the OSA (**Subsequent Order**).

AND WHEREAS based on the Application and the representations CME has made to the Commission, the Commission has determined that the granting of the Order would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that, pursuant to section 147 of the OSA, CME is exempt on an interim basis from recognition as a clearing agency under subsection 21.2(0.1) of the OSA;

PROVIDED THAT:

1. This Order shall terminate on the earlier of (i) June 30, 2013 and (ii) the effective date of the Subsequent Order;

2. CME's clearing agency activities in Ontario are limited to the clearing of Clearing Products for Ontario Clearing Members;

3. CME shall continue to be registered with the CFTC as a DCO under the CEA;

4. CME shall promptly notify staff of the Commission of:

   (a) any material change or proposed material change in its regulatory oversight by the CFTC;

   (b) any material problems with the clearance and settlement of transactions that could materially affect the safety and efficiency of CME;

   (c) any new OTC service or product cleared by CME that CME would like to offer to Ontario Clearing Members; and

   (d) the admission of any Ontario Clearing Members;

5. Upon the commencement of clearing of OTC derivatives trades by CME on behalf of Ontario Clearing Members, CME shall maintain and submit the following information to the Commission on a quarterly basis, or promptly upon request of Commission staff in respect of each cleared Clearing Product:

   (a) the average daily volume and value of trades cleared during the previous quarter, for each Ontario Clearing Member; and

(b) the portion of total volume and value of trades cleared during the previous quarter for all clearing members that represents the total volume and value of trades cleared during the previous quarter for each Ontario Clearing Member;

6. CME shall promptly provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff;

7. CME shall file with the Commission no later than August 31, 2012, a complete application with accurate information and relevant supporting documents for the Subsequent Order. If the August 31, 2012 deadline is not met, the Commission may terminate the interim order without further notice to CME;

8. CME shall submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of CME in Ontario; and

9. CME shall file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities in Ontario.

DATED June 8, 2012.

"James Carnwath"

"Christopher Portner"

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Simply Wealth Financial Group Inc. et al.

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

AND

IN THE MATTER OF
SIMPLY WEALTH FINANCIAL GROUP INC.,
NAIDA ALLARDE, BERNARDO GIANGROSSO,
K&S GLOBAL WEALTH CREATIVE STRATEGIES INC.,
KEVIN PERSAUD, MAXINE LOBBAN AND
WAYNE LOBBAN

REASONS AND DECISION

Hearing:	January 3, 4 and 13, 2012		
Decision:	June 21, 2012		
Panel:	James D. Carnwath, Q.C.	–	Commissioner and Chair of the Panel
Appearances:	Peter W. G. Carey	–	For Kevin Persaud
	Unrepresented	–	Simply Wealth Financial Group Inc., Naida Allarde, Bernardo Giangrosso, Maxine Lobban, Wayne Lobban and K & S Global Wealth Creative Strategies Inc.
	Christie Johnson	–	For Staff of the Commission

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PART ONE – OVERVIEW

A. Nature of the Hearing

[1] This was a hearing on the merits (the **"Hearing"**) before the Ontario Securities Commission (the **"Commission"**) pursuant to sections 127 and 127.1 of the *Securities Act,* R.S.O. 1990, c. S.5, as amended (the ***"Act"***), to determine whether it is in the public interest to make orders against the respondents Simply Wealth Financial Group Inc. (**"Simply Wealth"**), Naida Allarde (**"Ms. Allarde"**), Bernardo Giangrosso (**"Mr. Giangrosso"**), K&S Global Wealth Creative Strategies Inc. (**"K&S"**), Kevin Persaud ("Mr. Persaud"), Maxine Lobban (**"Ms. Lobban"**) and Wayne Lobban (**"Mr. Lobban"**) (collectively, the **"Respondents"**).

[2] The Hearing took place on January 3, 4 and 13, 2012.

B. The Respondents

[3] Simply Wealth is an Ontario company incorporated on January 14, 2003 and has its registered office in North York, Ontario. Simply Wealth has never been registered with the Commission in any capacity.

[4] Ms. Allarde is a director and officer of Simply Wealth. She resides in Ontario. Ms. Allarde was registered with the Commission as a salesperson in the category of Scholarship Plan Dealer from May 1, 2000 to November 27, 2000, from December 22, 2000 to December 31, 2002, and from March 5, 2003 to July 30, 2004.

[5] Mr. Giangrosso is a director and officer of Simply Wealth. He resides in Ontario. He has never been registered with the Commission.

[6] K&S was incorporated in Ontario on September 7, 2005 and has its registered office in Pickering, Ontario. K&S has never been registered with the Commission.

[7] Mr. Persaud is the sole director of K&S and was at all material times the directing mind of K&S. He resides in Ontario. Mr. Persaud has never been registered with the Commission.

[8] Ms. Maxine Lobban resides in Ontario. She was registered with the Commission as a salesperson in the category of Scholarship Plan Dealer from April 5, 2000 to November 14, 2001, from November 28, 2001 to September 4, 2002, from September 27, 2002 to December 31, 2003 and from March 29, 2004 to December 31, 2006.

[9] Mr. Wayne Lobban resides in Ontario. He was registered with the Commission as a salesperson in the category of Scholarship Plan Dealer from February 28, 2003 to December 31, 2003.

C. Staff's Allegations

[10] On March 16, 2011, Staff made the following allegations against the Respondents in its Amended Statement of Allegations:

> The conduct of Simply Wealth, and its directors Ms. Allarde, and Mr. Giangrosso, was contrary to the public interest and constituted the following breaches of the Act:
>
> (i) trading without registration contrary to section 25 of the *Act;*
>
> (ii) an illegal distribution of securities contrary to section 53 of the *Act;* and
>
> (iii) as directors of Simply Wealth, Ms. Allarde and Mr. Giangrosso authorized, permitted or acquiesced in breaches of section 25 and 53 of the Act by Simply Wealth contrary to section 129.2 of the *Act.*

The conduct of K&S, and its director Persaud, was contrary to the public interest and constituted the following breaches of the *Act:*

(i) trading without registration contrary to section 25 of the Act;

(ii) an illegal distribution of securities contrary to section 53 of the Act; and

(iii) as a director of K&S, Persaud authorized, permitted or acquiesced in breaches of sections 25 and 53 of the Act by K&S contrary to section 129.2 of the Act.

The conduct of Maxine Lobban and Wayne Lobban was contrary to the public interest and constituted the following breaches of the Act:

(i) trading without registration contrary to section 25 of the Act; and

(ii) an illegal distribution of securities contrary to section 53 of the Act.

D. Evidence Tendered at the Hearing

[11] The Hearing proceeded by way of agreed facts, evidence filed on consent and the oral evidence of Mr. Persaud.

[12] On consent, Staff filed exhibits 1 through 32, which included Agreed Statements of Facts with each Respondent, transcripts of the compelled examinations of each Respondent, Staff's brief entitled "Compensation Received by the Respondents" which sets out the compensation received and realized by each Respondent ("Staff's Financial Analysis"), and various documents relating to Mr. Persaud's promotional activities relating to Gold-Quest securities, which Staff are relying upon to prove its allegations against Mr. Persaud and K&S.

[13] Mr. Persaud testified and filed exhibits 33 to 35. The other Respondents called no oral evidence and filed no additional evidence.

PART TWO – THE FACTS

A. Background Facts: Gold-Quest International

[14] All of the Respondents admitted facts about Gold-Quest International ("Gold-Quest") in their Agreed Statement of Facts, including facts related to the nature of the investment contract, the commission structure, past regulatory proceedings and findings against Gold-Quest, and the current status of Gold-Quest.

B. Unregistered Trading and Illegal Distribution

(a) The Simply Wealth Respondents and the Lobban Respondents

[15] The Agreed Statements of Fact and the admissions made in the course of the compelled examinations of Ms. Allarde, Mr. Giangrosso, Simply Wealth (the **"Simply Wealth Respondents"**), Ms. Lobban and Mr. Lobban (the **"Lobban Respondents"**) establishes that:

- None of the Simply Wealth Respondents or Lobban Respondents were appropriately registered to trade in securities from June 2006 to June 2008 (the **"Material Time"**). Further, Gold-Quest was never registered with the Commission.

- No preliminary prospectus or prospectus has ever been filed with the Commission by Gold-Quest to attempt to qualify the trading of Gold-Quest securities.

- During the Material Time, Ontario residents invested with Gold-Quest as a result of the promotional activities of the Simply Wealth Respondents and Lobban Respondents. These activities included recommending investment in Gold-Quest, facilitating the process of investing in Gold-Quest, and, in certain cases, facilitating the transfer of funds to Gold-Quest on behalf of investors.

- The Simply Wealth Respondents and the Lobban Respondents were aware of the nature of the investment contracts with Gold-Quest. Gold-Quest told investors funds would be invested in the forex market and that they would receive returns of 87.5% per year on their investment.

- The Simply Wealth Respondents and Lobban Respondents received payments for referring investors to Gold-Quest pursuant to the Gold-Quest commission structure. The Simply Wealth Respondents and the Lobban Respondents did not tell the referred investors about the commissions being paid to them by Gold-Quest.

- The Simply Wealth Respondents realized a total of $215,790.00 (USD) in commissions from Gold-Quest as a result of their promotional activities. The Lobban Respondents realized a total of $84,381.50 (CDN) and $36,046.00 (USD) in commissions from Gold-Quest as a result of their promotional activities.

- There were no exemptions under the Act which allowed the Simply Wealth Respondents and the Lobban Respondents to trade in Gold-Quest securities in Ontario.

- The Simply Wealth Respondents and the Lobban Respondents admitted culpability for the breaches of the Act alleged in Staff's Amended Statement of Allegations and further admitted that they engaged in conduct contrary to the public interest.

[16] Staff submit that admissions made by the Simply Wealth Respondents and the Lobban Respondents in their Agreed Statements of Fact and admissions made in the course of their compelled examinations satisfy the essential elements of the allegations made against them. I agree and so find.

(b) The K&S Respondents

(1) The Agreed Statement of Facts

[17] The Agreed Statement of Facts of Mr. Persaud and K&S (the **"K&S Respondents"**) establishes that:

- Neither of the K&S Respondents were registered with the Commission to trade in securities during the Material Time. Further, Gold-Quest was not registered with the Commission to trade in securities during the material time (Ex. 4, Agreed Statement of Facts of the K&S Respondents at paras. 1-2 and 12).

- No preliminary prospectus or prospectus has ever been filed with the Commission by Gold-Quest to attempt to qualify the trading of Gold-Quest securities (Ex. 4, Agreed Statement of Facts of the K&S Respondents at para. 12).

- Mr. Persaud was advised by the principals of Gold-Quest that investors would enter into one-year contracts with Gold-Quest, the invested funds would be invested in the forex market, investors would receive an annual return on their investment of 87.5%, in order to receive this annual return, investors were required to leave their funds with Gold-Quest for a period of one year, and that investors who introduced another investor to Gold-Quest would receive the title of "Administrative Manager" for the new investor (Ex. 4, Agreed Statement of Facts of the K&S Respondents at para. 14).

- Mr. Persaud booked a conference room for a Gold-Quest presentation held on November 2, 2006. He sent out invitations to this presentation to various family members and friends (Ex. 4, Agreed Statement of Facts of the K&S Respondents at paras. 16 and 17).

- During the Material Time, nine Ontario residents invested approximately $69,000 (USD) with Gold-Quest. Mr. Persaud acted as an Administrative Manager for these nine investors (Ex. 4, Agreed Statement of Facts of the K&S Respondents at para. 24).

- The K&S Respondents were aware of the terms of the Gold-Quest Commission Structure. Mr. Persaud provided investors with information concerning the commissions (Ex. 4, Agreed Statement of Facts of the K&S Respondents at para. 25).

- One of the individuals to whom Mr. Persaud acted as Administrative Manager was Donald Iain Buchanan (**"Buchanan"**) who promoted Gold-Quest to Ontario residents, resulting in additional investment of approximately $1,800,000 (USD) with Gold-Quest. The K&S Respondents were the Managing Directors or Supervisory Managing Directors for investors that were brought into Gold-Quest under Buchanan (Ex. 4, Agreed Statement of Facts of the K&S Respondents at paras. 26 and 27).

- The K&S Respondents received $90,000 (USD) in commissions from Gold-Quest, pursuant to the Gold-Quest commission structure (Ex. 4, Agreed Statement of Facts of the K&S Respondents at paras. 27 and 28).

(2) Further Evidence

[18] Other evidence presented or filed in the course of the Hearing, including admissions made in the course of Mr. Persaud's compelled examination, Mr. Persaud's testimony at the Hearing, and the documentary evidence filed, establish the following facts which were not included in, or which elaborate upon, the K&S Respondents' Agreed Statement of Facts:

- Mr. Persaud invited his aunt, Susan Chetram, to a Gold-Quest presentation held on November 2, 2006, and directed her to the Gold-Quest website at www.g-qi.com (Ex. 16).

- Mr. Persaud personally sent invitations to the Gold-Quest presentation to approximately 15 to 20 family members and friends who were told that if they wanted to invest in Gold-Quest they would invest through the individual who invited them (Ex. 34).

- Mr. Persaud knew about the Gold-Quest commission structure prior to the Gold-Quest presentation and knew that he would receive a commission of 58% on the investment of anyone who signed up below him in the Gold-Quest commission structure (Ex. 7, Q181-186).

- Mr. Persaud spoke with Gold-Quest representatives on the phone respecting investors who had not received a subscription agreement or a welcome letter from Gold-Quest (Ex. 7, Q208-210).

- Mr. Persaud provided Gold-Quest membership forms to potential investors for them to fill out, would assign an ID code to the new investors once the forms were completed, and would send the completed forms by fax back to Gold-Quest (Ex. 7, Q341-350 and Q472-480).

- Mr. Persaud filled out the application forms for investors beneath him in the Gold-Quest commission structure who wanted to become Administrative Managers. He would then fax the completed forms to Gold-Quest for processing (Hearing Transcript of January 4, 2012 at pp. 35:3-18, 46:17-47:4).

- Mr. Persaud vetted the first few forms submitted by Administrative Managers beneath him in the Gold-Quest commission structure to ensure that the forms were filled out correctly. Persaud assigned an ID code to the new agreement and then faxed it to Gold-Quest. The ID code ensured that Gold-Quest knew the new investor was beneath Persaud in the Gold-Quest commission structure and he received commissions of 1.5% per month as “Managing Director” and 1% per month as “Supervisory Managing Director” (Ex. 7, Q444-448).

- Mr. Persaud communicated with investors beneath him in the Gold-Quest commission structure on a regular basis and acted as a link between Gold-Quest and his investors. Persaud answered inquiries investors had concerning Gold-Quest and their on-going investment in Gold-Quest (Exs. 24-29, 31 and 32).

[19] Additional admissions made by Mr. Persaud in the course of his compelled examination, which corroborate the Agreed Statement of Facts and statements made by Mr. Persaud during his testimony at the Hearing, can be found in Schedule “2” to Staff’s closing submissions.

C. Compensation Received and Realized by the Respondents

[20] Staff completed an analysis of the investor funds received and compensation realized by the Respondents as a result of their promotional activities regarding Gold-Quest securities. A summary of the results of such analysis follows:

RESPONDENT	TOTAL RECEIVED	TOTAL REALIZED
Naida Allarde	$958,738.73 (USD)	$215,790.00 (USD)
Bernardo Giangrosso		
Simply Wealth Financial Group Inc.		
Kevin Persaud	$254,007.04 (USD)	$90,000 (USD)
K&S Global Creative Wealth Strategies Inc.		
Maxine Lobban	$187,997.88 (USD)	$84,381.50 (CDN)
Wayne Lobban		$36,046.00 (USD)

(Ex. 15, Staff’s Financial Analysis, index and supporting documentation)

[21] Further, all Respondents agreed that they realized the amounts above in their Agreed Statements of Fact.

PART THREE – THE LAW & ANALYSIS

A. The Commission's Public Interest Jurisdiction

[22] The Commission mandate in upholding the purposes of the Act is set out in section 1.1 of the Act as follows:

> **1.1 Purposes –** The purposes of this Act are,
>
> (a) to provide protection to investors from unfair, improper or fraudulent practices; and
>
> (b) to foster fair and efficient capital markets and confidence in capital markets.

[23] The Commission is guided by certain fundamental principles in upholding and achieving the purposes of the Act. These principles include:

> **2.1 Principles to Consider –** In pursuing the purposes of this Act, the Commission shall have regard to the following fundamental principles:
>
> […]
>
> 2. The primary means for achieving the purposes of this Act are,
>
> i. requirements for timely, accurate and efficient disclosure of information;
>
> ii. restrictions on fraudulent and unfair market practices and procedures; and
>
> iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.
>
> (s. 2.1.2 of the Act)

[24] Administrative proceedings under the public interest provisions of the Act are one way in which the Commission carries out its statutory purposes (s. 127 of the Act).

[25] The purpose of the Commission's public interest jurisdiction is neither remedial nor punitive; it is protective and preventative, intended to be exercised to prevent likely future harm to Ontario's capital markets (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132 at paras. 42).

[26] The public interest provisions in the *Act* "reveal the breadth of the Commission's public interest mandate" and make clear the intention of the Legislature to "give the Commission a very broad discretion to determine what is in the public interest" (*Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557 at paras. 70-71).

[27] The scope of the Commission's discretion in defining the public interest is limited only by the general purposes of the *Act* (*Gordon Capital Corp. v. Ontario (Securities Commission)*, [1991] O.J. No. 934 (Ont. Ct. J.) at p. 9 (Q.L.)).

B. Standard of Proof

[28] It is well established that the standard of proof that must be met in administrative proceedings is the civil standard of the "balance of probabilities". The civil standard of proof and the nature of the evidence which is required to meet that standard are integral to the duty of administrative tribunals to provide a fair hearing (*Re ATI Technologies* (2005), 28 O.S.C.B. 8558 at paras. 13-14).

[29] The Supreme Court of Canada stated that the "evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test." However, this requirement of clear, convincing and cogent evidence does not elevate the standard of proof beyond the balance of probabilities (*F. H. v. McDougall,* [2008] 3 S.C.R. 41 at para. 46).

[30] Keeping in mind the standard of proof of a balance of probabilities and the requirements of clear, convincing and cogent evidence, in considering the evidence it is appropriate to attribute to corporate respondents the knowledge of, and information known by, directors of the company during the Material Time (Re Biovail Corporation (2010), 33 O.S.C.B. 8914 at para. 84).

C. Unregistered Trading in Securities

(a) Registration Requirements

[31] Subsection 25(1)(a) of the *Act*, prior to September 28, 2009, stated:

> **25.(1) Registration for trading –** No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
>
> […]
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[32] The requirement that individuals and companies be registered with the Commission to trade in securities is one of the cornerstones of the regulatory framework of the Act. Through the registration process, the Commission attempts to ensure that those who engage in trading activities meet the necessary proficiency requirements, are of good character and satisfy the appropriate ethical standards (*Gregory & Co. v. Quebec (Securities Commission)*, [1961] S.C.R. 584 (**"*Gregory*"**) at p. 4 (Q.L.); *Re First Global Ventures S.A.* (2007), 30 O.S.C.B. 10473 at para. 122).

[33] The registration requirement was discussed by the Supreme Court of Canada in *Gregory* as follows:

> The paramount object of the Act is to ensure that persons who, in the province, carry on the business of trading in securities or acting as investment counsel, shall be honest and of good repute and, in this way, to protect the public, in the province or elsewhere, from being defrauded as a result of certain activities initiated in the province by persons therein carrying on such a business. For the attainment of this object, trading in securities is defined in s. 14 [s. 1(1) of the Act]; registration is provided in s. 16 [s. 25 of the Act] as a requisite to trade in securities.
>
> (*Gregory*, above, at p. 4 (Q.L.))

[34] With respect to the phrase "trade in a security" used in subsection 25(1)(a) of the *Act,* the definition of "security" under subsection 1(1)(n) of the *Act* includes "any investment contract". "Investment contract" is not a term defined in the *Act* but its interpretation has been the subject of a long line of established jurisprudence.

(b) An Investment Contract is a Security

[35] In the leading case, Pacific Coast Coin, the Supreme Court of Canada considered what constitutes an "investment contract" within the meaning of the Act and reviewed the test established by the United States Supreme Court in Howey "Does the scheme involve an investment of money in a common enterprise, with profits to come solely from the efforts of others?" (*Pacific Coast Coin Exchange of Canada v. Ontario (Securities Commission)*, [1978] 2 S.C.R. 112 (**"Pacific Coast Coin"**) at pp. 10-11 (Q.L.); *Securities and Exchange Commission v. W.J. Howey Co.,* 328 U.S. 293 (1946) (**"Howey"**) at pp. 298-299 (p. 4, LexisNexis)).

[36] In *State of Hawaii, Commissioner of Securities v. Hawaii Market Center, Inc.*, cited with approval in Pacific Coast Coin, the Supreme Court of Hawaii crafted a risk capital approach to defining an investment contract. The Court based its approach on a recognition that:

> [T]he salient feature of securities sales is the public solicitation of venture capital to be used in a business enterprise […] This subjection of the investor's money to the risks of an enterprise over which he exercises no managerial control is the basic economic reality of a security transaction.
>
> (*State of Hawaii, Commissioner of Securities v. Hawaii Market Center, Inc.,* 485 P. 2d 105 (1971) at 109 (p. 3, LexisNexis)

[37] In *Pacific Coast Coin,* the Supreme Court of Canada refined the branch of the Howey test respecting whether "profits come solely from the efforts of others":

> The word 'solely' in [the Howey] test has been criticized and toned down by many jurisdictions in the United States. As mentioned in the Turner case, to give a strict interpretation to the "solely" […] "would not serve the purpose of the legislation. Rather we adopt a more realistic test, whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise". In the same case of Turner, the expression "common enterprise" has been defined to mean […] "one in which the fortunes of the investor are [i]nterwoven with and dependent upon the efforts and success of those seeking the

investment or of third parties". These refinements of the test, I accept.

(*Pacific Coast Coin,* above, at p.11 (Q.L.))

[38] The Supreme Court of Canada's formulation of the test in Pacific Coast Coin thus requires the tribunal to consider:

(1) an investment of money;

(2) with an intention or expectation of profit;

(3) in a common enterprise, in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties; and

(4) whether the efforts made by those other than the investor are undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.

(*Pacific Coast Coin*, above, at p. 11(Q.L.))

[39] The Court considered the third and fourth parts together and accepted that a common enterprise "exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter)." The relationship was one in which the investor's role was limited to the advancement of money, and the managerial control over the success of the enterprise was that of the promoter. The Court held that the "community" or "commonality" necessary for an investment contract is between the investor and the promoter (*Pacific Coast Coin*, above, at p. 12 (Q.L.)).

[40] The Supreme Court of Canada also observed that the intention of the Legislature is evident in the broad terms employed in defining "security" in the Act. The Court described the Act as "remedial legislation which must be construed broadly, and … read in the context of the economic realties to which it is addressed. Substance, not form, is the governing factor" (*Pacific Coast Coin*, above, at p. 10 (Q.L.)).

[41] The application of the investment contract test formulated by the Supreme Court of Canada in Pacific Coast Coin must be consonant with the important public policy goals and mandate of the Commission. To achieve the purposes of the Act, the definition of "investment contract" must embody a flexible rather than a static principle, one that adapts to the countless investment schemes devised by those who seek to use others' money on the promise of profits (*Pacific Coast Coin,* above, at p. 10 (Q.L.)).

[42] I find that the Gold-Quest membership agreements are "investment contracts" for the following reasons: (1) individuals would provide Gold-Quest with monies; (2) individuals would expect to receive a 87.5% rate of return per annum on their monies; and (3) would expect that their monies would be invested by Gold-Quest in the forex market with investors taking a passive role in the success or failure of the enterprise. In the Gold-Quest scheme, the investor's role was limited to the advancement of money, while the managerial control over the success of the enterprise rested with Gold-Quest.

(c) Trading and Acts in Furtherance of a Trade

[43] The definition of "trade" or "trading" as defined in subsection 1(1) of the Act includes:

(a) any sale or disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise,

[…]

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing.

[44] The inclusion of the word "indirectly" in the definition of "acts in furtherance" reflects an express intention on the part of the Legislature to capture conduct which seeks to avoid the registration requirement by doing indirectly that which is prohibited directly (Re Goldbridge Financial Inc. et al. (2011), 34 O.S.C.B. 1064 at para. 27).

[45] An act constitutes an act in furtherance of a trade if there is a sufficient proximate connection between the act and the trade in securities:

There is no bright line separating acts, solicitations and conduct indirectly in furtherance of a trade from acts, solicitations and conduct not in furtherance of a trade. Whether a particular act is in furtherance of an actual trade is a question of fact that must be answered in the circumstances of each case. A useful guide is whether the activity in question had a sufficiently proximate connection to an actual trade.

(*Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47)

[46] The Commission has found that a variety of activities constitute acts in furtherance of trades including, but not limited to:

(a) providing potential investors with subscription agreements to execute;

(b) distributing promotional materials concerning potential investments;

(c) issuing and signing share certificates;

(d) preparing and disseminating materials describing investment programs;

(e) preparing and disseminating forms of agreements for signature by investors;

(f) conducting information sessions with groups of investors; and

(g) meeting with individual investors.

(*Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 ("***Momentas***") at para. 80)

[47] In *Re Guard Inc.,* the Commission found that the preparation and dissemination of materials describing the business of the company and which advised recipients of the opportunity to invest in an offering constituted acts in furtherance of a trade. The Commission found that the respondent's activities, taken as a whole, amounted to the preparation of the market by creating an interest in the respondent's activities and a solicitation of potential investors (*Re Guard* (1996), 19 O.S.C.B. 3737 at p. 18 (Q.L.)).

[48] Solicitation or direct contact with investors is not required for an act to constitute an act in furtherance of a trade (*Re Lett* (2004), 27 OSCB 3215 at paras. 48-51 and 64; *Re Allen* (2005), 28 O.S.C.B. 8541 at para 85)

[49] An act in furtherance of a trade does not require that an investment contract be completed or that an actual trade otherwise occur. Any claim that an actual trade must occur for there to be an act in furtherance of a trade would necessarily limit the effectiveness of and negate the purpose of the Act, which is to regulate those who trade, or purport to trade, in securities (*Re First Federal Capital (Canada) Corp.* (2004), 27 O.S.C.B. 1603 at paras. 46-47 and 50-51).

[50] The Commission has found that it must adopt a contextual approach and assess "the totality of [a respondent's] conduct and the setting in which the acts have occurred" to determine whether non-registrants have acted in furtherance of a trade; the primary focus of this assessment is the effect these acts had on the persons at whom the acts were directed (*Momentas,* above, at para. 77).

(d) Did the Simply Wealth Respondents and the Lobban Respondents Trade in Securities?

[51] The admissions, described at paragraph 15 above, confirm that the conduct of the Simply Wealth Respondents and the Lobban Respondents, with respect to securities, was in breach of the *Act.* These respondents traded in securities without being registered to do so, contrary to s. 25 of the *Act.*

(e) Did the K&S Respondents Trade in Securities?

[52] I reject the submissions that Kevin Persaud's actions were merely of an administrative function as opposed to acts in furtherance of a trade. I do so for the following reasons:

- He invited approximately 15 to 20 persons to attend the presentation on Gold-Quest in Toronto;
- Nine of the persons he invited to the presentation invested in Gold-Quest;
- He recommended to his Aunt that she consider investing in Gold-Quest and directed her to its website;
- When he issued his invitations to the presentation, he knew the compensation scheme offered by Gold-Quest and, as an original inviter he would reap 58% of investments made by his invitees, with possible future benefits to follow;
- He was the Administrative Manager to those investors who were required to go through him in any dealings with Gold-Quest;

- He helped investors complete their forms and forwarded those forms to Gold-Quest; and
- He was paid $90,000.00 for his services, an unlikely sum for a purely administrative function.

[53] I find these acts of the K&S Respondents, taken in there totality, to be acts in furtherance of trading contrary to s. 25 of the *Act.*

(f) Do the K&S Respondents have a defense of due diligence?

[54] Counsel for the K&S Respondents made closing submissions claiming that lack of motive, intention or knowledge on Mr. Persaud's part were relevant considerations when determining breach.

[55] Following the closing oral submissions, I directed the Secretary to invite written submissions on the decision in *Re Sabourin* (2009), 32 O.S.C.B. 2707 ("***Sabourin***") which was not cited to me in argument.

[56] In particular, I drew counsel's attention to paras. 64 to 71 of Sabourin. Paragarphs 64 to 66 of *Sabourin* provide:

> [64] An issue raised in this proceeding is whether what the Respondents knew, or believed, or intended has any relevance in this proceeding. Staff submits that it need not establish motive, intention, knowledge or belief on the part of Respondents in order to prove its allegations. Staff relies on the following passage from *Standard Trustco Ltd.* (Re) (1992), 15 O.S.C.B. 4322 at 4359-60:
>
> > While the Commission should consider the state of mind of the Respondents in deciding whether to exercise its public interest jurisdiction, it is not determinative. It is not necessary for us to find that the Respondents acted wilfully or deceitfully in order to exercise our public interest jurisdiction. In the case of *Gordon Capital Corporation and Ontario Securities Commission* (1990), 13 OSCB 2035, affirmed (1991) 14 OSCB 2713 (Ont. Div. Ct.) at p. 14, Craig J. stated:
> >
> > > The fact that Gordon may have acted without malevolent motive and inadvertently is not determinative of the right of the OSC to exercise its regulatory and discretionary powers to impose a sanction upon Gordon.
> >
> > Although that case involved a hearing into whether it was in the public interest to suspend, cancel, restrict or impose conditions on the registration of a registrant and not a section 128 hearing, we believe the same principle applies in the case at hand.
>
> [65] In *Re Gordon Capital Corporation* (1990), 13 O.S.C.B. 2035, affirmed (1991), 14 O.S.C.B. 2713 (Ont. Div. Ct.) [*Gordon Capita*l], the respondents conceded that breaches of the Act occurred, but argued that they should be excused on the basis that the breaches were inadvertent and not reasonably foreseeable. The Commission rejected that position.
>
> [66] In affirming the Commission's decision, the Ontario Divisional Court indicated that the classification of offences into categories of "absolute liability", "strict liability" and full "mens rea" is only relevant to criminal and quasi-criminal proceedings and that the due diligence defence is not applicable to proceedings that are regulatory, protective or corrective in nature. The court emphasized the distinction between charging a respondent with a criminal or quasicriminal offence and alleging that a respondent breached a regulatory statute: while the former may result in punitive consequences, regulatory proceedings are protective of the public in regulating certain activities. The primary purpose of proceedings under the Act is "to maintain standards of behaviour and regulate the conduct of those who are licensed to carry on business in the securities industry." The court, therefore, concluded that the Commission did not commit any error in law by rejecting the due diligence defence (*Gordon Capital, supra* at 2723-26 (Ont. Div.Ct.).

[57] Counsel for the K&S Respondents submits that para. 59 of *Sabourin,* which is a direct cite of *Momentas* (at para. 77) noted above at paragraph 50 of this decision, would seem to indicate that the state of mind of the individual charged would be relevant. With respect, I disagree. Paragraph 59 of *Sabourin* found that "[s]uch approach requires an examination of the totality of the conduct and the setting in which the acts have occurred, the primary consideration of which is the effects the acts had on those to whom they were directed"[emphasis added].

D. Distributing Securities Without a Prospectus

[58] During the Material time, s. 53(1) of the *Act* stated:

> **53. (1) Prospectus required –** No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be distributed of security, unless a preliminary prospectus or a prospectus have been filed and receipts have been issued for them by the Director.

[59] As found earlier at paragraph 16, the Simply Wealth Respondents and the Lobban Respondents admitted to culpability of breaches of the Act alleged against them. They traded in securities without a prospectus or preliminary prospectus being filed with the Commission and without a receipt being issued by the Director.

[60] I find that the K&S Respondents engaged in acts in furtherance of trade, as described at paragraph 52 above, which were also trades of securities without a prospectus or preliminary prospectus being filed with the Commission and without a receipt being issued by the Director. Therefore, the K&S Respondents are in breach of s. 53(1) of the Act.

E. Director and Officer Liability

[61] During the Material time, s. 129.2 of the Act stated:

> **129.2 Directors and Officers –** For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[62] Ms. Allarde and Mr. Giangrosso were directors of Simply Wealth. They were aware of the nature of the investment contracts, acknowledged the involvement of Simply Wealth and admitted to culpability for breaches of the *Act.* As a result, I find that Ms. Allarde and Mr. Giangrosso authorized, permitted or acquiesced in breaches of sections 25 and 53 of the *Act* by Simply Wealth, contrary to s. 129.2 of the *Act.* I similarly find that Mr. Persaud, as the sole director of K&S, authorized, permitted or acquiesced in breaches of sections 25 and 53 of the *Act* by K&S contrary to s. 129.2 of the *Act.*

PART FOUR - CONCLUSION

[63] I find the conduct of Simply Wealth and its directors Ms. Allarde and Mr. Giangrosso, was contrary to the public interest and constituted the following breaches of the *Act:*

- trading without registration contrary to section 25 of the Act;
- an illegal distribution of securities contrary to section 53 of the Act; and
- as directors of Simply Wealth, Ms. Allarde and Mr. Giangrosso authorized, permitted or acquiesced in breaches of sections 25 and 53 of the Act by Simply Wealth, contrary to section 129.2 of the Act.

[64] I find the conduct of K&S, and its director Kevin Persaud, was contrary to the public interest and constituted the following breaches of the *Act:*

- trading without registration contrary to section 25 of the *Act;*
- an illegal distribution of securities contrary to section 53 of the *Act*; and
- as a director of K&S, Kevin Persaud authorized, permitted or acquiesced in breaches of sections 25 and 53 of the *Act* by K&S, contrary to section 129.2 of the *Act.*

[65] I find the conduct of Maxine Lobban and Wayne Lobban was contrary to the public interest and constituted the following breaches of the Act:

- trading without registration contrary to section 25 of the *Act;* and
- an illegal distribution of securities contrary to section 53 of the *Act.*

[66] The parties are directed to contact the Office of the Secretary to the Commission within ten days to schedule a sanctions and costs hearing, failing which a date will be set by the Office of the Secretary.

Dated this 21st day of June, 2012.

"James D. Carnwath"

3.1.2 Peter Beck et al.

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

AND

IN THE MATTER OF
PETER BECK, SWIFT TRADE INC. (continued as 7722656 Canada Inc.),
BIREMIS, CORP., OPAL STONE FINANCIAL SERVICES S.A., BARKA CO. LIMITED,
TRIEME CORPORATION and CALM OCEANS L.P.

SETTLEMENT AGREEMENT BETWEEN STAFF AND THE RESPONDENTS

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "**Commission**") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. s.5, as amended (the "Act"), it is in the public interest for the Commission to approve this settlement agreement ("**Settlement Agreement**") and make certain orders in respect of Peter Beck ("**Beck**"); Swift Trade Inc. (continued as 7722656 Canada Inc.)("**Swift Trade**"); Biremis, Corp. ("**Biremis**"); Opal Stone Financial Services S.A. ("**Opal Stone**"); Barka Co. Limited ("**Barka**"); Trieme Corporation ("**Trieme**"); and Calm Oceans L.P. ("**Calm Oceans**"), which is a limited partnership sometimes referred to as "**Anguilla LP**" (collectively, the "**Swift Trade Group**" or "**Group**", or the "**Respondents**" and each, individually, a "**Member**").

2. All terms shall have the same meaning as in the Act, except where otherwise provided.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission ("**Staff**") agrees to recommend settlement of the proceeding commenced by the Notice of Hearing dated March 23, 2011, as subsequently amended, issued in connection with the allegations as set out in the Statement of Allegations of Staff dated March 23, 2011 (the "**Statement of Allegations**"), including the hearing ("**TCTO Hearing**") referenced by Notice of Hearing dated July 19, 2011 (collectively, the "**Proceeding**") against the Respondents in accordance with the terms and conditions set out in Part V of this Settlement Agreement. The Respondents agree to the making of an order in the form attached as Schedule "A", based on the facts set out below.

PART III – AGREED FACTS

4. The Respondents admit the facts set out in Part III of this Settlement Agreement solely for the purposes of this Settlement Agreement.

5. This Settlement Agreement and the facts and admissions as set out herein are wholly without prejudice to the Respondents in any other proceeding including, without limitation, any civil, administrative or other action or proceeding currently pending or that may be brought by any person or agency in Canada or elsewhere, whether or not this Settlement Agreement is approved by the Commission. Without limiting the generality of the foregoing, the Respondents expressly deny that this Settlement Agreement is intended to be an admission of liability in any such other proceeding and expressly deny any such admission of liability in any such other proceeding.

i. The Respondents

A. Peter Beck

6. Beck is an Ontario resident. Beck has, or had, a direct or indirect ownership interest in each of the other Respondents, except for: (i) Barka, which is owned by the estate of Beck's father; and (ii) Calm Oceans, the general partner of which is owned by a trust settled by Beck's late father. Beck is a beneficiary of that trust.

7. Beck was the co-founder of Swift Trade and he was also its President and director. Beck is the director and majority shareholder of BRMS Holdings Inc. ("**BRMS**"), which owned 100% of Swift Trade. Beck had been registered under the Act as the trading officer for Swift Trade from September, 2002 to December, 2010. He was also the designated compliance officer of Swift Trade from November, 2004 to August, 2006. From December, 2009 until Swift Trade's dissolution in December, 2010, Beck was registered under the Act as the ultimate designated person (the "**UDP**") and dealing representative for Swift Trade. Beck has not been registered under the Act since December, 2010.

B. Swift Trade Inc.

8. Swift Trade was incorporated by Beck under the laws of Ontario in 2002. Swift Trade was registered under the Act as an "exempt market dealer" from September 28, 2009 until its dissolution in December, 2010. From September 18, 2002 to September, 2009, Swift Trade was registered under the Act as a "limited market dealer".

9. In December 2010, Swift Trade participated in a series of corporate actions which resulted in its continuation as 7722656 Canada Inc. On December 13, 2010, 7722656 Canada Inc. dissolved.

C. Biremis, Corp.

10. Biremis was incorporated under the laws of Massachusetts in 2004 and became a Canadian corporation in July, 2011. Beck is the President and a director of Biremis, and Biremis is a subsidiary of BRMS. Biremis is registered with the U.S. Securities and Exchange Commission (the "**SEC**") as a "broker-dealer" and is a licensed member of the Financial Industry Regulatory Authority ("**FINRA**"). On July 15, 2011, Biremis requested that its registration with the SEC and its membership in FINRA be terminated.

D. Opal Stone Financial Services S.A.

11. Opal Stone was incorporated under the laws of Uruguay in 2007. Opal Stone has never been registered under the Act. Beck's late father settled a private family trust, which wholly owns Opal Stone. Beck was the President of Opal Stone in or about the time it was created. Opal Stone was Biremis' client from September 2007 until July 2011, and Swift Trade was a client of Opal Stone from May, 2009 until Swift Trade's dissolution in December, 2010.

E. Barka Co. Limited

12. Barka was incorporated under the laws of Cyprus in 2004 for the sole purpose of trading securities for its own account using individual traders. It has never been registered under the Act. Barka was a client of Swift Trade. Barka is owned 100% by the estate of Beck's father.

F. Trieme Corporation

13. Trieme was incorporated under the laws of Ontario in 2005 for the sole purpose of trading securities for its own account using individual traders. It has never been registered under the Act. Trieme was a client of Swift Trade. Trieme ceased all trading activities on November 30, 2010. Beck is the director and sole shareholder of Trieme.

G. Calm Oceans L.P.

14. Calm Oceans is a limited partnership organized under the laws of Anguilla. Barka, Trieme and other entities are limited partners in Calm Oceans. The general partner of Calm Oceans is Calm Seas Inc. (the "**General Partner**"), which is an Anguillan company owned by a trust settled by Beck's late father. Beck is a beneficiary of that trust.

ii. Overview of the Respondents' Business

15. Since approximately 2002, the Respondents, together with certain other affiliated and unaffiliated entities, have been involved in a large-volume, day-trading business using individual traders ("**Traders**"), retained by certain Members of the Group, to place orders to buy and sell securities (the "**Business**").

16. The Traders work from offices ("**Trader Locations"**) in Ontario, elsewhere in Canada and around the world, and place buy/sell orders for certain Members of the Group using proprietary software (the "**Software**"). The Software runs on both the Traders' terminals and network servers located at third-party facilities ("**Data Centers**").

17. The Traders place orders for the purchase and sale of securities (each a "**Trade Order**") using the Software. Trade Orders are executed on marketplaces in Canada ("**Canadian Marketplaces**") and marketplaces outside of Canada ("**International Marketplaces**").

18. In 2008, there were approximately 4,500 Traders in 190 offices around the world, including in Canada, China, Europe, India, Israel, Kazakhstan, Nicaragua, Panama, and Russia. The Traders traded approximately 22 billion shares on Canadian and International Marketplaces.

19. None of the Traders is or has been registered under the Act to trade on behalf of any of the Respondents.

20. Since late 2010, the Business has been carried on by Calm Oceans. The General Partner retains the Traders directly to trade for Calm Oceans' account. Previously, at various times, the Traders were retained by Barka, Trieme and/or other entities.

21. Calm Oceans is an offshore, international, proprietary day-trading limited partnership based in Costa Rica. It does not solicit anyone to buy or sell securities and it gives no advice or recommendations.

22. Calm Oceans has never been registered under the Act. With respect to trading on Canadian Marketplaces, Calm Oceans currently relies on the exemption from the dealer registration requirement contained in section 25 of the Act ("**Dealer Registration Requirement**") where such exemption applies to trades solely through a registered dealer where the dealer is registered in a category that permits the trades. This exemption is contained in section 8.5 of National Instrument 31-103 *Registration Requirements and Exemptions* ("**NI 31-103**").

23. Calm Oceans currently licenses the Software from Orbixa Technologies Inc. (previously named Orbixa Management Services Inc.) ("**Orbixa**"), which also supports and develops the Software. Orbixa designs and maintains Calm Oceans' network infrastructure. Orbixa also provides certain accounting, legal and compliance consulting and administrative services to Calm Oceans, that were described to Staff and the Consultant (as defined below) by the Respondents and/or Orbixa. Orbixa's office is located in Toronto, Ontario.

iii. The Compliance and Consultants' Review

24. Staff of the Compliance and Registrant Regulation Branch ("**CRR**") of the Commission conducted a compliance review of Swift Trade in or around March, 2009 (the "**Compliance Review**"). This Compliance Review took place at Swift Trade's offices at 55 St. Clair Avenue West in Toronto, Ontario and related to compliance with Ontario securities law for the year ended December 31, 2008 (the "**Review Period**"). As part of the Compliance Review process, CRR issued a deficiency report to Swift Trade, dated August 7, 2009 (the "**Deficiency Report**").

25. A review (the "**Consultant's Review**") by a consultant retained by Staff (the "**Consultant**") was initiated in response to deficiencies identified in the Deficiency Report. The purpose of the Consultant's Review was to obtain a comprehensive understanding of the business operations and affairs of Swift Trade and certain of its affiliates and related parties. The nature and scope of the Consultant's Review were specified in the terms and conditions (the "**ST Terms and Conditions**") imposed on Swift Trade's registration by the Director on December 21, 2009 (for an aggregate period of 12 months). The Consultant focused on the records and operations of Swift Trade and certain related parties for the three-month period from October 1 to December 31, 2008. The Consultant completed its report in February, 2011.

iv. Breaches of Ontario Securities Law and Conduct Contrary to the Public Interest

26. As described below, Swift Trade, under the direction of Beck, breached Ontario securities law by failing to establish, maintain and enforce a supervisory system of controls and/or written supervisory procedures that were reasonably designed to provide reasonable assurance that it complied with Ontario securities law, and to manage its risks in accordance with prudent business practices. The Respondents breached Ontario securities law and/or engaged in conduct contrary to the public interest, as detailed below.

A. Financial Management Deficiencies

27. During the Review Period, Swift Trade was deficient in the management of its financial affairs in that it failed to properly record its business transactions and financial affairs completely and accurately. Specifically, Swift Trade failed to reconcile its accounting records with those of third-party service providers, and to record accounting entries correctly.

28. Swift Trade and Beck failed to hire, retain and supervise adequate finance personnel. During the Compliance Review and the Consultant's Review, the finance personnel were not able to demonstrate complete or satisfactory knowledge of Swift Trade's structure and operations.

29. Also, Beck failed to adequately supervise Swift Trade's process for hiring the 2008 Director of Finance (and Controller for Biremis), who had resigned from his previous employment where his conduct had been under investigation by his employer. At the time he hired this individual, Beck was not aware of the basis for the investigation, however, he did not adequately investigate this individual's employment history. Within days of being charged with numerous criminal violations, this individual informed Beck that criminal charges had been filed against him but misled Beck as to the nature of those charges. Although Beck was misled, he failed to investigate the criminal allegations against this individual further. This individual was subsequently convicted in Ontario of two counts of breach of public trust and one count of theft in relation to his previous employment. This individual's employment was subsequently terminated after Beck learned that he had concealed his criminal charges.

30. Swift Trade's conduct was contrary to the requirements of Ontario securities law and in particular, sections 1.3 and 3.1 of the then applicable OSC Rule 31-505 *Conditions of Registration* ("**OSC Rule 31-505**") and section 11.1 of NI 31-103. Swift Trade's conduct was also contrary to the public interest.

B. Trade Review Deficiencies

31. For the period of 2008 to 2010, Swift Trade had inadequate compliance practices and it failed to perform or demonstrate that it had performed adequate reviews of trading for possible instances of manipulative or deceptive trading activities. In particular:

(a) Swift Trade and Beck failed to hire, retain and supervise adequate compliance personnel. During the Compliance Review, the compliance personnel were not able to demonstrate complete or satisfactory knowledge about the Swift Trade Group's structure and operations. In 2008, Swift Trade's compliance personnel consisted of two individuals, each with limited compliance experience, who were responsible for monitoring all Trade Orders and trading activity described in paragraph 18.

(b) The trade reviews that were performed by compliance personnel for the purpose of identifying potential illegal trades known as "wash trades" were inadequate, and Swift Trade did not detect, or failed to demonstrate that it had detected, certain instances of questionable trading, as it had maintained unclear and insufficient records of trade review findings.

(c) By failing to perform, or demonstrate that it had performed, adequate trade reviews, Swift Trade was in breach of the requirements of Ontario securities law, and in particular, the provisions of the then applicable OSC Rule 31-505 and/or section 11.1 of NI 31-103. By failing to perform, or demonstrate that it had performed, adequate trade reviews, Swift Trade also acted contrary to the public interest.

C. Failure to Maintain or Produce Complete and Accurate Records

32. Swift Trade failed to maintain or produce all of the records that were requested by CRR during the Compliance Review or by the Consultant during the Consultant's Review. Swift Trade failed to comply with subsection 19(3) of the Act, and the ST Terms and Conditions by failing to produce records that it was required to keep pursuant to section 19 of the Act.

33. Swift Trade and Beck also failed to supervise adequately Swift Trade's designated compliance officer and chief compliance officer in their performance of these regulatory obligations.

D. Beck's Non-Compliance with Ontario Securities Law

34. As the registered UDP of Swift Trade, in the period from December, 2009 until the dissolution of Swift Trade in December, 2010, Beck failed to adequately supervise the activities of Swift Trade and each individual acting on its behalf to ensure their compliance with Ontario securities law, contrary to section 5.1 of NI 31-103.

35. As a director or officer of Swift Trade, Beck authorized, permitted or acquiesced in the non-compliance with Ontario securities law by these companies in the circumstances described above, and as such, is deemed by section 129.2 of the Act to also have not complied with Ontario securities law.

E. Conduct Contrary to the Public Interest Relating to the Dealer Registration Requirement

36. Prior to December, 2011, due to the network's legacy structure, all buy/sell orders for Canadian and International Marketplaces (other than in Asia) were routed through trading-related servers in a Data Center located, up to December 2011, at 1 Yonge Street in Toronto, Ontario (the "**Toronto Data Center**").

37. Each of Calm Oceans, Swift Trade, Biremis, Opal Stone, Barka and Trieme transmitted and/or received orders to sell securities on International Marketplaces via the Toronto Data Center.

38. Once submitted, these trade orders were transmitted and received by other Members of the Group through the Toronto Data Center. These trade orders would be transmitted through and received by various Members in accordance with various contractual arrangements entered into between Members and then transmitted to a marketplace for execution on a virtually instantaneous basis.

39. By December 7, 2011, all trading-related servers and certain equipment were moved from the Toronto Data Center to a similar facility outside of Canada. As a result, buy/sell orders no longer route through the Toronto Data Center. Servers other than trading-related servers remain in Toronto, Ontario.

40. Particulars of the conduct contrary to the public interest related to the Dealer Registration Requirement are as follows:

(i) Swift Trade

Since at least March, 2007, Swift Trade received and transmitted orders to sell securities from its two clients, Barka and Trieme (collectively the "ST Related Clients"), for execution on International Marketplaces. Swift Trade transmitted these orders through Opal Stone and Biremis, and not through appropriately registered dealers under the Act, for execution on International Marketplaces in circumstances for which it had no exemption from the Dealer Registration Requirement.

(ii) Biremis

From 2007 until 2011, Biremis received sale orders from its clients (Swift Trade and Opal Stone), which originated from Trader Locations in Ontario and elsewhere and were routed through the Toronto Data Center. Biremis then transmitted these orders for execution on International Marketplaces. Biremis engaged in such conduct without the use of appropriately registered dealers under the Act and in circumstances in which it had no exemption from the Dealer Registration Requirement. Biremis has advised Staff that it has ceased all trading activity in 2011 and is currently inactive.

(iii) Opal Stone

Since at least 2007, Opal Stone had been receiving sale orders from its clients (including, since May, 2009, Swift Trade, and included orders originating from Trader Locations in Ontario and elsewhere) which were routed through the Toronto Data Center. Opal Stone then transmitted these orders to Biremis for execution on International Marketplaces. Opal Stone engaged in such conduct without the use of appropriately registered dealers under the Act and in circumstances in which it had no exemption from the Dealer Registration Requirement. Opal Stone has advised Staff that it has ceased all trading activity in 2011.

(iv) ST Related Clients: Barka and Trieme

From May, 2009 to December 2010, the ST Related Clients transmitted sale orders to Swift Trade for execution on International Marketplaces, which orders originated from Trader Locations in Ontario and elsewhere, and which were routed through the Toronto Data Center. The ST Related Clients engaged in such conduct without the use of appropriately registered dealers under the Act and in circumstances in which they had no exemption from the Dealer Registration Requirement.

(v) Calm Oceans

Calm Oceans became a client of Opal Stone on November 1, 2010. From that date until July, 2011, Calm Oceans submitted sale orders to Opal Stone, using the Toronto Data Center, for execution through or by Biremis on Canadian and International Marketplaces. The orders for execution on International Marketplaces were placed without the use of appropriately registered dealers under the Act and in circumstances in which Calm Oceans had no exemption from the Dealer Registration Requirement.

As of July 15, 2011, Calm Oceans submitted orders for execution directly to (or via sponsored access by) unaffiliated dealers for execution on Canadian and International Marketplaces.

Prior to January, 2012, individual Traders (located in Ontario and elsewhere) submitted orders on behalf of Calm Oceans, using the Toronto Data Center, directly to (or via sponsored access by) unaffiliated dealers, who were not registered as investment dealers under the Act, for execution on International Marketplaces. Calm Oceans engaged in such conduct without the use of appropriately registered dealers under the Act and in circumstances in which it had no exemption from the Dealer Registration Requirement.

On January 18, 2012 the Respondents, including Calm Oceans, undertook that individual Traders retained by the Respondents and located in Ontario would only place orders to purchase or sell securities on marketplaces within or outside of Ontario on the Respondents' behalf if such orders were placed directly (or via sponsored access) with a dealer that is registered as an investment dealer under the Act.

Calm Oceans has advised Staff that in or about January, 2012, individual Traders located in Ontario ceased placing orders on behalf of Calm Oceans for execution on International Marketplaces.

41. None of Biremis, Opal Stone, Barka, Trieme, or Calm Oceans has ever been registered under the Act.

42. It is Staff's position that the conduct described above in paragraph 40 was in breach of the Dealer Registration Requirement contained in section 25 of the Act. Notwithstanding that the Respondents take issue with Staff's position on this particular matter, they acknowledge that this conduct was contrary to the public interest and have given the undertakings as set out in paragraph 48 below.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

43. By engaging in the conduct described above, Swift Trade and Beck admit and acknowledge that they contravened Ontario securities law and the Respondents admit and acknowledge that they acted contrary to the public interest.

PART V –TERMS OF SETTLEMENT

44. The Respondents agree to the terms of settlement listed below.

45. The Commission will make an order, pursuant to subsection 127(1) and section 127.1 of the Act, that:

(a) This Settlement Agreement is approved;

(b) Beck be reprimanded;

(c) The Respondents be ordered to pay:

(i) an administrative penalty in the aggregate amount of $100,000 (jointly and severally) for their failure to comply with Ontario securities law as specified above, and this administrative penalty shall be for the allocation to or for the benefit of third parties; and

(ii) the aggregate amount of $300,000 on a joint and several basis, representing a portion of Staff's costs in this matter;

(d) Each of Swift Trade, Biremis, and Opal Stone be prohibited, for a period of 6 years, from:

(i) becoming or acting as a registrant;

(ii) trading in any securities in Ontario; or

(iii) acquiring any securities in Ontario;

(e) Each of Barka and Trieme be prohibited, for a period of 4 years, from:

(i) becoming or acting as a registrant;

(ii) trading in any securities in Ontario; or

(iii) acquiring any securities in Ontario;

(f) where, for the purposes of the above subparagraphs (d)(ii) and (iii) and (e)(ii) and (iii), "trading" or "acquiring" shall, for greater certainty, include,

1. at any location in Ontario, receiving or transmitting an order to purchase or sell securities (regardless of the location from which the order originates, whether inside or outside of Ontario), and

2. at any location outside of Ontario,

a. receiving an order to buy or sell securities from a person or company located in Ontario, or

b. transmitting an order to buy or sell securities to a person or company located in Ontario,

provided that, for greater certainty, Barka and Trieme may each continue to act as limited partners of Calm Oceans and/or partners or investors in any successor of Calm Oceans, and, in that capacity, perform related activities that do not constitute "trading" or "acquiring", such as receiving trading-related profits from, or funding trading-related losses incurred by, Calm Oceans or its successors; and

despite the foregoing, Trieme may, for investment purposes, acquire debt securities through or from a registered dealer, and trade such debt securities solely through or to a registered dealer in the circumstances described in section 8.5 of NI 31-103;

(g) Calm Oceans be prohibited, for a period of 4 years, from:

(i) becoming or acting as a registrant

provided that, for greater certainty, the prohibition referred to in the above subparagraph (g)(i) shall not affect its ability to trade in Ontario in reliance on applicable exemptions from registration;

(h) Beck be:

(i) ordered to resign all positions that he holds as a director or officer of a registrant; and

(ii) prohibited, for a period of 2 years, from becoming or acting as a:

(A) registrant;

(B) director or officer of a registrant which, for greater certainty, shall include acting as an integral part of the mind and management of a registrant or performing functions similar to those normally performed by an officer or director for a registrant;

provided that, for greater certainty, the prohibition referred to in the above subparagraph (h)(ii) shall not prevent Beck or companies he owns or family trusts related to him or accounts of his from (i) trading securities in Ontario in reliance on applicable exemptions from registration except where herein, or otherwise, prohibited, or (ii) acting on behalf of technology providers to registrants in the support and development of software and the design and maintenance of network infrastructure.

46. The Respondents agree to make the payments ordered above in subparagraph 45(c) by certified cheque promptly following the approval by the Commission of this Settlement Agreement. None of the Respondents will be reimbursed for, or receive a contribution toward, this payment from any other person or company who is not a Respondent.

47. The Respondents undertake to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in subparagraphs 45 (b), (d), (e), (f), (g) and (h) above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

48. Each of:

(a) Biremis,

(b) Trieme,

(c) Orbixa.

(d) Beck, on behalf of himself, and any other person or company under his direction or control (Biremis, Trieme, Orbixa and any other person or company under Beck's direction or control being referred to as a "**Beck Entity**"),

(e) Barka,

(f) Opal Stone and

(g) Calm Oceans,

makes the following undertakings on its own behalf (or, in the case of Beck, on behalf of himself and the Beck Entities), which will be executed in the form attached as Schedule "B", and which shall remain in effect as against each person or company giving such undertaking, unless and until that person or company becomes registered under the Act as an investment dealer or as otherwise ordered by the Commission. Each undertakes to the Commission that:

(i) it will not be a Controlling Person[1] of a registrant if, at the relevant time, it is prohibited from becoming or acting as a registrant pursuant to the above-referenced order of the Commission,

provided that, with respect to Beck's current ownership interest in Omega Securities Inc. ("**OSI**"),

(A) the undertaking in this subparagraph shall not preclude Beck from continuing to hold his current beneficial ownership interest in OSI or its direct and indirect parent companies, Omega ATS Inc. and/or BRMS Holdings Inc., or any successor to any of such entities, including by way of securities exchange transaction, so long as, for a period of two years, Beck shall not participate in the management of, or management decision-making of, OSI (but for greater certainty he may act on behalf of a technology provider to OSI in the support and development of software and the design and maintenance of network infrastructure); and

(B) Beck shall provide a copy of the Settlement Agreement and the order made in the form attached as Schedule "A" to the President, Chief Executive Officer and the board of directors of OSI.

(ii) any order to purchase or sell securities for or on behalf of Beck, a Beck Entity, Barka, Opal Stone or Calm Oceans, originating from a Trader Location in Ontario must proceed directly to (or via sponsored access by) a dealer that is registered as an investment dealer under the Act before the purchase or sale is executed on any marketplace, and, for greater certainty, shall not be routed through any Beck Entity, or any other entity in a circumstance where that other entity is itself engaged in trading unless that other entity is registered as an investment dealer under the Act;

(iii) any order to purchase or sell securities for or on behalf of Beck, a Beck Entity, Barka, Opal Stone or Calm Oceans, originating from a Trader Location outside of Ontario must proceed to (or via sponsored access by) a dealer that is registered as an investment dealer under the Act before the purchase or sale is executed on any marketplace in Ontario, and, for greater certainty, shall not be routed in Ontario through any Beck Entity, or any other entity in a circumstance where that other entity is itself engaged in trading unless that other entity is registered as an investment dealer under the Act; provided that such order may, before being transmitted into Ontario, be routed by or on behalf of a foreign intermediary; and

(iv) none of Beck, the Beck Entities, Barka, Opal Stone or Calm Oceans will use any trading-related servers that are located in Ontario and that are owned or operated by any of them to receive or transmit orders to purchase or sell securities.

PART VI – STAFF COMMITMENT

49. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceedings under Ontario securities law against the Respondents, Orbixa or any other Beck Entity complying with the undertaking in Schedule "B", in relation to the allegations in the Statement of Allegations, and the facts contained in Part III of this Settlement Agreement, subject to the provisions of paragraph 50, below.

50. If the Commission approves this Settlement Agreement and the Respondents fail to comply with any of the terms of this Settlement Agreement, Staff may bring proceedings under Ontario securities laws against the Respondents. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

51. Nothing in this Part VI shall preclude Staff from seeking an order from the Commission in relation to inter-jurisdictional enforcement pursuant to subsection 127(10) of the Act.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

52. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for June 22, 2012, or on another date agreed to by Staff and the Respondents, according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure*.

53. Staff and the Respondents agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing, unless the parties agree that additional facts should be submitted at the settlement hearing.

[1] In these Terms of Settlement, "Controlling Person" of a registrant means a person or company that, alone or in combination with any other person or company, has beneficial ownership of, or direct or indirect control or direction over, 10% or more of any class or series of voting securities of the registrant.

54. If the Commission approves this Settlement Agreement, the Respondents agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

55. If the Commission approves this Settlement Agreement, none of the parties will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

56. Whether or not the Commission approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

57. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

    (i) this Settlement Agreement and all discussions and negotiations between Staff and the Respondents before the settlement hearing takes place will be without prejudice to Staff and the Respondents and shall not be disclosed or referred to in any way by any party; and

    (ii) Staff and the Respondents will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

58. The parties will keep the terms of this Settlement Agreement confidential until the Commission approves this Settlement Agreement. At that time, the parties will have no further obligations to maintain the confidentiality of the Settlement Agreement. If the Commission does not approve this Settlement Agreement, all parties must continue to keep the terms of this Settlement Agreement confidential, unless they agree in writing not to do so or are required by law to disclose the terms.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

59. The parties may sign separate copies of this Settlement Agreement. Together, these signed copies will form a binding agreement.

60. A copy of any signature will be treated as an original signature.

DATED this 20th day of June, 2012.

"Daria Gavrikova"	)	"Peter Beck"
Witness	)	Peter Beck

DATED this 20th day of June, 2012.

"Daria Gavrikova"	)	"Peter Beck"
Witness	)	7722656 CANADA INC. (formerly Swift Trade Inc.) Per: Peter Beck Title: Former Director, solely for the purposes of this Settlement Agreement

DATED this 20th day of June, 2012.

	)	
	)	
"Daria Gavrikova"	)	"Peter Beck"
Witness	)	BIREMIS, CORP.
	)	Per: Peter Beck
	)	Title: President

DATED this 20th day of June, 2012.

	)	
	)	
"Daria Gavrikova"	)	"Richard Gómez Fernández"
Witness	)	OPAL STONE FINANCIAL SERVICES S.A.
	)	Per: Richard Gómez Fernández
	)	Title: Director

DATED this 19th day of June, 2012.

	)	"Altruco Managament Limited"
	)	
	)	"Panagiota Charalambous"
Witness	)	BARKA CO. LIMITED
	)	Per: Panagiota Charalambous
	)	Authorized Signatory
	)	

DATED this 20th day of June, 2012.

	)	
"Daria Gavrikova"	)	
	)	"Peter Beck"
Witness	)	TRIEME CORPORATION
	)	Per: Peter Beck
	)	Title: President

DATED this 20th day of June, 2012.

	)	
	)	
"Herbert Francisco Rodriquez Lopez"	)	"Herbert F. Rodriguez Chaves"
Witness	)	CALM OCEANS L.P.
	)	Per: CALM SEAS INC.
	)	(General Partner)
	)	Herbert F. Rodriguez Chaves,
	)	Title: President
	)	

DATED this 19th day of June, 2012.

	)	
	)	
	)	
"Brooke Shulman"	)	
	)	"Tom Atkinson"
Witness	)	TOM ATKINSON
		Director, Enforcement Branch

SCHEDULE "A"

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

AND

**IN THE MATTER OF
PETER BECK, SWIFT TRADE INC. (continued as 7722656 Canada Inc.), BIREMIS, CORP.,
OPAL STONE FINANCIAL SERVICES S.A., BARKA CO. LIMITED,
TRIEME CORPORATION and CALM OCEANS L.P.**

**ORDER
(Sections 127 and 127.1 of the Securities Act)**

WHEREAS on March 23, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in connection with a Statement of Allegations dated March 23, 2011, to consider whether it is in the public interest to make orders, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), against Peter Beck ("Beck"); Swift Trade Inc. (continued as 7722656 Canada Inc.)("Swift Trade"); Biremis, Corp. ("Biremis"); Opal Stone Financial Services S.A. ("Opal Stone"); Barka Co. Limited ("Barka"); Trieme Corporation ("Trieme"); and a limited partnership sometimes referred to as "Anguilla LP", legally known as Calm Oceans L.P. ("Calm Oceans");

AND WHEREAS on July 19, 2011, the Commission issued a Notice of Hearing to consider whether, in the opinion of the Commission, it is in the public interest for the Commission to issue a Temporary Order as specified therein, pursuant to subsections 127(1) and (5) of the Act;

AND WHEREAS on June ?, 2012, the Commission issued an amended Notice of Hearing and related Amended Statement of Allegations to amend the title of proceedings to replace the reference to Anguilla LP with Calm Oceans;

AND WHEREAS the Respondents and Staff of the Commission ("Staff") entered into a settlement agreement dated June, 2012 (the "Settlement Agreement") in which they agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated March 23, 2011, as subsequently amended, including the hearing referenced by the Notice of Hearing dated July 19, 2011, subject to the approval of the Commission;

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

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

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

IT IS ORDERED THAT:

A. This Settlement Agreement is approved;

B. Beck is hereby reprimanded, pursuant to clause 6 of subsection 127(1) of the Act;

C. The Respondents shall pay:

(i) pursuant to clause 9 of subsection 127(1) of the Act, an administrative penalty in the aggregate amount of $100,000 (jointly and severally), for the allocation to or for the benefit of third parties in accordance with subsection 3.4(2)(b) of the Act; and

(ii) pursuant to section 127.1 of the Act, the aggregate amount of $300,000 on a joint and several basis, representing a portion of Staff's investigation and hearing costs in this matter;

D. Each of Swift Trade, Biremis, and Opal Stone be prohibited, for a period of 6 years from the date of approval of the Settlement Agreement, from:

(i) becoming or acting as a registrant, pursuant to clause 8.5 of subsection 127(1) of the Act;

(ii) trading in any securities in Ontario, pursuant to clause 2 of subsection 127(1) of the Act; and

(iii) acquiring any securities in Ontario, pursuant to clause 2.1 of subsection 127(1) of the Act;

E. Each of Barka and Trieme be prohibited, for a period of 4 years from the date of approval of the Settlement Agreement, from:

(i) becoming or acting as a registrant, pursuant to clause 8.5 of subsection 127(1) of the Act;

(ii) trading in any securities in Ontario, pursuant to clause 2 of subsection 127(1) of the Act; and

(iii) acquiring any securities in Ontario, pursuant to clause 2.1 of subsection 127(1) of the Act;

F. where, for the purposes of the above subparagraphs (D)(ii) and (iii) and (E)(ii) and (iii), "trading" or "acquiring" shall, for greater certainty, include,

1. at any location in Ontario, receiving or transmitting an order to purchase or sell securities (regardless of the location from which the order originates, whether inside or outside of Ontario), and

2. at any location outside of Ontario,

a. receiving an order to buy or sell securities from a person or company located in Ontario, or

b. transmitting an order to buy or sell securities to a person or company located in Ontario,

provided that, for greater certainty, Barka and Trieme may each continue to act as limited partners of Calm Oceans and/or partners or investors in any successor of Calm Oceans, and, in that capacity, perform related activities that do not constitute “trading” or “acquiring”, such as receiving trading-related profits from, or funding trading-related losses incurred by, Calm Oceans or its successors; and

despite the foregoing, Trieme may, for investment purposes, acquire debt securities through or from a registered dealer, and trade such debt securities solely through or to a registered dealer in the circumstances described in section 8.5 of NI 31-103;

G. Calm Oceans be prohibited, for a period of 4 years from the date of approval of the Settlement Agreement, from:

(i) becoming or acting as a registrant, pursuant to clause 8.5 of subsection 127(1) of the Act;

provided that, for greater certainty, the prohibition referred to in the above subparagraph (G)(i) shall not affect its ability to trade in Ontario in reliance on applicable exemptions from registration;

H. Beck be:

(i) ordered to resign all positions that he holds as a director or officer of a registrant, pursuant to clause 8.1 of subsection 127(1) of the Act; and

(ii) prohibited, for a period of 2 years, from the date of approval of the Settlement Agreement, from becoming or acting as a:

(A) registrant, pursuant to clause 8.5 of subsection 127(1) of the Act;

(B) director or officer of a registrant, pursuant to clause 8.2 of subsection 127(1) of the Act which, for greater certainty, shall include acting as an integral part of the mind and management of a registrant or performing functions similar to those normally performed by an officer or director for a registrant;

provided that, for greater certainty, the prohibition referred to in the above subparagraph (H)(ii) shall not prevent Beck or companies he owns or family trusts related to him or accounts of his from (i) trading securities in Ontario in reliance on applicable exemptions from registration except where herein, or otherwise, prohibited, or (ii) acting on behalf of technology providers to registrants in the support and development of software and the design and maintenance of network infrastructure.

DATED at Toronto this day of June, 2012.

_____ _____

_____

SCHEDULE "B"

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

AND

IN THE MATTER OF
PETER BECK,
SWIFT TRADE INC. (continued as 7722656 Canada Inc.), BIREMIS, CORP.,
OPAL STONE FINANCIAL SERVICES S.A., BARKA CO. LIMITED,
TRIEME CORPORATION and CALM OCEANS L.P.

UNDERTAKING TO THE
ONTARIO SECURITIES COMMISSION

This Undertaking is given in connection with a settlement agreement between the Respondents and Staff of the Commission ("Staff") dated June 2012 (the "Settlement Agreement"), and Order of the Commission dated June 21, 2012 (the "Order"), and all terms shall have the same meaning as therein.

Each of:

(a) Biremis, Corp. ("**Biremis**")

(b) Trieme Corporation ("**Trieme**"),

(c) Orbixa Technologies Inc. ("**Orbixa**"),

(d) Peter Beck ("**Beck**"), on behalf of himself, and any other person or company under his direction or control (Biremis, Trieme, Orbixa and any other person or company under Beck's direction or control being referred to as a "**Beck Entity**"),

(e) Barka Co. Limited ("**Barka**"),

(f) Opal Stone Financial Services S.A. ("**Opal Stone**") and

(g) Calm Oceans L.P. ("**Calm Oceans**"),

undertakes to the Commission on its own behalf (or, in the case of Beck, on behalf of himself and the Beck Entities) that:

1. Unless and until that person or company becomes registered under the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Securities Act**") as an investment dealer, or as otherwise ordered by the Commission:

   i. it will not be a Controlling Person[2] of a registrant if, at the relevant time, it is prohibited from becoming or acting as a registrant pursuant to the above-referenced Order of the Commission,

   provided that, with respect to Beck's current ownership interest in Omega Securities Inc. ("**OSI**"),

   (A) the undertaking in this subparagraph shall not preclude Beck from continuing to hold his current beneficial ownership interest in OSI or its direct and indirect parent companies, Omega ATS Inc. and/or BRMS Holdings Inc., or any successor to any of such entities, including by way of securities exchange transaction, so long as, for a period of two years, Beck shall not participate in the management of, or management decision-making of, OSI (but for greater certainty he may act on behalf of a technology provider to OSI in the support and development of software and the design and maintenance of network infrastructure); and

[2] "Controlling Person" of a registrant means a person or company that, alone or in combination with any other person or company, has beneficial ownership of, or direct or indirect control or direction over, 10% or more of any class or series of voting securities of the registrant.

(B) Beck shall provide a copy of the Settlement Agreement and the Order to the President, Chief Executive Officer and the board of directors of OSI.

ii. any order to purchase or sell securities for or on behalf of Beck, a Beck Entity, Barka, Opal Stone or Calm Oceans, originating from a Trader Location in Ontario must proceed directly to (or via sponsored access by) a dealer that is registered as an investment dealer under the Act before the purchase or sale is executed on any marketplace, and, for greater certainty, shall not be routed through any Beck Entity, or any other entity in a circumstance where that other entity is itself engaged in trading unless that other entity is registered as an investment dealer under the Act;

iii. any order to purchase or sell securities for or on behalf of Beck, a Beck Entity, Barka, Opal Stone or Calm Oceans, originating from a Trader Location outside of Ontario must proceed to (or via sponsored access by) a dealer that is registered as an investment dealer under the Act before the purchase or sale is executed on any marketplace in Ontario, and, for greater certainty, shall not be routed in Ontario through any Beck Entity, or any other entity in a circumstance where that other entity is itself engaged in trading unless that other entity is registered as an investment dealer under the Act; provided that such order may, before being transmitted into Ontario, be routed by or on behalf of a foreign intermediary; and

iv. none of Beck, the Beck Entities, Barka, Opal Stone or Calm Oceans will use any trading-related servers that are located in Ontario and that are owned or operated by any of them to receive or transmit orders to purchase or sell securities.

The undersigned may each sign separate copies of this Undertaking. A copy of any signature will be treated as an original signature.

Dated at Toronto this 20 day of June, 2012.

Dated at Toronto this 20 day of June, 2012.

"Daria Gavrikova"	)	“Peter Beck”
Witness	)	PETER BECK, on behalf of himself, and any other person or company under Beck’s direction or control

Dated at Toronto this 20 day of June, 2012.

"Daria Gavrikova”	)	“Peter Beck”
Witness	)	BIREMIS, CORP. Per: Peter Beck Title: President

Dated at Toronto this 20 day of June, 2012.

"Daria Gavrikova”	)	“Peter Beck”
Witness	)	TRIEME CORPORATION Per: Peter Beck Title: President

Dated at Toronto this 20 day of June, 2012.

"Daria Gavrikova"	)	"Peter Beck"
Witness	)	ORBIXA TECHNOLOGIES INC. Per: Peter Beck Title: President

Dated at this 19th day of June, 2012.

	)	"Altruco Managament Limited"
	)	"Panagiota Charalambous"
Witness	)	BARKA CO. LIMITED Per: Panagiota Charalambous Authorized Signatory

Dated at Toronto this 20 day of June, 2012.

"Daria Gavrikova"	)	"Richard Gómez Fernández"
Witness	)	OPAL STONE FINANCIAL SERVICES S.A. Per: Richard Gómez Fernández Title: Director

Dated at San Jose this 20 day of June , 2012.

"Herbert Francisco Rodriquez Lopez"	)	"Herbert F. Rodriguez Chaves"
Witness	)	CALM OCEANS L.P. Per: CALM SEAS INC. (General Partner) Herbert F. Rodriguez Chaves, Title: President

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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
Immunall Science Inc.	11 Jun 12	22 Jun 12		25 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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5.1.1 NI 23-103 Electronic Trading

NOTICE OF NATIONAL INSTRUMENT 23-103 ELECTRONIC TRADING

I. INTRODUCTION

The Canadian Securities Administrators (CSA or we) have made National Instrument 23-103 *Electronic Trading* (Instrument) and Companion Policy 23-103 (Companion Policy). The Instrument and Companion Policy set out a regulatory framework to ensure that marketplace participants and marketplaces manage the risks associated with electronic trading.

The Instrument has been adopted or is expected to be adopted by each member of the CSA. The final text of the Instrument and Companion Policy is being published concurrently with this Notice and can also be obtained on the websites of various CSA members.

Jurisdictions that are a party to Multilateral Instrument 11-102 *Passport System* (currently all jurisdictions except Ontario) are also publishing amendments to that instrument that permit the use of the passport system for aspects of the Instrument. The amendments were published for comment on August 19, 2011. No comments were received. These related amendments are contained in Appendix B to this Notice.

Subject to all ministerial approval requirements, the Instrument will come into force on March 1, 2013 in all CSA jurisdictions. The Companion Policy will come into force at the same time. Additional information regarding the implementation or adoption of the Instrument in each province or territory is included at Appendix A to this Notice.

CSA staff have worked closely with staff of the Investment Industry Regulatory Organization of Canada (IIROC) on the development of the Instrument and Companion Policy. IIROC staff have shared their knowledge and expertise regarding many of the issues raised by electronic trading and we thank them for their valuable contribution. IIROC is publishing today proposed amendments to the Universal Market Integrity Rules that reflect and support various provisions of the Instrument for comment. Further information may be found at www.iiroc.ca.

II. BACKGROUND

On April 8, 2011, the CSA published proposed National Instrument 23-103 and its related companion policy (2011 Proposal). The CSA invited public comment on all aspects of the 2011 Proposal. Twenty nine comment letters were received. We have considered the comments received and thank all commenters for their submissions. A list of those who submitted comments, as well as a summary of comments and our responses to them are attached at Appendix C to this Notice. Copies of the comment letters are posted at www.osc.gov.on.ca.

The Instrument was developed to address certain risks of electronic trading and builds on the obligations outlined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103). Section 11.1 of NI 31-103 requires a registered firm to manage the risks associated with its business in accordance with prudent business practices.

The Instrument addresses the risks of electronic trading by providing specific requirements for controls, policies and procedures relating to electronic trading. Electronic trading risks arise from greater speed and automation in the Canadian market. This increases the potential impact of a trading error or a rapid series of errors, caused by a computer or human fault. The Instrument and Companion Policy provide a regulatory framework that will help ensure that marketplace participants and marketplaces are appropriately managing the risks associated with widespread electronic trading.

The Instrument is designed to address a number of risks related to electronic trading including credit risk, market integrity risk, technology or systems risk and regulatory arbitrage risk. For a detailed discussion of these risks, please see the notice that accompanied the 2011 Proposal.

Requirements Pertaining to Direct Electronic Access

The 2011 Proposal included requirements regarding the provision of direct electronic access (DEA), however the Instrument does not include these requirements. In considering the DEA provisions, we determined that similar forms of marketplace access, such as an order execution service account or dealer-to-dealer routing raise risks similar to those of DEA and therefore

should be subject to similar requirements. As a result, the CSA and IIROC are developing a package of proposed rules that would help ensure that similar forms of marketplace access are treated similarly. We expect to publish this revised proposal for comment in the coming months.

III. PURPOSE AND SUBSTANCE OF INSTRUMENT AND COMPANION POLICY

A. Key Aspects of the Instrument

The Instrument sets out requirements that apply to:

1. marketplace participants,

2. the use of automated order systems, and

3. marketplaces.

The Instrument applies to the trading of all securities on alternative trading systems and recognized exchanges (together, "marketplaces"). We note that the definition of a "security" varies among the CSA jurisdictions. In some jurisdictions, such as Ontario, the Instrument does not apply to commodity futures contracts, but in others, such as Québec, the Instrument would apply to standardized derivatives.

1. Requirements Applicable to Marketplace Participants

The Instrument imposes requirements on marketplace participants that electronically send orders to marketplaces. The purpose of these requirements is to ensure that marketplace participants have policies, procedures and controls reasonably designed to manage the risks associated with electronic trading. We are of the view that these controls are essential in maintaining the integrity of marketplace participants, marketplaces and the Canadian capital market as a whole.

(i) Marketplace Participant Controls, Policies and Procedures

In our view, the risks associated with electronic trading arise when the marketplace participant enters orders electronically for its own trading, acts as an agent handling orders for its clients or when it authorizes clients to access a marketplace using its marketplace participant identifier. Therefore, the Instrument requires that each marketplace participant establish, maintain and ensure compliance with risk management and supervisory controls that are reasonably designed to manage the financial, regulatory and other risks associated with marketplace access.[1]

To assist in early detection of erroneous or non-compliant trades, these risk management and supervisory controls, policies and procedures must be reasonably designed to ensure all orders are monitored and include both automated pre-trade controls and regular post-trade monitoring[2] that systematically limit financial exposure and ensure compliance with applicable marketplace and regulatory requirements.[3]

In addition, the Instrument requires a marketplace participant to have specific controls that are reasonably designed to:

- limit the entry of orders to securities that the marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant, is authorized to trade,
- restrict access to trading to persons authorized to do so,
- ensure that compliance staff of the marketplace participant receive immediate order and trade information,
- enable the marketplace participant to immediately stop or cancel any orders entered by the marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant,
- enable the marketplace participant to immediately suspend or terminate any access to a marketplace, and
- ensure that the entry of orders does not interfere with fair and orderly markets.[4]

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1 Paragraph 3(1)(a) of NI 23-103.
2 Subsection 3(2) of NI 23-103.
3 Subsection 3(3) of NI 23-103.
4 Subsection 3(3) of NI 23-103.

These are minimum requirements. A marketplace participant may want to implement risk management and supervisory controls, policies and procedures that surpass those specifically described in the Instrument, depending on its business model and risk tolerance.

While the above controls are required under the Instrument, we have not mandated specified parameters for these controls. As indicated, the details of the risk management and supervisory controls, policies and procedures may vary from marketplace participant to marketplace participant depending on its business model. For example, a marketplace participant that only handles order flow from retail clients will likely need to develop different risk management controls and supervisory procedures and parameters for those controls than a marketplace participant that mostly receives order flow from sophisticated high frequency traders.

The Instrument also requires that compliance staff of the marketplace participant receive all order and trade information sent by the marketplace participant, and if applicable its clients with marketplace access provided by the marketplace participant, to a marketplace.[5] This will help ensure that the marketplace participant is able to appropriately monitor for any erroneous or non-compliant trading. We expect that participant dealers will establish appropriate safeguards to keep their client trading information confidential and available only to appropriate personnel for regulatory compliance purposes when complying with this provision.

To meet these requirements, both marketplace participants and regulators need clarity about what types of controls, policies and procedures are to be in effect and maintained by the marketplace participant. To achieve this, the Instrument requires that the mandated policies and procedures be in written form and that a marketplace participant maintain a written description of its risk management and supervisory controls.[6]

(ii) Control over Setting and Adjustment of Risk Management and Supervisory Controls

Since the immediate risks arising from all orders, including regulatory compliance obligations, fall on the marketplace participant, we think that it is inappropriate for the marketplace participant to rely on a client or other third party to set and adjust its risk control parameters. Our view is that the risks presented by electronic trading to the marketplace participant and the market as a whole are significant enough that the marketplace participant must set and adjust these critical risk management and supervisory controls to help ensure that it can manage these risks as needed in an effective manner. The Instrument therefore requires that marketplace participants directly and exclusively set and adjust their risk management and supervisory controls, policies and procedures subject to certain limited exceptions.[7]

(iii) Independence of Third Party Providing Risk Management and Supervisory Controls

While marketplace participants may develop their own risk management technology and software, they also have the option to use technology and software developed by third parties, including marketplaces. However, we are of the view that third party risk management and supervisory controls, policies and procedures should only be used if the third party is independent from a marketplace participant's clients or the clients' affiliates. Such independence would assist the marketplace participant in tailoring the controls to meet its specific needs and in ensuring the sufficiency of these controls.

Therefore the Instrument requires that a third party that provides risk management and supervisory controls, policies or procedures to a marketplace participant must be independent from each client of that marketplace participant.[8] The independent third party could be another marketplace participant, an exchange or alternative trading system, a service vendor, or other entity that is not an affiliate, and is otherwise independent, of the client. One exception provided for in the Instrument is that an entity affiliated with a marketplace participant that is also a client of the marketplace participant may provide supervisory and risk management controls to the marketplace participant. However, the marketplace participant is still required to directly and exclusively set and adjust the parameters of the supervisory and risk management controls, policies and procedures.

(iv) Authorization to Set or Adjust Risk Management and Supervisory Controls, Policies and Procedures

We recognize that there are circumstances, such as introducing and carrying arrangements or jitney arrangements that involve multiple dealers, where there may be certain controls that are better administered by the introducing dealer. This is because the introducing dealer has first hand knowledge of the client and is responsible for suitability and other "know your client" obligations.[9] Therefore, while the Instrument requires marketplace participants to directly and exclusively set and adjust its risk management controls, policies and procedures, the Instrument permits a participant dealer to authorize another investment dealer that is directing trading to the participant dealer to set or adjust a control, policy or procedure on the participant dealer's

5 Subparagraph 3(3)(b)(iv) of NI 23-103.

6 Paragraph 3(1)(b) of NI 23-103.

7 Subsection 3(5) of NI 23-103.

8 Subsection 3(4) of NI 23-103.

9 Section 4 of 23-103CP.

behalf.[10] However, the participant dealer must still have controls in place to manage the order flow it receives from the investment dealer.

2. Requirements Applicable to Use of Automated Order Systems

An automated order system is defined in the Instrument as "a system used to automatically generate or electronically transmit orders on a pre-determined basis".[11] This definition is intended to capture both the hardware and software used to generate or transmit orders on a pre-determined basis and includes smart order routers and trading algorithms that are used by marketplace participants, offered by marketplace participants to clients or developed by clients or service vendors.

Such systems can be used to transmit many orders in a very short period of time and if something goes wrong, the market can be negatively impacted very quickly. Due to these risks and because a marketplace participant is responsible for the use of an automated order system that sends orders using its marketplace participant identifier, regardless of its origins, the Instrument requires marketplace participants to take all reasonable steps to ensure that the use of these automated order systems, by itself or any client, does not interfere with fair and orderly markets.[12]

As part of a marketplace participant taking all reasonable steps to ensure that the use of automated order systems does not interfere with fair and orderly markets, the Instrument requires a marketplace participant to have a general understanding of any automated order system used by itself or any client, and to ensure that each automated order system is tested before its initial use and at least annually thereafter.[13] We understand that much of the detailed information about a client's automated order systems may be considered confidential and proprietary. However, this requirement is designed to ensure that the marketplace participant has a sufficient level of knowledge and understanding to identify and manage its risks.[14] We expect these provisions will help to support the fair and orderly functioning of our markets upon the deployment of a smart order router, trading algorithm or any other aspect of an automated order system.

Despite the above requirements, we recognize that it may still be possible for an automated order system to function improperly. In order to address such situations, the Instrument requires a marketplace participant to have controls in place, such as a "kill switch", to disable the automated order system and to be able to immediately prevent orders generated from such a system from reaching a marketplace.[15] We think this provision is essential in mitigating the risk that automated order systems pose to the functioning of our markets.

3. Requirements Applicable to Marketplaces

While the Instrument places obligations on marketplace participants, we think that marketplaces also have an important role to play in managing the risks associated with electronic trading. We note that the marketplace requirements imposed by the Instrument are supplementary to the ones already placed on marketplaces by National Instrument 21-101 *Marketplace Operation*.

The Instrument imposes requirements on marketplaces for: (i) availability of order and trade information, (ii) marketplace controls relating to electronic trading, (iii) marketplace thresholds, and (iv) erroneous trades.

(i) Availability of Order and Trade Information

The Instrument obliges a marketplace to provide its participants with access to their order and trade information, including execution reports, on an immediate basis and on reasonable terms. We expect this information to be an important tool to help marketplace participants implement and monitor the effectiveness of their risk management and supervisory controls. Consequently it is important that no marketplace rule, fee or practice creates an unreasonable barrier to accessing this information. Regarding providing order and trade information on an immediate basis, we would consider the provision of drop copies, which is very close to providing immediate order and trade information, to be acceptable.[16]

(ii) Marketplace Controls Relating to Electronic Trading

Requirements related to marketplace controls were included to help ensure marketplaces have the necessary risk management and supervisory controls, policies and procedures to address the risks that arise from the electronic trading that occurs on their platforms.

10 Section 4 of NI 23-103.
11 Section 1 of NI 23-103.
12 Subsection 5(1) of NI 23-103.
13 Subsection 5(3) of NI 23-103.
14 Part 3 of 23-103CP.
15 Paragraph 5(3)(c) of NI 23-103.
16 Subsection 6(2) of 23-103CP.

The Instrument requires marketplaces to:

- have the ability and authority to terminate all or a portion of a marketplace participant's access,
- regularly assess and document whether it requires any risk management and supervisory controls, policies and procedures relating to electronic trading,
- ensure timely implementation of those risk management and supervisory controls, policies and procedures,
- regularly assess and document the adequacy and effectiveness of its risk management and supervisory controls, policies and procedures, and
- document and promptly remedy any deficiencies in the adequacy or effectiveness of the controls, policies and procedures implemented.[17]

These are minimum requirements and we note that a marketplace may implement additional controls, policies and procedures that it considers necessary to appropriately address the electronic trading risks that arise on its market.

(iii) Marketplace Thresholds

This requirement is part of the follow-up to the events of the May 6, 2010 "flash crash". Under this provision, marketplaces are required to prevent the execution of orders beyond certain thresholds. These thresholds may be determined by a regulation services provider or by a recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) of NI 23-101.[18] There are a variety of methods that may be used to prevent the execution of these orders and IIROC is currently conducting public consultations as to how to best implement this requirement and work with applicable marketplaces, where necessary, in determining the mandated thresholds.

We view these thresholds as important tools in maintaining a fair and orderly market as they could mitigate the type of volatility experienced during the May 6, 2010 "flash crash". This requirement is intended to complement both IIROC's Single Stock Circuit Breaker policy and its proposal for Market-wide Circuit Breakers and we are of the view that a regulation services provider, where applicable, is in the best position to set these types of thresholds.

(iv) Clearly Erroneous Trades

While the controls required by the Instrument should prevent many erroneous trades from occurring, the Instrument also imposes obligations on marketplaces to have the capacity to cancel, vary or correct any trade that is deemed to be erroneous.[19] The Instrument sets out the following circumstances under which a marketplace, when it has retained a regulation services provider, may cancel, vary or correct a trade:

- when instructed to do so by its regulation services provider,
- if the cancellation, correction or variation is requested by a party to the trade, consent is provided by both parties to the trade and the regulation services provider is notified, or
- if the cancellation, correction or variation is necessary to correct a systems issue or error caused by an individual acting on behalf of the marketplace in executing the trade, and permission to cancel, vary or correct the trade has been obtained from the regulation services provider.[20]

The Instrument also requires publicly transparent marketplace policies and procedures for the cancellation, variation or correction of trades.[21] We anticipate that this will help the market as a whole to understand when trades executed on a marketplace may be cancelled or changed by that marketplace.

17 Section 7 of NI 23-103.
18 Subsection 8(1) of NI 23-103.
19 Subsection 9(1) of NI 23-103.
20 Subsection 9(2) of NI 23-103.
21 Subsection 9(3) of NI 23-103.

B. Summary of Changes to 2011 Proposal

After considering the comments received, we have made some non-material revisions to the documents that were published for comment. These revisions are reflected in the final Instrument and Companion Policy we are publishing concurrently with this Notice.

(i) Scope of Rule

Some commenters asked for clarity as to the applicability of the 2011 Proposal, specifically whether the 2011 Proposal applies only to equities or to other asset classes as well. We have clarified that the Instrument applies to the trading of all securities on marketplaces.[22] We note however, that the definition of "security" varies among CSA jurisdictions. For example, a standardized derivative is defined to be a "security" in Québec, while in many other CSA jurisdictions it is not.

(ii) Role of Clearing Brokers

Some commenters suggested that the focus of the 2011 Proposal on the executing broker should be changed to include the clearing broker who ultimately bears the credit risk of a trade.

In response to this comment, we have added further guidance to the Companion Policy regarding the role of the clearing broker and the risks of electronic trading.[23] Specifically, we note that a key focus of the Instrument is the gatekeeping function of the executing broker and the risks associated with entering orders onto a marketplace. We agree that a clearing broker also bears financial and regulatory risks associated with providing clearing services and point out that under NI 31-103 a dealer is required to manage the risks associated with its business in accordance with prudent business practices. As part of this NI 31-103 obligation, we expect a clearing broker to have effective systems and controls to properly manage its risks.

(iii) Definition of Automated Order System

One commenter requested clarification if smart order routers are included under the definition of "automated order system". We have clarified in the Companion Policy that automated order systems include both hardware and software used to generate or electronically transmit orders on a pre-determined basis and would include technology such as smart order routers.[24]

(iv) Automated Pre-trade Controls

Automated pre-trade controls prevent an order or series of orders from interfering with the fair and orderly functioning of the market. We have provided further guidance in the Companion Policy that automated pre-trade controls include an examination of the order before entry on a marketplace and the monitoring of entered orders, whether executed or not.[25]

(v) Pre-determined Credit and Capital Thresholds

Some commenters requested clarification regarding what is meant by pre-set credit and capital thresholds. We have therefore clarified in the Companion Policy that a marketplace participant can establish pre-set credit thresholds through the setting of lending limits to a client and establish pre-set capital thresholds by setting limits on the financial exposure that can be created by orders entered on a marketplace under its marketplace participant identifier.[26]

(vi) Design of Controls, Policies and Procedures

A few commenters expressed the view that the standard for risk management and supervisory controls, policies and procedures in subsection 3(3) of the Instrument was unreasonably high since it required a marketplace participant to "ensure" that certain actions will or will not occur. In response, we have adopted a standard to require that the risk management and supervisory controls, policies and procedures be reasonably designed to meet the various requirements instead of maintaining the stricter "ensure" standard.[27]

(vii) Real-Time Monitoring of Orders

Real-time monitoring of orders can assist in identifying, preventing or cancelling an order or a series of orders that may interfere with the fair and orderly functioning of a marketplace.

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[22] Subsection 1.1(2) of 23-103CP.
[23] Subsection 1.1(1) of 23-103CP.
[24] Section 1 of NI 23-103; Subsection 1.2(1) of 23-103CP.
[25] Subsection 3(4) of 23-103CP.
[26] Subsection 3(5) of 23-103CP.
[27] Subsection 3(3) of NI 23-103.

We have clarified in the Companion Policy that, while the Instrument does not mandate compliance monitoring in real-time, there are instances when automated, real-time monitoring should be considered, such as when an automated order system is used to generate orders. We have also clarified that is it up to the marketplace participant to determine, based on the risk of its order flow, the appropriate timing for compliance monitoring.[28]

(viii) Direct and Exclusive Control of Risk Management Controls

Some commenters requested further clarification as to what constitutes the direct and exclusive control of risk management and supervisory controls. We have therefore amended the requirement in the Instrument[29] and clarified in the Companion Policy[30] that it is the setting and adjusting of the risk management and supervisory controls, policies and procedures that must be directly and exclusively controlled by the marketplace participant.

Other commenters indicated that the 2011 Proposal was more restrictive than the SEC's Rule 15c3-5 because the SEC's requirements would allow for an affiliated broker-dealer of a direct access client to provide risk management controls to a broker-dealer with market access. We agree that this provision would not dilute the effectiveness of only allowing entities independent from clients to provide marketplace participants with risk management and supervisory controls. We have revised the Instrument to state that an entity directly affiliated with a participant dealer that is also a client of the participant dealer may provide supervisory and risk management controls to the participant dealer.[31] We note, however, that the participant dealer must still directly and exclusively set and adjust the supervisory and risk management controls regardless of the source of the controls. The prohibition of any person or company to set or adjust the parameters of the controls, policies and procedures, other than the marketplace participant, would also apply in this instance.

(ix) Authorization to Set or Adjust Risk Management and Supervisory Controls, Policies and Procedures

One of the provisions a participant dealer would need to fulfill before authorizing an investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure is that the participant dealer must provide the investment dealer with the immediate order and trade information of a client. We use the term "ultimate client" to better capture the fact that the investment dealer must receive order and trade information of the client for which it is has been authorized to set or adjust a specific control, policy or procedure on behalf of the participant dealer.[32]

(x) Use of Automated Order Systems

The 2011 Proposal proposed an obligation on marketplace participants and any client of the marketplace participant to ensure that their use of automated order systems did not interfere with fair and orderly markets. To address comments indicating that this was too strict a standard, the Instrument now requires a marketplace participant to take all reasonable steps to ensure that the use of automated order systems by itself or any client does not interfere with fair and orderly markets.[33] We made a similar change to the obligation on the client. The Instrument requires a client of a marketplace participant to take all reasonable steps to ensure its use of automated order systems does not interfere with fair and orderly markets.[34]

The 2011 Proposal also provided guidance in the Companion Policy that it is expected that an automated order system would be tested before its initial use and after any significant change is made. The Instrument now states that automated order systems must be tested in accordance with prudent business practices both before their initial use and at least annually thereafter to further ensure that the risks of using automated order systems are appropriately addressed.[35]

(xi) Termination of Marketplace Access

The 2011 Proposal proposed to require that a marketplace have the ability and authority to terminate all or a portion of the access provided to a marketplace participant or its clients. We have clarified that a marketplace need only have the ability and authority to terminate all or a portion of the access provided to a marketplace participant since this general requirement would also cover access granted by the marketplace participant to its clients.[36]

[28] Subsection 3(7) of 23-103CP.
[29] Subsection 3(5) of NI 23-103.
[30] Subsection 3(8) of 23-103CP.
[31] Subsection 3(4) of NI 23-103.
[32] Subsection 4(e) of NI 23-103.
[33] Subsection 5(1) of NI 23-103.
[34] Subsection 5(2) of NI 23-103.
[35] Paragraph 5(3)(b) of NI 23-103.
[36] Subsection 7(1) of NI 23-103.

(xii) Clearly Erroneous Trades

The Instrument sets out circumstances under which a marketplace may cancel, vary or correct a trade executed on its platform.[37] One such circumstance is where the cancellation, variation or correction is necessary to correct an error caused by a system or technological malfunction of the marketplace's systems or equipment in executing the trade and permission to cancel, vary or correct the error has been obtained from its regulation services provider, if applicable. We have also included that an error caused by an individual acting on behalf of the marketplace may also be cancelled, varied or corrected by the marketplace after permission has been obtained by its regulation services provider, if applicable.

C. Implementation of Instrument

From speaking to certain marketplace participants, we note that in some cases the Instrument may be substantially satisfied through existing risk management controls and supervisory procedures that have already been implemented. We also understand that other marketplace participants will need more time in order to be ready to comply with the Instrument.

We have determined to delay implementation of the Instrument until March 1, 2013. We expect that this will provide marketplace participants and marketplaces enough time to comply with the requirements of the Instrument.

During this period, if a marketplace participant or marketplace has a question, we encourage them to contact any of the staff listed below. We will gather the questions posed, and if needed, will create a Frequently Asked Questions document.

VI. QUESTIONS

The Instrument and the Companion Policy are available on certain websites of CSA members, including:

www.lautorite.qc.ca
www.albertasecurities.ca
www.bcsc.ca
www.osc.gov.on.ca

Please refer your questions to any of the following:

Sonali GuptaBhaya Ontario Securities Commission 416-593-2331 sguptabhaya@osc.gov.on.ca	Barbara Fydell Ontario Securities Commission 416-593-8253 bfydell@osc.gov.on.ca
Tracey Stern Ontario Securities Commission 416-593-8167 tstern@osc.gov.on.ca	Paul Romain Ontario Securities Commission 416-204-8991 promain@osc.gov.on.ca
Serge Boisvert Autorité des marchés financiers 514-395-0337 ext. 4358 serge.boisvert@lautorite.qc.ca	Élaine Lanouette Autorité des marchés financiers 514-395-0337 ext. 4356 elaine.lanouette@lautorite.qc.ca
Meg Tassie British Columbia Securities Commission 604-899-6819 mtassie@bcsc.bc.ca	Shane Altbaum Alberta Securities Commission 403-355-4475 shane.altbaum@asc.ca
Roy Dias Alberta Securities Commission 413-297-4221 roy.dias@asc.ca	

June 28, 2012.

[37] Section 9 of NI 23-103.

APPENDIX A

IMPLEMENTATION OR ADOPTION OF THE INSTRUMENT

The Instrument will be implemented as:

- a rule in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, New Brunswick, Ontario, the Northwest Territories, the Yukon Territory, Nunavut and Prince Edward Island;
- a regulation in Québec; and
- a commission regulation in Saskatchewan.

The Companion Policy will be adopted as a policy in each of the jurisdictions represented by the CSA.

In Ontario, the Instrument and other required materials were delivered to the Minister of Finance on June 28, 2012. The Minister may approve or reject the Instrument or return it for further consideration. If the Minister approves the Instrument (or does not take any further action), the Instrument will come into force on March 1, 2013.

In Québec, the Instrument is a regulation made under section 331.1 of The Securities Act (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. It is also published in the Bulletin of the Autorité des marchés financiers.

In British Columbia, the implementation of the Instrument is subject to ministerial approval. Provided all necessary approvals are obtained, British Columbia expects the Instrument to come into force on March 1, 2013.

APPENDIX B

PASSPORT SYSTEM AMENDMENTS

Amending Instrument for
Multilateral Instrument 11-102 Passport System

1. ***Multilateral Instrument 11-102 Passport System is amended by this Instrument.***

2. ***Appendix D is amended by adding the following row immediately below the row that contains*** "Use of client brokerage commissions" ***in the Provision column:***

Electronic trading	NI 23-103 (only sections 3(1), 3(2), 3(3)(a) to 3(3)(d), 3(4) to 3(7), 4, and 5(3))

3. ***The provisions of this Instrument come into force on March 1, 2013.***

APPENDIX C

COMMENT SUMMARY AND CSA RESPONSES

ICE Futures Canada, Inc.	TriAct	IRESS
CanDeal	Flextrade Systems Inc.	Ross McKee
CIBC	PMAC	CNSX Markets Inc.
TMX Group	Akimbo Capital LP	Optima Capital Canada
ExpoWorld Ltd.	Heaps Capital Ltd.	EMDA
Chi-X ATS	Newedge Canada Inc.	Mark DesLauriers
TD Securities	LiquidNet Canada Inc.	GETCO
Jitneytrade Inc.	Softek	SIFMA
Simon Romano & Terrence Doherty	Alpha ATS	IIAC
Penson Financial Services Canada	Scotia Capital	

Please note that a summary of comments relating to proposed requirements relating to direct electronic access included in the 2011 Proposal will be published in the coming months with a revised proposal relating to direct electronic access and other similar forms of marketplace access.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
General	**Support for Proposed NI 23-103 Electronic Trading and Direct Electronic Access to Marketplaces (Proposed Instrument)** Many commenters expressed general support for the proposal. **Scope of Proposed Rule** A number of commenters asked for clarity as to the scope of the Proposed Instrument. One commenter wanted to know whether the Proposed Instrument applies only to equities or to other asset classes as well. Other commenters asked specifically if the requirements of the Proposed Instrument applied to: • the trading of fixed income securities; • the trading of commodities; • the futures market.	The Instrument applies to the trading of securities on all marketplaces, which would also include the trading of fixed income securities. With respect to the trading of commodities and the futures market, we have clarified in the Companion Policy that the definition of "security" varies among the CSA jurisdictions including with regard to derivatives. For example, the term "security" includes a standardized derivative in Québec and the Instrument would apply to the trading of that product in Quebec.
1. Definitions	**Definition of "automated order system"** One commenter requested clarification if smart order routers are included under this definition. **Definition of "Credit Risk" and "Capital Risk"** One commenter requested a definition of credit and capital risk as used in 3(3)(a)(i).	The Companion Policy clarifies that the definition of "automated order system" includes both hardware and software used to send orders on a pre-determined basis, which would include smart order routers. The Companion Policy explains that capital risk refers to the financial exposure created by orders entered and pre-set credit thresholds refer to lending

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
		limits.
	Use of term "Electronic Trading"	
	One commenter pointed out that some of the references to "electronic trading" may extend the scope of the Proposed Instrument beyond what is intended since today all trading is electronic to some degree. This commenter was of the view that if the Proposed Instrument intends to cover all trading, the extension of requirements to all "electronic trading" may introduce additional and potentially conflicting regulatory requirements.	We are not aware of how the scope of the Instrument may be extended with the use of the term "electronic trading". The Instrument is intended to cover any trading that occurs as a result of orders being electronically submitted to a marketplace by a marketplace participant or by a client to which a participant dealer provides marketplace access.
	Definition of "portfolio manager"	
	Some commenters requested clarification as to what is meant by "portfolio manager" and specifically whether this definition is intended to correspond with the existing registration requirements as set out in NI 31-103.	Section 2 of the Instrument states that a term defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103), such as "portfolio manager", is to have the respective meaning ascribed to it in NI 31-103.
	Other definitions	
	One commenter requested a definition of "eligible registrant".	We do not think that adding this definition would improve the Instrument.
3. Risk Management and Supervisory Controls, Policies and Procedures	**General**	
	A couple of commenters suggested that pre-trade risk management controls should be placed at the marketplace level. It was also argued that a uniform adoption of pre-trade risk controls across marketplaces would decrease costs to participant dealers. Other commenters supported pre- and post-trade controls.	The CSA are of the view that a marketplace participant should bear primary responsibility for ensuring that the risks of its business are reasonably and effectively controlled and monitored. However, we also think that marketplaces also have some responsibility to manage risks to the market and therefore the Instrument requires marketplaces to assess whether they need to implement any controls, policies and procedures to appropriately address the risks arising from the type of electronic trading that takes place on its platform.
	Another commenter suggested that marketplaces should have the ability to provide the supervisory and risk management controls, policies and procedures.	We have clarified in the Companion Policy that third parties, including marketplaces, can provide supervisory and risk management controls, policies and procedures as long as the marketplace participant directly and exclusively controls the setting and adjusting of these controls. In addition, no person or company, subject to limited exceptions, may set and adjust these

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
		controls other than the marketplace participant.
	A commenter noted, based on its U.S. experience, that pre-trade risk management systems are expensive to acquire and maintain and the costs would be difficult for smaller participant dealers to absorb. Another commenter advocated minimizing required pre-trade controls due to cost, complexity and latency without an equivalent risk reduction and asked the CSA to clarify which controls are required pre-trade.	We note that the Instrument provides flexibility, enabling third party providers, including marketplaces, to offer pre-trade controls. We think that pre-trade controls are critical to addressing the risks of electronic trading.
	One commenter, while in favour of the focus on controls, policies and procedures, was of the view that these requirements would be more appropriately set out as guidance.	We are of the view that the requirements pertaining to controls, policies and procedures are the minimum that are expected for a marketplace participant to properly manage its risks. We do not think that it is appropriate to set this framework in guidance.
	Some commenters also suggested that the focus of the Proposed Instrument on the executing broker should be changed to include the monitoring of intraday credit calculations and the clearing broker who ultimately bears the credit risk.	The Companion Policy clarifies that the Instrument is meant to address the risks associated with electronic trading on a marketplace and that a key focus of the Instrument is on the gate keeping function of the executing broker. We note that a clearing broker also bears financial and regulatory risks associated with providing clearing services and that this broker must manage the risks associated with its business in accordance with prudent business practices under NI 31-103.
	Another commenter suggested that some clients will need to choose between registering as dealers or accepting additional filters on their flow which will increase latency to their trading and that if these clients register as dealers, they would only be held to the minimum standards of IIROC oversight and would no longer be backed by the capital of large financial institutions which would increase the damage done to our markets in the event of a system failure.	We agree that it is up to each client to determine if registering as an investment dealer suits its business model better than maintaining its current status under the requirements of the Instrument. We note that registration and IIROC membership requirements would attach to clients that become investment dealers.
	Another commenter wanted clarity as to whether the executing dealer or the clearing dealer would be responsible for pre-trade risk controls, post-trade monitoring and capital and credit limit assignment.	The Instrument contemplates that it is the executing dealer that is responsible for pre-trade risk controls and post-trade monitoring and capital and credit limit assignment.
	“Ensure” standard Some commenters cited concern with the wording of several provisions of this section that require that a marketplace participant “ensure” certain actions will or will not occur and certain	We have revised the Instrument in certain instances to require a marketplace participant to have controls reasonably designed to ensure certain actions will or will not occur.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
	commenters suggested that it is more appropriate that the proposed policies and procedures be designed to "reasonably ensure" that regulatory requirements will be met.	
(1) A marketplace participant must:		
(a) establish, maintain and ensure compliance with appropriate risk management and supervisory controls, policies and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with marketplace access or providing clients with direct electronic access;	**3(1)(a)** Further clarification was requested from certain commenters on the types of dealer trading checks and thresholds that is envisioned including: • the expectation on strategy-based capital adequacy; and • whether a per-order check is the minimum standard requested. Several commenters advocated different requirements for a marketplace participant and for a client to which a participant dealer provides access to a marketplace.	Subsection 3(3) sets out the minimum requirements for the risk management and supervisory controls, policies and procedures required in subsection 3(1). Marketplace participants are provided with flexibility in determining how to meet these minimum requirements. We think that the risks of electronic trading apply in both circumstances and therefore have imposed common requirements.
(b) record the policies and procedures required by paragraph (a) and maintain a description of its risk management and supervisory controls in written form.	As well, one commenter suggested that the CSA set a minimum standard for capital and capabilities. One commenter also recommended that any pre-trade credit and capital risk controls be applied to the specific client relationship and not be aggregated across business lines, asset classes and executing dealers as this would be impractical and cost prohibitive. Another commenter states that it is not feasible or effective to apply real-time capital or credit limits to all market access at a participant dealer and that such cross-trading system controls would be expensive. Another commenter asked for guidance about the calculation of credit and capital limits across asset classes.	We are of the view that a one-size-fits-all approach with respect to standards for capital and capabilities would not best serve our markets. We think that principles based standards provide a marketplace participant with greater flexibility in setting limits that are appropriate to its business model and risk tolerance. This approach is also in line with current global standards. We note that a participant dealer should be aware of its total exposure that is created by trading, particularly when a client's trading includes accessing a marketplace directly. Therefore, it is necessary for the pre-trade credit and capital risk controls to systematically limit a marketplace participant's financial exposure, for example across business lines and asset classes. We note that this is also required by the SEC's Rule 15c3-5 Risk Management Controls for Brokers or Dealers with Market Access and that guidance regarding the setting of credit and capital limits is provided in the Companion Policy.
(2) The risk management and supervisory controls, policies and procedures required in subsection (1) must be designed to ensure all orders are monitored and include	One commenter pointed out that trades arising from delivery against payment or receipt-against-payment are reviewed post trade and do not lend themselves to pre-trade credit reviews. This commenter also noted that the systems in place now at many marketplace	We expect that the implementation period provided for marketplace participants to meet the requirements of the Instrument is adequate. We continue to be of the view that pre-trade checks for all marketplace participants are

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
	participants for credit risk management of retail order flow are not in place for institutional DAP/RAP flow and this has caused the Securities and Exchange Commission (SEC) to delay implementation of this requirement in the United States.	important tools in addressing the risks of electronic trading.
(a) automated pre-trade controls; and	**3(2)(a)** One commenter wanted further clarification as to what is meant by "automated" and questioned whether it is meant that each order is checked before it reaches the marketplace.	"Automated" means that the function is not conducted manually. Due to the high speed and volume at which orders are entered, it is expected that pre-trade controls must be automated if these checks are to be done effectively and efficiently.
(b) regular post-trade monitoring.	**3(2)(b)** One commenter wanted further clarification as to what is meant by "regular" post-trade monitoring and questioned whether it is an end of day or next day check to ensure the client is within the set credit limit.	It is expected that the regularity of post trade monitoring will be conducted commensurate with the marketplace participant's determination of the risks posed to its operations by the order flow it is handling. At a minimum, an end of day check would be expected.
(3) The risk management and supervisory controls, policies and procedures required in subsection (1) must		
(a) systematically limit the financial exposure of the marketplace participant, including:		
(i) preventing the entry of one or more orders that would result in exceeding appropriate pre-determined credit or capital thresholds for the marketplace participant and, if applicable, its DEA client;		
(ii) preventing the entry of one or more orders that exceed appropriate price or size parameters;		
(b) ensure compliance with applicable marketplace and regulatory requirements, including:		
(i) preventing the entry of orders that do not comply with all applicable	**3(3)(b)(i)** One commenter expressed concern regarding the requirement to comply with all marketplace	All marketplace requirements and amendments thereto are submitted to

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
marketplace and regulatory requirements that must be satisfied on a pre-order entry basis; (ii) limiting the entry of orders to securities that a marketplace participant or, if applicable, its DEA client, is authorized to trade; (iii) restricting access to trading on a marketplace to persons authorized by the marketplace participant; (iv) ensuring that the compliance staff of the marketplace participant receives immediate order and trade information, including, without limitation, execution reports, resulting from orders sent by the marketplace participant or, if applicable, its DEA client, to a marketplace; (c) enable the marketplace participant to immediately stop or cancel one or more orders entered by the marketplace participant or, if applicable, its DEA client; (d) enable the marketplace participant to immediately suspend or terminate any direct electronic access granted to a DEA client; and (e) ensure that the entry of orders does not interfere with fair and orderly markets.	requirements that must be satisfied on a pre-order basis and wanted to know what safety checks will be in place to ensure pre-order entry requirements imposed by marketplaces will be reasonable. **3(3)(b)(iv)** Two commenters suggested that the proposed obligation to ensure that compliance staff of the marketplace participant receive immediate order and trade information is unduly burdensome and that the CSA should consider requiring that such information be made available to compliance staff as needed or upon request.	the marketplace's securities regulators for review. We are of the understanding that the provision of drop copies, which are near real-time, is not unduly burdensome to send or receive. Immediate order and trade information can be a useful tool in enabling a marketplace participant to implement and monitor the effectiveness of its risk management and supervisory controls.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
(4) The risk management and supervisory controls, policies and procedures established pursuant to this section, including those provided by a third party, must be under the direct and exclusive control of the marketplace participant, subject to section 4 below.	**3(4)** Some commenters asked for further clarification about the requirement for "control", including whether it refers only to control over filter parameters or to physical location or ownership.	We have amended the requirement in the Instrument and clarified in the Companion Policy that we are referring to the setting and adjustment of risk management and supervisory controls, policies and procedures.
(5) A third party that provides risk management and supervisory controls, policies and procedures to a marketplace participant must be independent from each DEA client of that marketplace participant.	**3(5)** Some commenters pointed out that this section is similar to a limitation under the SEC's Rule 15c3-5 but that under U.S. securities laws, broker-dealers are not included in the definition of "customer" whereas under IIROC's rules, orders from dealers are "client orders". Therefore, unlike Rule 15c3-5 adopted by the SEC, the Proposed Instrument could be read to prohibit a marketplace participant that provides direct marketplace access to an affiliated broker-dealer from using the risk management controls, policies or procedures developed by the marketplace participant or an affiliate which these commenters believe is unnecessarily restrictive.	We have revised the Instrument to allow affiliates of the participant dealer that are also clients of the participant dealer with marketplace access provided by the participant dealer to provide risk management controls, policies or procedures to the participant dealer. However, we note that the participant dealer must directly and exclusively control the setting and adjustment of these controls, policies or procedures. In addition, no person or company, other than the marketplace participant may set or adjust its controls, policies and procedures.
(6) A marketplace participant must: (a) regularly assess and document the adequacy and effectiveness of its risk management and supervisory controls, policies and procedures; and (b) document and promptly remedy any deficiencies.	Other commenters requested further guidance on requirements for the "independence" of a third party from a client of a marketplace participant that accesses a marketplace directly through access provided by the marketplace participant. Also, commenters asked what degree of assistance a vendor can provide to its client regarding "direct and exclusive control".	An independent third party is an entity that is not an affiliate, and is otherwise independent of a client. We have revised the Instrument to clarify that only the marketplace participant may set or adjust the controls, policies or procedures, including those provided by third parties.
(7) Where a marketplace participant uses the services of a third party to provide risk management or supervisory controls, policies and procedures, the marketplace	Concern was expressed with respect to the inability of clients to use their own superior systems and technology and a commenter indicated that it was unreasonable to allow third party software and technology to be used to the exclusion of a client's or its affiliate's own better	We are of the view that technology developed independently from clients would assist the participant dealer in tailoring the controls to its specific needs and ensuring the sufficiency of these controls. As well, there may be a

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
participant must: (a) regularly assess and document the adequacy and effectiveness of the third party's relevant risk management and supervisory controls, policies and procedures; and (b) document any deficiencies and ensure that the deficiencies are promptly remedied.	systems. **3(7)(a)** One commenter wanted further details as to how the CSA would expect a dealer to reasonably assess the effectiveness of another dealer's systems and processes beyond allocation by contract.	reduction in the effectiveness of these controls if the entities that will be monitored by these controls also develop them. Among other possibilities, a marketplace participant can use a third party to determine the effectiveness of another dealer's systems or monitor the performance of the system during regular use.
4. Allocation of Control over Risk Management and Supervisory Controls, Policies and Procedures A participant dealer may reasonably allocate control over specific risk management and supervisory controls, policies and procedures required under subsection 3(1) to an investment dealer if:	A number of commenters supported these proposed requirements.	We agree with the commenters that expressed the view that these requirements will provide a reasonable approach to the allocation of risk management and supervisory controls.
(a) the participant dealer has a reasonable basis for determining that such investment dealer, based on its relationship with the ultimate client, has better access to information relating to the ultimate client than the participant dealer such that the investment dealer can more effectively implement the controls, policies and procedures; (b) a description of the allocation of control over specific risk management and supervisory controls, policies and procedures is set out in a written agreement between the participant dealer and investment dealer;	One commenter was of the view that these requirements should be drafted on a principles basis since these requirements are significantly burdensome, especially in light of the fact that both parties would be regulated and the executing party regularly undergoes trading desk reviews by the Investment Industry Regulatory Organization of Canada (IIROC).	We are of the view that in order to adequately address the risks of electronic trading, these specific minimum standards must be met. If these requirements were instead placed in guidance, we note that Canada would have a lower standard than in the U.S. with respect to electronic trading thus possibly causing regulatory arbitrage.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
(c) the participant dealer assesses and documents the adequacy and effectiveness of the investment dealer's risk management and supervisory controls, policies and procedures prior to allocating control;	Another commenter espoused the view that the proposed rule did not go far enough in permitting the allocation of risk management by only limiting allocation to investment dealers. This commenter suggested that the proposed rule should recognize that any two regulated broker dealers, whether regulated by the SEC or IIROC should be permitted to allocate risk management tools between one another.	The CSA note that the performance of risk management by an SEC regulated broker dealer would be outside of our jurisdiction and we would not be able to enforce this Instrument in that circumstance.
(d) the participant dealer (i) regularly assesses the adequacy and effectiveness of the risk management and supervisory controls, policies and procedures over which control has been allocated to the investment dealer; (ii) documents any deficiencies and ensures that the deficiencies are promptly remedied; and	One commenter requested clarification as to the difference between "participant dealer" and "investment dealer".	A participant dealer is defined in the Instrument as a marketplace participant that is an investment dealer. An investment dealer is not necessarily always a marketplace participant.
(e) the participant dealer provides the investment dealer with the immediate order and trade information of the DEA client that the participant dealer receives pursuant to subparagraph 3(3)(b)(iv).	Another commenter asked whether risk management and supervisory controls, policies and procedures may be allocated in a jitney arrangement.	Yes, the Companion Policy clarifies that in jitney, and other trading arrangements that involve multiple dealers, there may be certain controls that are better directed by the originating dealer because of its superior knowledge of the ultimate client.
5. Use of Automated Order Systems		
(1) The use of automated order systems by a marketplace participant or any client, including a DEA client, must not interfere with fair and orderly markets.	**5(1)** One commenter was of the view that the CSA should impose a "reasonableness" standard instead of the stricter standard of requiring automated order systems to not interfere with fair and orderly markets.	We have revised the Instrument to require that a marketplace participant and any client take all reasonable steps to ensure that the use of automated order systems does not interfere with fair and orderly markets.
(2) As part of the risk management and supervisory controls, policies	**5(2)** One commenter was of the view that more	The Instrument requires that an

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
and procedures required under subsection 3(1), a marketplace participant must: (a) have the necessary knowledge and understanding of any automated order system used by the marketplace participant or any client, including a DEA client, in order to identify and manage its risks associated with the use of the automated order system; (b) ensure that each automated order system is regularly, and at least annually, tested in accordance with prudent business practices; and	specific requirements were needed to address the difference between the use of an off-the-shelf product and an algorithm that uses code created by a client with marketplace access provided by the marketplace participant.	automated order system be tested according to prudent business practices. Prudent business practices may require an algorithm developed by a person or company that does not have an extensive background in creating such products to undergo more detailed testing than an algorithm developed for commercial use by experts.
(c) have controls in place to immediately and at any time disable the automated order system to prevent orders generated by the automated order system from reaching a marketplace.	One commenter indicated that it is not appropriate for participant dealers to test the automated order systems of their clients and instead proposed that an independent third party solution be used or that a client be allowed to certify that their automated systems have been tested in accordance with a standard acceptable to IIROC and the CSA. Another commented that it should be left up to dealers to determine whether it needs to be knowledgeable about a client's automated order system. One other commenter thought that dealers should be able to rely on certifications from their clients because of the competitive sensitivity of automated order system information.	Guidance in the Companion Policy states that a participant dealer does not necessarily have to conduct tests on each automated order system used by its clients but must satisfy itself that these automated order systems have been appropriately tested in accordance with prudent business practices.
	Another commenter noted that certain clients may become marketplace participants if they are unwilling to share details about their systems' features and programming due to confidentiality concerns.	We acknowledge that certain clients may become marketplace participants in order to avoid sharing details of their automated order systems. Our view is that it is important for a marketplace participant to obtain sufficient information in order to properly identify and manage its own risks.
	A final comment was that the CSA should be prepared to provide detailed guidance to participant dealers with respect to the minimum standards that will be expected of them.	We have provided guidance in the Companion Policy and if considered necessary, will also provide a document outlining frequently asked questions regarding the Instrument.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
12. Availability of Order and Trade Information A marketplace must provide a marketplace participant with reasonable access to its order and trade information, including execution reports, on an immediate basis to enable the marketplace participant to effectively implement the risk management and supervisory controls, policies and procedures required in section 3.	Some commenters noted that it appears that these requirements reinforce current practices. Others remarked that these requirements, especially if they are meant to go beyond current practices, would be unduly burdensome.	Under this requirement, a marketplace is to provide immediate or near real-time information, such as a drop copy.
14. Marketplace Controls Relating to Electronic Trading (1) A marketplace must have the ability and authority to terminate all or a portion of the access provided to a marketplace participant or a DEA client.	**14(1)** While most commenters agreed that marketplaces should have the ability and authority to terminate access provided to a marketplace participant or a client of a marketplace participant, one commenter was of the view that marketplaces lack the necessary analytics to assess whether termination is appropriate and that IIROC is in a better position to undertake this capability.	We would expect marketplaces to act when they identify trading behaviour that is interfering with the fair and orderly functioning of their markets. We have clarified this in the Companion Policy.
(2) A marketplace must: (a) regularly assess and document whether the marketplace requires any risk management and supervisory controls, policies and procedures relating to electronic trading, in addition to those controls that a marketplace participant is required to have pursuant to subsection 3(1), and ensure that such controls, policies and procedures are implemented in a timely manner; (b) regularly assess and document the adequacy and effectiveness of any risk management and supervisory controls, policies and procedures implemented pursuant to paragraph (a); and	One commenter suggested that the Proposed Instrument may be too lenient on marketplaces and that marketplaces should have an obligation to prevent the entry of erroneous orders in terms of specific size or price parameters with respect to its own marketplace.	The Instrument requires marketplaces to assess if they require any additional controls, policies and procedures in addition to those instituted by their members or subscribers. As well, the Instrument requires marketplaces to institute thresholds that assist in mitigating volatility such as that witnessed during the May 6, 2010 “flash crash”.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
(c) document and promptly remedy any deficiencies identified in the controls, policies and procedures implemented pursuant to paragraph (a).	One commenter suggested that we include an additional requirement for marketplaces to provide cancel-on-disconnect functionality whereby when a participant's filters are triggered, it is able to disconnect and the marketplace will cancel all of its remaining orders. This commenter noted that this functionality provides critical protection where the participant's system loses connectivity and it cannot immediately act to reduce its exposure. **Companion Policy – Section 14** One commenter was of the view that the CP guidance stating that a marketplace should be aware of the risk management and supervisory controls, policies and procedures of its marketplace participants and assess if it needs to implement additional controls, policies and procedures to eliminate any risk management gaps and ensure the integrity of trading on its market is inappropriate as it requires the marketplace to force each of its participants to disclose the participant's proprietary and possibly confidential risk management and supervisory controls. This commenter further stated that this burden is entirely unnecessary given that IIROC and the CSA are best positioned to ensure that participating dealers are in compliance with risk management rules.	We are of the view that marketplaces may institute cancel-on-disconnect functionality as they see fit under subsection 7(2) of the Instrument. We note that many marketplaces have already instituted this feature on their platforms and we are supportive of this action. The guidance states that the marketplace should be generally aware of the risk management and supervisory controls, policies and procedures of its marketplace participants. This is so marketplaces can then better determine if they need to implement additional controls, policies and procedures. It is not expected that marketplaces will have in-depth knowledge of such controls, policies and procedures.
15. Marketplace Thresholds (1) A marketplace must prevent the execution of orders for exchange-traded securities exceeding price and volume thresholds set by: (a) its regulation services provider; (b) the marketplace, if it is a recognized exchange that directly monitors the conduct of its members and enforces requirements set pursuant to subsection 7.1(1) of NI 23-101; or (c) the marketplace, if it is a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces	The support for standardized marketplace thresholds was mixed. While some commenters agreed with using standardized marketplace thresholds others did not believe in a one-size-fits-all approach and believed that the thresholds should be left to the discretion of the marketplace. A commenter that did not agree with this proposed requirement indicated that limits on volumes should be done at the dealer level using order management systems given that it would be difficult to establish a common volume threshold for all types of clients and all types of securities. One supporter of harmonized marketplace thresholds indicated that the calculation methodology and reference price used by the regulation services provider should be clear and that marketplaces should be allowed to maintain flexibility over the means of technical implementation of these thresholds. Another commenter urged the CSA to distinguish between price band parameters (a	We provided IIROC with flexibility in determining the implementation of the marketplace thresholds.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
requirements set pursuant to subsection 7.3(1) of NI 23-101.	percentage change in prices that causes restrictions on order entry or trading to allow a marketplace to review what is happening) and circuit breakers. This commenter also indicated that it would support requirements for marketplaces to make their price band parameters transparent for users to better understand the differences between the various marketplaces. Another commenter indicated that industry participants will need to review a detailed thresholds proposal before being able to properly assess the implications related to this requirement.	We agree and IIROC has published a proposal for the marketplace thresholds for public comment.
(2) A recognized exchange, recognized quotation and trade reporting system or regulation services provider setting a price threshold for an exchange-traded security under subsection (1) must coordinate its price threshold with all other exchanges, quotation and trade reporting systems and regulation services providers setting a price threshold under subsection (1) for that exchange-traded security or a security underlying that exchange-traded security.	**15(2)** One commenter noted that the price of an underlying security is only one of the factors that determine the price of a derivatives contract and that, as a result, a strict relationship between the price threshold for an underlying security and the derivative on that underlying security would not be practicable. One commenter urged the CSA to review the "coordination" language in this section to ensure that a derivative exchange has the flexibility to set appropriate thresholds.	We note the comment. We have reviewed the language and are satisfied that it provides a derivative exchange with the flexibility to set appropriate thresholds for its marketplace.
16. Clearly Erroneous Trades (1) A marketplace must have the capability to cancel, vary or correct a trade. (2) If a marketplace has retained a regulation services provider, the marketplace must not cancel, vary or correct a trade executed on the marketplace unless: (a) instructed to do so by its regulation services provider; (b) the cancellation, variation or correction is requested by a party to the trade, consent is provided by both parties to the trade and	**Support for provision** Most commenters supported these proposed requirements while one commenter was of the view that this provision was inconsistent with the CSA's proposed obligation on marketplaces to ensure a fair and orderly market and did not follow the approach taken in other jurisdictions. One commenter suggested that the CSA should consider whether it would be better to use a uniform approach regardless of whether a marketplace had retained a regulation services provider.	Recognized exchanges and recognized quotation and trade reporting systems may conduct their own market regulation and determine the best method to maintain a fair and orderly marketplace. However, we would encourage regulation services providers and recognized exchanges and recognized quotation and trade reporting systems to co-ordinate their approaches in dealing with erroneous trades.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comments and Additional CSA Commentary
notification is provided to its regulation services provider; or (c) the cancellation, variation or correction is necessary to correct an error caused by a system or technological malfunction of the marketplace systems or equipment in executing the trade, and permission to cancel, vary or correct has been obtained from its regulation services provider. (3) A marketplace must establish, maintain and ensure compliance with reasonable policies and procedures that clearly outline the processes and parameters associated with a cancellation, variation or correction and must make such policies and procedures publicly available.	**16(3)** One commenter suggested that the policies and procedures should be publicized and made readily available by the applicable marketplace.	We agree. The Instrument requires that a marketplace's erroneous trade policies and procedures be made publicly available.
Effective Date/Implementation	A number of commenters encouraged the CSA to consult with industry when setting an implementation date. Other commenters encouraged the CSA to provide for a large implementation window to take into account certain factors such as time for marketplaces to amend their subscriber or participant agreements. Another commenter suggested a staged roll-out for the Proposed Instrument.	We have discussed implementation timing with various market participants before setting the implementation date. The implementation window is in line with what we have been told would be the length of time necessary for marketplace participants, participant dealers and marketplaces to prepare for compliance with the Instrument.

NATIONAL INSTRUMENT 23-103
ELECTRONIC TRADING

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PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1. In this Instrument,

"automated order system" means a system used to automatically generate or electronically transmit orders on a pre-determined basis;

"marketplace and regulatory requirements" means

(a) the rules, policies, requirements or other similar instruments set by a marketplace respecting the method of trading by marketplace participants, including those related to order entry, the use of automated order systems, order types and features and the execution of trades;

(b) the applicable requirements in securities legislation; and

(c) the applicable requirements set by a recognized exchange, a recognized quotation and trade reporting system or a regulation services provider under section 7.1, 7.3 or 8.2 of NI 23-101;

and

"participant dealer" means a marketplace participant that is an investment dealer.

Interpretation

2. A term that is defined or interpreted in National Instrument 21-101 *Marketplace Operation,* or National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* has, if used in this Instrument, the meaning ascribed to it in National Instrument 21-101 or National Instrument 31-103.

PART 2
REQUIREMENTS APPLICABLE TO MARKETPLACE PARTICIPANTS

Risk Management and Supervisory Controls, Policies and Procedures

3. (1) A marketplace participant must

(a) establish, maintain and ensure compliance with risk management and supervisory controls, policies and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with marketplace access or providing clients with access to a marketplace; and

(b) record the policies and procedures required under paragraph (a) and maintain a description of the marketplace participant's risk management and supervisory controls in written form.

(2) The risk management and supervisory controls, policies and procedures required under subsection (1) must be reasonably designed to ensure that all orders are monitored and for greater certainty, include

(a) automated pre-trade controls, and

(b) regular post-trade monitoring.

(3) The risk management and supervisory controls, policies and procedures required in subsection (1) must be reasonably designed to

(a) systematically limit the financial exposure of the marketplace participant, including, for greater certainty, preventing

(i) the entry of one or more orders that would result in exceeding pre-determined credit or capital thresholds for the marketplace participant and, if applicable, its client with marketplace access provided by the marketplace participant,

(ii) the entry of one or more orders that exceed pre-determined price or size parameters;

(b) ensure compliance with marketplace and regulatory requirements, including, for greater certainty,

(i) preventing the entry of orders that do not comply with marketplace and regulatory requirements that must be satisfied on a pre-order entry basis;

(ii) limiting the entry of orders to those securities that a marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant, is authorized to trade;

(iii) restricting access to trading on a marketplace to persons authorized by the marketplace participant; and

(iv) ensuring that the compliance staff of the marketplace participant receives immediate order and trade information, including, for greater certainty, execution reports, resulting from orders sent by the marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant;

(c) enable the marketplace participant to immediately stop or cancel one or more orders entered by the marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant;

(d) enable the marketplace participant to immediately suspend or terminate any access to a marketplace granted to a client with marketplace access provided by the marketplace participant; and

(e) ensure that the entry of orders does not interfere with fair and orderly markets.

(4) A third party that provides risk management and supervisory controls, policies or procedures to a marketplace participant must be independent from each client with marketplace access provided by the marketplace participant, except if the client is an affiliate of the marketplace participant.

(5) A marketplace participant must directly and exclusively set and adjust the risk management and supervisory controls, policies and procedures required under this section, including those provided by third parties.

(6) A marketplace participant must

(a) regularly assess and document the adequacy and effectiveness of its risk management and supervisory controls, policies and procedures; and

(b) document any deficiencies in the adequacy or effectiveness of a risk management or supervisory control, policy or procedure and promptly remedy the deficiency.

(7) If a marketplace participant uses the services of a third party to provide risk management or supervisory controls, policies and procedures, the marketplace participant must

(a) regularly assess and document the adequacy and effectiveness of the third party's relevant risk management and supervisory controls, policies and procedures; and

(b) document any deficiencies in the adequacy or effectiveness of a risk management or supervisory control, policy or procedure and ensure the deficiency is promptly remedied.

Authorization to Set or Adjust Risk Management and Supervisory Controls, Policies and Procedures

4. Despite subsection 3(5), a participant dealer may, on a reasonable basis, authorize an investment dealer to perform, on the participant dealer's behalf, the setting or adjusting of a specific risk management or supervisory control, policy or procedure required under subsection 3(1) if

(a) the participant dealer has a reasonable basis for determining that the investment dealer, based on the investment dealer's relationship with the ultimate client, has better access to information relating to the ultimate client than the participant dealer such that the investment dealer can more effectively set or adjust the control, policy or procedure;

(b) a description of the specific risk management or supervisory control, policy or procedure and the conditions under which the investment dealer is authorized to set or adjust the specific risk management or supervisory control, policy or procedure are set out in a written agreement between the participant dealer and investment dealer;

(c) before authorizing the investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure, the participant dealer assesses and documents the adequacy and effectiveness of the investment dealer's setting or adjusting of the risk management or supervisory control, policy or procedure;

(d) the participant dealer

(i) regularly assesses the adequacy and effectiveness of the setting or adjusting of the risk management or supervisory control, policy or procedure by the investment dealer, and

(ii) documents any deficiencies in the adequacy or effectiveness of the setting or adjusting of the risk management or supervisory control, policy or procedure and ensures that the deficiencies are promptly remedied, and

(e) the participant dealer provides the investment dealer with the immediate order and trade information of the ultimate client that the participant dealer receives under subparagraph 3(3)(b)(iv).

PART 3
REQUIREMENTS APPLICABLE TO USE OF AUTOMATED ORDER SYSTEMS

Use of Automated Order Systems

5. (1) A marketplace participant must take all reasonable steps to ensure that its use of an automated order system or the use of an automated order system by any client, does not interfere with fair and orderly markets.

(2) A client of a marketplace participant must take all reasonable steps to ensure that its use of an automated order system does not interfere with fair and orderly markets.

(3) For the purpose of the risk management and supervisory controls, policies and procedures required under subsection 3(1), a marketplace participant must

(a) have a level of knowledge and understanding of any automated order system used by the marketplace participant or any client that is sufficient to allow the marketplace participant to identify and manage the risks associated with the use of the automated order system,

(b) ensure that every automated order system used by the marketplace participant or any client is tested in accordance with prudent business practices initially before use and at least annually thereafter, and

(c) have controls in place to immediately

(i) disable an automated order system used by the marketplace participant, and

(ii) prevent orders generated by an automated order system used by the marketplace participant or any client from reaching a marketplace.

PART 4
REQUIREMENTS APPLICABLE TO MARKETPLACES

Availability of Order and Trade Information

6. (1) A marketplace must provide a marketplace participant with access to its order and trade information, including execution reports, on an immediate basis to enable the marketplace participant to effectively implement the risk management and supervisory controls, policies and procedures required under section 3.

(2) A marketplace must provide a marketplace participant access to its order and trade information referenced in subsection (1) on reasonable terms.

Marketplace Controls Relating to Electronic Trading

7. (1) A marketplace must not provide access to a marketplace participant unless it has the ability and authority to terminate all or a portion of the access provided to the marketplace participant.

(2) A marketplace must

(a) regularly assess and document whether the marketplace requires any risk management and supervisory controls, policies and procedures relating to electronic trading, in addition to those controls that a marketplace participant is required to have under subsection 3(1), and ensure that such controls, policies and procedures are implemented in a timely manner;

(b) regularly assess and document the adequacy and effectiveness of any risk management and supervisory controls, policies and procedures implemented under paragraph (a);and

(c) document and promptly remedy any deficiencies in the adequacy or effectiveness of the controls, policies and procedures implemented under paragraph (a).

Marketplace Thresholds

8. (1) A marketplace must not permit the execution of orders for exchange-traded securities to exceed the price and volume thresholds set by

(a) its regulation services provider;

(b) the marketplace, if it is a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101; or

(c) the marketplace, if it is a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces the requirements set under subsection 7.3(1) of NI 23-101.

(2) A recognized exchange, recognized quotation and trade reporting system or regulation services provider setting a price threshold for an exchange-traded security under subsection (1) must coordinate its price threshold with all other exchanges, quotation and trade reporting systems and regulation services providers setting a price threshold under subsection (1) for the exchange-traded security or a security underlying the exchange-traded security.

Clearly Erroneous Trades

9. (1) A marketplace must not provide access to a marketplace participant unless it has the ability to cancel, vary or correct a trade executed by the marketplace participant.

(2) If a marketplace has retained a regulation services provider, the marketplace must not cancel, vary or correct a trade executed on the marketplace unless

(a) instructed to do so by its regulation services provider;

(b) the cancellation, variation or correction is requested by a party to the trade, consent is provided by both parties to the trade and notification is provided to the marketplace's regulation services provider; or

(c) the cancellation, variation or correction is necessary to correct an error caused by a system or technological malfunction of the marketplace systems or equipment, or caused by an individual acting on behalf of the marketplace, and the consent to cancel, vary or correct has been obtained from the marketplace's regulation services provider.

(3) A marketplace must establish, maintain and ensure compliance with reasonable policies and procedures that clearly outline the processes and parameters associated with a cancellation, variation or correction and must make such policies and procedures publicly available.

PART 5

EXEMPTION AND EFFECTIVE DATE

Exemption

10. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

Effective Date

11. This Instrument comes into force on March 1, 2013.

COMPANION POLICY 23-103CP
ELECTRONIC TRADING

Table of Contents

PART 1 GENERAL COMMENTS

1.1 Introduction

(1) Purpose of National Instrument 23-103

The purpose of National Instrument 23-103 *Electronic Trading* (NI 23-103) is to address areas of concern and risks brought about by electronic trading. The increased speed and automation of trading on marketplaces give rise to various risks, including credit risk and market integrity risk. To protect marketplace participants from harm and to ensure continuing market integrity, these risks need to be reasonably and effectively controlled and monitored.

In the view of the Canadian Securities Administrators (CSA or we), marketplace participants should bear primary responsibility for ensuring that these risks are reasonably and effectively controlled and monitored. This responsibility applies to orders that are entered electronically by the marketplace participant itself, as well as orders from clients using the participant dealer's marketplace participant identifier.

This responsibility includes both financial and regulatory obligations. This view is premised on the fact that it is the marketplace participant that makes the decision to engage in trading or provide marketplace access to a client. However, the marketplaces also have some responsibilities to manage risks to the market.

NI 23-103 is meant to address risks associated with electronic trading on a marketplace with a key focus on the gatekeeping function of the executing broker. However, a clearing broker also bears financial and regulatory risks associated with providing clearing services. Under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) a dealer must manage the risks associated with its business in accordance with prudent business practices. As part of that obligation, we expect a clearing dealer to have in place effective systems and controls to properly manage its risks.

(2) Scope of NI 23-103

NI 23-103 applies to the electronic trading of securities on marketplaces. In Alberta and British Columbia, the term "security" when used in NI 23-103 includes an option that is an exchange contract but does not include a futures contract. In Ontario, the term "security" when used in NI 23-103, does not include a commodity futures contract or a commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under the Commodity Futures Act or the form of which is not accepted by the Director under the Commodity Futures Act. In Québec, the term "security" when used in NI 23-103, includes a standardized derivative as this notion is defined in the Derivatives Act.

(3) Purpose of Companion Policy

This Companion Policy sets out how the CSA interpret or apply the provisions of NI 23-103 and related securities legislation.

Except for Part 1, the numbering of Parts and sections in this Companion Policy correspond to the numbering in NI 23-103. Any general guidance for a Part appears immediately after the Part name. Any specific guidance on sections in NI 23-103 follows any general guidance. If there is no guidance for a Part or section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

All references in this Companion Policy to Parts and sections are to NI 23-103**,** unless otherwise noted.

1.2 Definitions

Unless defined in NI 23-103**,** terms used in NI 23-103 and in this Companion Policy have the meaning given to them in the securities legislation of each jurisdiction, in National Instrument 14-101 *Definitions*, National Instrument 21-101 *Marketplace Operation* (NI 21-101)*,* or NI 31-103.

(1) Automated order systems

Automated order systems encompass both hardware and software used to generate or electronically transmit orders on a pre-determined basis and would include smart order routers and trading algorithms that are used by marketplace participants, offered by marketplace participants to clients or developed or used by clients.

PART 2 REQUIREMENTS APPLICABLE TO MARKETPLACE PARTICIPANTS

3. Risk management and supervisory controls, policies and procedures

(1) National Instrument 31-103 requirements

For marketplace participants that are registered firms, section 11.1 of NI 31-103 requires the registered firm to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to: (a) provide reasonable assurance that the registered firm and each individual acting on its behalf complies with securities legislation; and (b) manage the risks associated with its business in accordance with prudent business practices. Section 3 of NI 23-103 builds on the obligations outlined in section 11.1 of NI 31-103. The CSA have included requirements in NI 23-103 for all marketplace participants that conduct trading on a marketplace to have risk management and supervisory controls, policies and procedures that are reasonably designed to manage their risks in accordance with prudent business practices. What would be considered to be "reasonably designed" in this context is tied to the risks associated with electronic trading that the marketplace participant is willing to bear and what is necessary to manage that risk in accordance with prudent business practices.

These requirements provide greater specificity with respect to the expectations surrounding controls, policies and procedures relating to electronic trading. The requirements apply to all marketplace participants, not just those that are registered firms.

(2) Documentation of risk management and supervisory controls, policies and procedures

Paragraph 3(1)(b) requires a marketplace participant to record its policies and procedures and maintain a copy of its risk management and supervisory controls in written form. This includes a narrative description of any electronic controls implemented by the marketplace participant as well as their functions.

We note that the risk management and supervisory controls, policies and procedures related to the trading of unlisted, government and corporate debt may not be the same as those related to the trading of equity securities due to the differences in the nature of trading of these types of securities. Different marketplace models such as a request for quote, negotiation system, or continuous auction market may require different risk management and supervisory controls, policies and procedures in order to appropriately address the varying levels of diverse risks these different marketplace models can pose to our markets.

A registered firm's obligation to maintain its risk management and supervisory controls in written form under paragraph 3(1)(b) includes retaining these documents and builds on a registered firm's obligation in NI 31-103 to retain its books and records. We expect a non-registered marketplace participant to retain these documents as part of its obligation under paragraph 3(1)(b) to maintain a description of its risk management and supervisory controls in written form.

(3) Clients that also maintain risk management controls

We are aware that a client that is not a registered dealer may maintain its own risk management controls. However, part of the intent of NI 23-103's risk management and supervisory controls, policies and procedures is to require a participant dealer to manage its risks associated with electronic trading and to protect the participant dealer under whose marketplace participant identifier an order is being entered. Consequently, a participant dealer must maintain reasonably designed risk management and supervisory controls, policies and procedures regardless of whether its clients maintain their own controls. It is not appropriate for a participant dealer to rely on a client's risk management controls, as the participant dealer would not be able to ensure the sufficiency of the client's controls, nor would the controls be tailored to the particular needs of the participant dealer.

(4) Minimum risk management and supervisory controls, policies and procedures

Subsection 3(2) sets out the minimum elements of the risk management and supervisory controls, policies and procedures that must be addressed and documented by each marketplace participant. Automated pre-trade controls include an examination of the order before it is entered on a marketplace and the monitoring of entered orders whether executed or not. The marketplace

participant should assess, document and implement any additional risk management and supervisory controls, policies and procedures that it determines are necessary to manage the marketplace participant's financial exposure and to ensure compliance with applicable marketplace and regulatory requirements.

With respect to regular post-trade monitoring, it is expected that the regularity of this monitoring will be conducted commensurate with the marketplace participant's determination of the order flow it is handling. At a minimum, an end of day check is expected.

(5) Pre-determined credit or capital thresholds

A marketplace participant can establish pre-determined credit thresholds by setting lending limits for a client and establish pre-determined capital thresholds by setting limits on the financial exposure that can be created by orders entered or executed on a marketplace under its marketplace participant identifier. The pre-determined credit or capital thresholds referenced in paragraph 3(3)(a) may be set based on different criteria, such as per order, trade account or other criteria, including overall trading strategy, or using a combination of these factors as required in the circumstances.

For example, a participant dealer that sets a credit limit for a client with marketplace access provided by the participant dealer could impose that credit limit by setting sub-limits applied at each marketplace to which the participant dealer provides access that together equal the total credit limit. A participant dealer may also consider whether to establish credit or capital thresholds based on sector, security or other relevant factors. In order to address the financial exposure that might result from rapid order entry, a participant dealer may also consider measuring compliance with set credit or capital thresholds on the basis of orders entered rather than executions obtained.

We note that different thresholds may be set for the marketplace participant's own order flow (including both proprietary and client order flow) and that of a client with marketplace access provided by the marketplace participant, if appropriate.

(6) Compliance with applicable marketplace and regulatory requirements

The CSA expect marketplace participants to prevent the entry of orders that do not comply with all applicable marketplace and regulatory requirements that must be satisfied on a pre-trade basis where possible. Specifically, marketplace and regulatory requirements that must be satisfied on a pre-order entry basis are those requirements that can effectively be complied with only before an order is entered on a marketplace, including: (i) conditions that must be satisfied under National Instrument 23-101 *Trading Rules* (NI 23-101) before an order can be marked a "directed-action order", (ii) marketplace requirements applicable to particular order types and (iii) compliance with trading halts. This requirement does not impose new substantive regulatory requirements on the marketplace participant. Rather it establishes that marketplace participants must have appropriate mechanisms in place that are reasonably designed to effectively comply with their existing regulatory obligations on a pre-trade basis in an automated, high-speed trading environment.

(7) Order and trade information

Subparagraph 3(3)(b)(iv) requires the risk management and supervisory controls, policies and procedures to be reasonably designed to ensure that the compliance staff of the marketplace participant receives immediate order and trade information. This will require the marketplace participant to ensure that it has the capability to view trading information in real-time or to receive immediate order and trade information from the marketplace, such as through a drop copy.

This requirement will help the marketplace participant fulfill its obligations under subsection 3(1) with respect to establishing and implementing reasonably designed risk management and supervisory controls, policies and procedures that manage its risks associated with access to marketplaces.

This provision does not prescribe that a marketplace participant carry out compliance monitoring in real-time. There are instances however, when automated, real-time monitoring should be considered, such as when an automated order system is used to generate orders. It is up to the marketplace participant to determine, based on the risk that the order flow poses to the marketplace participant, the appropriate timing for compliance monitoring. However, our view is that it is important that a marketplace participant have the necessary tools in place to facilitate order and trade monitoring as part of the marketplace participant's risk management and supervisory controls, policies and procedures.

(8) Direct and exclusive control over setting and adjusting of risk management and supervisory controls, policies and procedures

Subsection 3(5) specifies that a marketplace participant must directly and exclusively set and adjust its risk management and supervisory controls, policies and procedures. With respect to exclusive control, we expect that no person or company, other than the marketplace participant, will be able to set and adjust the controls, policies and procedures. With respect to direct

control, a marketplace participant must not rely on a third party in order to perform the actual setting and adjusting of its controls, policies and procedures.

A marketplace participant can use technology of third parties, including that of marketplaces, as long as the marketplace participant, whether a registered dealer or institutional investor, is able to directly and exclusively set and adjust its supervisory and risk management controls, policies and procedures.

Section 4 provides a limited exception to the requirement in subsection 3(5) in that a participant dealer may , on a reasonable basis, and subject to other requirements, authorize an investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure on behalf of the participant dealer.

(***9)*** ***Risk management and supervisory controls, policies and procedures provided by an independent third party***

Under subsection 3(4), a third party providing risk management and supervisory controls, policies or procedures to a marketplace participant must be independent of any client of the marketplace participant. However, an entity affiliated with a participant dealer that is also a client of the participant dealer may provide supervisory and risk management controls to the participant dealer. In all instances, the participant dealer must directly and exclusively set and adjust its supervisory and risk management controls.

Paragraph 3(7)(a) requires that a marketplace participant must regularly assess and document whether the risk management and supervisory controls, policies and procedures of the third party are effective and otherwise consistent with the provisions of NI 23-103 before engaging such services. Reliance on representations of a third party provider is insufficient to meet this assessment requirement. The CSA expect registered firms to be responsible and accountable for all functions that they outsource to a service provider as set out in Part 11 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

(10) ***Regular assessment of risk management controls and supervisory policies and procedures***

Subsection 3(6) requires a marketplace participant to regularly assess and document the adequacy and effectiveness of the controls, policies and procedures it is required to establish under subsection 3(1). Under subsection 3(7), the same assessment requirement also applies if a marketplace participant uses the services of a third party to provide risk management or supervisory controls, policies and procedures. A "regular" assessment would constitute, at a minimum, an assessment conducted annually of the controls, policies and procedures and whenever a substantive change is made to the controls, policies and procedures. A marketplace participant should determine whether more frequent assessments are required, depending on the particular circumstances.

A marketplace participant that is a registered firm is expected to retain the documentation of each such assessment as part of its obligation to maintain books and records in NI 31-103.

4. Authorization to set or adjust risk management and supervisory controls, policies and procedures

Section 4 is intended to address introducing (originating) and carrying (executing) arrangements or jitney arrangements that involve multiple dealers. In such arrangements, there may be certain controls that are better directed by the originating dealer, since it is the originating dealer that has knowledge of its client and is responsible for suitability and other "know your client" obligations. However, the executing dealer must also have reasonable controls in place to manage the risks it incurs by executing orders for other dealers.

Therefore, section 4 provides that a participant dealer may, on a reasonable basis, authorize an investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure on the participant dealer's behalf by written contract and after a thorough assessment. Our view is that where the originating investment dealer with the direct relationship with the ultimate client has better access than the participant dealer to information relating to the ultimate client, the originating investment dealer may more effectively assess the ultimate client's financial resources and investment objectives.

We also expect that the participant dealer will maintain a written contract with the investment dealer that sets out a description of the specific risk management or supervisory control, policy or procedure and the conditions under which the investment dealer is authorized to set or adjust the control, policy or procedure as part of its books and records obligations set out in NI 31-103.

Paragraph 4(d) requires a participant dealer to regularly assess the adequacy and effectiveness of the investment dealer's setting or adjusting of the risk management and supervisory controls, policies and procedures that it performs on the participant dealer's behalf. We expect that this will include an assessment of the performance of the investment dealer under the written agreement prescribed in paragraph 4(b). A "regular" assessment would constitute, at a minimum, an assessment conducted annually of the controls, policies and procedures and whenever a substantive change is made to the controls, policies or

procedures. A marketplace participant should determine whether more frequent assessments are required, depending on the particular circumstances.

Under paragraph 4(e), the participant dealer must provide the compliance staff of the originating investment dealer with immediate order and trade information of the ultimate client. This is to allow the originating investment dealer to monitor trading more effectively and efficiently.

Authorizing an investment dealer to set or adjust a risk management or supervisory control, policy or procedure does not relieve the participant dealer of its obligations under section 3, including the overall responsibility to establish, document, maintain and ensure compliance with risk management and supervisory controls, policies and procedures reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with marketplace access.

PART 3 REQUIREMENTS APPLICABLE TO THE USE OF AUTOMATED ORDER SYSTEMS

5. Use of automated order systems

Section 5 stipulates that a marketplace participant or any client must take all reasonable steps to ensure that its use of automated order systems does not interfere with fair and orderly markets. A marketplace participant must also take all reasonable steps to ensure that the use of an automated order system by a client does not interfere with fair and orderly markets. This includes both the fair and orderly trading on a marketplace or the market as a whole and the proper functioning of a marketplace. For example, the sending of a continuous stream of orders that negatively impacts the price of a security or that overloads the systems of a marketplace may be considered as interfering with fair and orderly markets.

Paragraph 5(3)(a) requires a marketplace participant to have a level of knowledge and understanding of any automated order systems used by either the marketplace participant or the marketplace participant's clients that is sufficient to allow the marketplace participant to identify and manage the risks associated with the use of the automated order system. We understand that detailed information of automated order systems may be treated as proprietary information by some clients or third party service providers; however, the CSA expect that the marketplace participant will be able to obtain sufficient information in order to properly identify and manage its own risks.

Paragraph 5(3)(b) requires that each automated order system is tested in accordance with prudent business practices. A participating dealer does not necessarily have to conduct tests on each automated order system used by its clients but must satisfy itself that these automated order systems have been appropriately tested. Testing an automated order system in accordance with prudent business practices includes testing it before its initial use and at least annually thereafter. We would also expect that testing would also occur after any significant change to the automated order system is made.

PART 4 REQUIREMENTS APPLICABLE TO MARKETPLACES

6. Availability of order and trade information

(1) Reasonable access

Subsection 6(1) is designed to ensure that a marketplace participant has immediate access to the marketplace participant's order and trade information when needed. Subsection 6(2) will help ensure that the marketplace does not have any rules, polices, procedures, fees or practices that would unreasonably create barriers to the marketplace participant in accessing this information.

This obligation is distinct from the requirement for marketplaces to disseminate order and trade information through an information processor under Parts 7 and 8 of NI 21-101. The information to be provided pursuant to section 6 would need to include the private information included on each order and trade in addition to the public information disseminated through an information processor.

(2) Immediate order and trade information

For the purposes of providing access to order and trade information on an immediate basis, we consider a marketplace's provision of this information by a drop copy to be acceptable.

7. Marketplace controls relating to electronic trading

(1) Termination of marketplace access

Subsection 7(1) requires a marketplace to have the ability and authority to terminate all or a portion of the access provided to a marketplace participant before providing access to that marketplace participant. This requirement also includes the authority of

a marketplace to terminate access provided to a client that is using a participant dealer's marketplace participant identifier to access the marketplace. We expect a marketplace to act when it identifies trading behaviour that interferes with the fair and orderly functioning of its market.

(2) Assessments to be conducted

Paragraph 7(2)(a) requires a marketplace to regularly assess and document whether the marketplace requires any risk management and supervisory controls, policies and procedures relating to electronic trading, in addition to the risk management and supervisory controls, policies and procedures that marketplace participants are required to have under subsection 3(1), and ensure that such controls, policies and procedures are implemented in a timely manner. As well, a marketplace must regularly assess and document the adequacy and effectiveness of any risk management and supervisory controls, policies and procedures put in place under paragraph 7(2)(a). A marketplace is expected to document any conclusions reached as a result of its assessment and any deficiencies noted. It must also promptly remedy any identified deficiencies.

It is important that a marketplace take steps to ensure it does not engage in activity that interferes with fair and orderly markets. Part 12 of NI 21-101 requires marketplaces to establish systems-related risk management controls. It is therefore expected that a marketplace will be generally aware of the risk management and supervisory controls, policies and procedures of its marketplace participants and assess whether it needs to implement additional controls, policies and procedures to eliminate any risk management gaps and ensure the integrity of trading on its market.

(3) Timing of assessments

A "regular" assessment would constitute, at a minimum, an assessment conducted annually and whenever a substantive change is made to a marketplace's operations, rules, controls, policies or procedures that relate to methods of electronic trading. A marketplace should determine whether more frequent assessments are required depending on the particular circumstances of the marketplace, for example when the number of orders or trades is increasing very rapidly or when new types of clients or trading activities are identified. A marketplace should document and preserve a copy of each such assessment as part of its books and records obligation in NI 21-101.

(4) Implementing controls, policies and procedures in a timely manner

A "timely manner" will depend on the particular circumstances, including the degree of potential risk of financial harm to marketplace participants and their clients or harm to the integrity of the marketplace and to the market as a whole. The marketplace must ensure the timely implementation of any necessary risk management and supervisory controls, policies and procedures.

8. Marketplace thresholds

Section 8 requires that each marketplace must not permit the execution of orders of exchange-traded securities exceeding price and volume thresholds set by its regulation services provider, or by the marketplace if it is a recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces certain requirements set under NI 23-101.

These price and volume thresholds are expected to reduce erroneous orders and price volatility by preventing the execution of orders that could interfere with a fair and orderly market.

There are a variety of methods that may be used to prevent the execution of these orders. However, the setting of the price threshold is to be coordinated among all regulation services providers, recognized exchanges and recognized quotation and trade reporting systems that set the threshold under subsection 8(1).

The coordination requirement also applies when setting a price threshold for securities that have underlying interests in an exchange-traded security. We note that there may be differences in the actual price thresholds set for an exchange-traded security and a security that has underlying interests in that exchange-traded security.

9. Clearly erroneous trades

(1) Application of section 9

Section 9 provides that a marketplace cannot provide access to a marketplace participant unless it has the ability to cancel, vary or correct a trade executed by that marketplace participant. This requirement would apply in the instance where the marketplace decides to cancel, vary or correct a trade or is instructed to do so by a regulation services provider.

Before cancelling, varying or correcting a trade, paragraph 9 (2)(a) requires that a marketplace receive instructions from its regulation services provider, if it has retained one. We note that this would not apply in the case of a recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101.

(2) Cancellation, variation or correction where necessary to correct a system or technological malfunction or error made by the marketplace systems or equipment

Under paragraph 9(2)(c) a marketplace may cancel, vary or correct a trade where necessary to correct an error caused by a system or technological malfunction of the marketplace's systems or equipment or an individual acting on behalf of the marketplace. If a marketplace has retained a regulation services provider, it must not cancel, vary or correct a trade unless it has obtained permission from its regulation services provider to do so.

Examples of errors caused by a system or technological malfunction include where the system executes a trade on terms that are inconsistent with the explicit conditions placed on the order by the marketplace participant, or allocates fills for orders at the same price level in a manner or sequence that is inconsistent with the stated manner or sequence in which such fills are to occur on the marketplace. Another example includes where the trade price was calculated by a marketplace's systems or equipment based on some stated reference price, but it was calculated incorrectly.

(3) Policies and procedures

For policies and procedures established by the marketplace in accordance with the requirements of subsection 9(3) to be "reasonable", they should be clear and understandable to all marketplace participants.

The policies and procedures should also provide for consistent application. For example, if a marketplace decides that it will consider requests for cancellation, variation or correction of trades in accordance with paragraph 9(2)(b), it should consider all requests received regardless of the identity of the counterparty. If a marketplace chooses to establish parameters only within which it might be willing to consider such requests, it should apply these parameters consistently to each request, and should not exercise its discretion to refuse a cancellation or amendment when the request falls within the stated parameters and the consent of the affected parties has been provided.

When establishing any policies and procedures in accordance with subsection 9(3), a marketplace should also consider what additional policies and procedures might be appropriate to address any conflicts of interest that might arise.

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 FORM 45-16F1 AND 45-501F1

Transaction Date		No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
05/08/2012		3	ABB Finance (USA) Inc. - Notes	12,213,434.87	3.00
05/31/2012		101	ACM Commercial Mortgage Fund - Units	6,540,054.47	N/A
03/16/2012		42	African Queen Mines Ltd. - Units	1,714,119.00	7,791,450.00
05/18/2012		1	Ambit Biosciences (Canada) Corporation - Notes	952,793.32	1.00
05/30/2012		10	ArcticAx Inc. - Common Shares	1,221,998.25	444,363.00
08/31/2011 02/29/2012	to	1	Ashmore Brazil Fund Ltd. - Common Shares	634,845.36	34.22
05/15/2012		4	Audience, Inc. - Common Shares	1,602,700.00	5,270,180.00
03/10/2011 04/08/2011	to	12	Auxo Management L.P. - Units	1,559,725.00	1,559,725.00
03/16/2012 03/23/2012	to	14	Bison Income Trust II - Trust Units	1,202,114.69	120,211.47
05/25/2012		2	Bison Income Trust II - Trust Units	700,000.00	70,000.00
01/16/2012 01/25/2012	to	13	Bison Income Trust II - Trust Units	1,972,600.00	197,260.00
04/24/2012 04/27/2012	to	17	Bison Income Trust II - Trust Units	1,085,730.00	108,573.00
01/02/2012 01/11/2012	to	15	Bison Income Trust II - Trust Units	5,306,346.71	530,634.67
03/06/2012 03/15/2012	to	15	Bison Income Trust II - Trust Units	913,833.26	91,383.33
05/22/2012		5	BlackRock Incorporated - Common Shares	14,675,040.00	90,000.00
06/04/2012		1	Blue Planet Environmental Inc. - Common Shares	520,900.00	2,595,757.00
05/03/2012		45	Brigadier Gold Limited - Units	822,500.00	16,450,000.00
05/31/2012		12	Cabo Drilling Corp. - Units	2,705,000.00	2,705.00
06/15/2012		3	Canadian Orebodies Inc. - Common Shares	1,006,500.00	6,100,000.00
03/23/2012		12	Canoe Unique Energy (CDN) Limited Partnership II - Limited Partnership Units	8,900,000.00	8,900.00
06/01/2012		1	Carrier Connex Inc. - Common Shares	430,000.00	1,000.00
05/28/2012 06/01/2012	to	11	Colwood City Centre Limited Partnership - Notes	473,675.00	373,675.00

Transaction Date		No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
05/24/2012		1	Commonwealth Silver and Gold Mining Inc. - Common Shares	100,000.00	100,000.00
03/14/2012		1	Corsa Fund 2012 LP - Limited Partnership Interest	247,875.00	N/A
05/31/2012		58	Earth Video Camera Inc. - Common Shares	1,269,544.64	1,133,522.00
05/31/2012		36	EastCoal Inc. - Units	17,010,000.00	48,600,000.00
05/31/2012		5	Energate Inc. - Debentures	2,000,000.00	5.00
02/13/2012		6	EnerTech Capital Partners IV, L.P. - Limited Partnership Interest	13,344,660.00	N/A
03/16/2012		1	Extorre Gold Mines Limited - Common Shares	25,063,000.00	3,530,000.00
05/29/2012 06/12/2012	to	1	Forex Capital Markets LLC - N/A	0.00	23,972.00
05/29/2012		1	Galaxy Capital Corp. - Common Shares	150,000.00	1,000,000.00
05/29/2012		16	Galore Resources Inc. - Units	750,000.00	7,500,000.00
05/14/2012		1	Geminare Incorporated - Common Shares	1,000,002.81	1,440,835.00
05/03/2012		4	Global Infrastructure Partners II-C L.P. - Limited Partnership Interest	356,234,800.00	361,000,000.00
05/31/2012		40	Global SeaFarms Corporation - Units	1,072,000.00	5,360,000.00
06/12/2012		7	Greater China Capital Inc. - Receipts	871,970.88	3,963,504.00
06/04/2012		1	Harricana River Mining Corporation Inc. - Units	150,000.00	600,000.00
04/20/2012		1	IBI Group Inc. - Common Shares	10,005,000.00	667,000.00
01/19/2012 01/25/2012	to	30	International Millennium Mining Corp. - Units	811,784.20	13,217,237.00
11/01/2010 11/04/2010	to	33	International Millennium Mining Corp. - Units	790,000.00	15,800,000.00
05/29/2012		4	Kivalliq Energy Corporation - Common Shares	3,205,800.00	7,124,000.00
05/29/2012		19	Kivalliq Energy Corporation - Flow-Through Shares	8,386,450.00	16,772,900.00
05/28/2012 05/31/2012	to	11	League IGW Real Estate Investment Trust - Units	1,218,209.00	1,218,209.00
05/04/2012		1	Living forest One Limited Partnership - Common Shares	6,500.00	10,000.00
05/04/2012		1	Living Forest One Limited Partnership - Units	6,500.00	10,000.00
04/26/2012		7	Manitou Gold Inc. - Common Shares	0.00	100,000.00
05/28/2012		8	Manitou Gold Inc. - Common Shares	0.00	200,000.00
05/03/2012 05/23/2012	to	36	McMurray Street Investments Inc. - Mortgage	2,308,000.00	2,308,000.00
06/01/2012		24	Megastar Development Corp. - Common Shares	1,100,000.00	11,000,000.00

Transaction Date		No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
06/01/2012		1	Monarch Opportunities Fund Ltd. - Common Shares	51,900,000.00	50,000.00
05/31/2012 06/06/2012	to	3	MOVE Trust, BNY Trust Company of Canada as Trustee - Notes	24,159,283.25	3.00
05/24/2012		42	New Haven Mortgage Income Fund (1) Inc. - Special Shares	8,598,769.20	N/A
04/02/2012		6	New Moon Minerals Corp. - Units	35,000.00	350,000.00
05/21/2012		1	Newcastle Investment Corp. - Common Shares	4,392,366.00	23,000,000.00
01/01/2011 12/31/2011	to	19	NewGen Mining Fund LP - Units	3,401,042.50	22,531.85
06/04/2012 06/13/2012	to	3	Newport Balanced Fund - Trust Units	285,150.00	N/A
06/04/2012 06/13/2012	to	2	Newport Canadian Equity Fund - Trust Units	55,000.00	N/A
06/04/2012 06/13/2012	to	1	Newport Global Equity Fund - Trust Units	24,000.00	N/A
06/02/2012 06/13/2012	to	6	Newport Yield Fund - Trust Units	264,000.00	N/A
05/16/2012		1	Niam Nordic V LP - Limited Partnership Interest	9,729,000.00	N/A
04/18/2012		3	Noble Mineral Exploration Inc. - Common Shares	750,000.00	7,500,000.00
03/12/2012 03/13/2012	to	4	Nuinsco Resources Limited - Units	44,990.12	321,358.00
05/24/2012		6	Palisade Vantage Fund - Units	1,900,079.42	172,421.00
05/29/2012		1	Parkside Resources Corporation - Flow-Through Units	36,000.00	300,000.00
05/29/2012		5	Parkside Resources Corporation - Units	170,750.00	1,707,500.00
05/24/2012		2	Redstone Investment Corporation - Notes	10,000.00	N/A
05/31/2012		1	Residential Reinsurance 2012 Limited - Notes	3,104,700.00	1.00
05/31/2012		1	Residential Reinsurance 2012 Limited - Notes	18,628,200.00	1.00
05/31/2012 06/08/2012	to	5	Restone Investment Corporation - Notes	760,000.00	N/A
05/31/2012		26	Second City Capital Partners II, Limited Partnership - Limited Partnership Interest	23,725,082.50	N/A
06/01/2012 06/08/2012	to	3	Sinclair-Cockburn Mortgage Investment Corporation - Common Shares	450,000.00	450,000.00
04/11/2012		6	Solara Exploration Ltd. - Flow-Through Shares	230,000.00	2,300,000.00
05/11/2012		7	SQI Diagnostics Inc. - Common Shares	2,571,502.50	1,469,430.00
05/24/2012		4	Tekni-Plex, Inc. - Notes	2,130,907.60	4.00
05/08/2012		17	The Carlyle Group L.P. - Common Shares	769,650.00	30,500,000.00

Transaction Date		No of Purchasers	Issuer/Security	Total Purchase Price ($)	No of Securities Distributed
05/22/2012 05/25/2012	to	32	UBS AG, Jersey Branch - Certificates	20,958,527.40	32.00
05/31/2012 06/01/2012	to	8	UBS AG, Jersey Branch - Certificates	1,652,384.02	8.00
05/14/2012 05/18/2012	to	38	UBS AG, Jersey Branch - Certificates	12,423,621.47	38.00
05/31/2012		1	Vishay Intertechnology, Inc. - Debentures	517,450.00	1.00
05/24/2012		6	Walton NC Westlake LP - Limited Partnership Units	317,604.00	31,840.00
05/16/2012		1	Web.com Group, Inc. - Common Shares	579,416.00	37,600.00
03/20/2012		2	White Tiger Gold Ltd. - Units	1,011,750.00	2,130,000.00

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Anatolia Energy Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated June 19, 2012
NP 11-202 Receipt dated June 19, 2012
Offering Price and Description:
Up to $6,000,000.00 - * Units Price: $ * per Unit
Underwriter(s) or Distributor(s):
MACKIE RESEARCH CAPITAL CORPORATION
TOLL CROSS SECURITIES INC.
CORMARK SECURITIES INC.
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #1924034

Issuer Name:
Enbridge Pipelines Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated June 20, 2012
NP 11-202 Receipt dated June 20, 2012
Offering Price and Description:
$1,000,000,000.00 - MEDIUM TERM NOTES (UNSECURED
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1924486

Issuer Name:
Investors Real Property Fund
Principal Regulator - Manitoba
Type and Date:
Preliminary Simplified Prospectus dated June 20, 2012
NP 11-202 Receipt dated June 22, 2012
Offering Price and Description:
Series JDSC Units
Underwriter(s) or Distributor(s):
INVESTORS GROUP FINANCIAL SERVICES INC.
INVESTORS GROUP SECURITIES INC.
Investors Group Financial Services Inc.
Investors Group Securities Inc.
Promoter(s):
-
Project #1913490

Issuer Name:
McEwen Mining Inc. (formerly US Gold Corporation)
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus - MJDS dated June 18, 2012
NP 11-202 Receipt dated June 19, 2012
Offering Price and Description:
US$200,000,000.00
Debt Securities (which may be guaranteed by one or more of our Co-Registrants)
Common Stock
Warrants
Subscription Rights
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1923964

Issuer Name:
NeuroBioPharm Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Long Form Prospectus dated June 20, 2012
NP 11-202 Receipt dated June 21, 2012
Offering Price and Description:
Distribution by Neptune Technologies & Bioressources Inc. of 2,000,000 Class A Common Shares and 4,000,000 Series 2011-1 Warrants of NeuroBioPharm Inc. as a Dividend-in-Kind
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1924881

Issuer Name:
Niagara Ventures Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated June 22, 2012
NP 11-202 Receipt dated June 22, 2012
Offering Price and Description:
MINIMUM OFFERING: $3,000,000.00 or 15,000,000 Common Shares; MAXIMUM OFFERING: $4,750,000.00 or 23,750,000 Common Shares PRICE: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Macquarie Private Wealth Inc.
Promoter(s):
Larry Phillips
Project #1925204

Issuer Name:
Oncolytics Biotech Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated June 21, 2012
NP 11-202 Receipt dated June 21, 2012
Offering Price and Description:
Cdn.$150,000,000.00
Common Shares
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1924848

Issuer Name:
Puget Ventures Inc.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated June 20, 2012
NP 11-202 Receipt dated June 20, 2012
Offering Price and Description:
Minimum $6,187,500.00 (10,312,500 Subscription Receipts) Maximum $16,000,950.00 (26,668,250 subscription Receipts) each Subscription Receipt representing the right to receive one Unit Price: $0.60 per Subscription Receipt
Underwriter(s) or Distributor(s):
EURO PACIFIC CANADA INC.
JACOB SECURITIES INC.
D&D SECURITIES INC.
Promoter(s):
Erin Chutter
Alexei Musteatsa
Project #1848712

Issuer Name:
Alaris Royalty Corp.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated June 19, 2012
NP 11-202 Receipt dated June 19, 2012
Offering Price and Description:
$44,070,000.00 - 2,260,000 Common Shares Per Offered Share $19.50
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:
Templeton Growth Fund, Ltd.
Templeton Growth Corporate Class
Templeton International Stock Fund
Templeton International Stock Corporate Class
Templeton Emerging Markets Fund
Templeton Emerging Markets Corporate Class
Templeton Global Smaller Companies Fund
Templeton Global Smaller Companies Corporate Class
Templeton Global Bond Fund
Templeton Global Bond Hedged Yield Class
Templeton Canadian Stock Fund
Templeton Canadian Stock Corporate Class
Templeton Canadian Balanced Fund
Templeton Global Income Fund
Templeton BRIC Corporate Class
Templeton EAFE Developed Markets Fund
Templeton Asian Growth Corporate Class
Templeton Frontier Markets Corporate Class
Franklin Flex Cap Growth Fund
Franklin Flex Cap Growth Corporate Class
Franklin World Growth Fund
Franklin World Growth Corporate Class
Franklin High Income Fund
Franklin Strategic Income Fund
Franklin U.S. Core Equity Fund
Franklin U.S. Rising Dividends Fund
Franklin U.S. Rising Dividends Corporate Class
Bissett Canadian Equity Fund
Bissett Canadian Equity Corporate Class
Bissett Small Cap Fund
Bissett Small Cap Corporate Class
Bissett Microcap Fund
Bissett Canadian Balanced Fund
Bissett Canadian Balanced Corporate Class
Bissett Dividend Income Fund
Bissett Dividend Income Corporate Class
Bissett Bond Fund
Bissett Bond Corporate Class
Bissett Corporate Bond Fund
Bissett Bond Yield Class (formerly Franklin Templeton Managed Yield Class)
Bissett Canadian High Dividend Fund (formerly Bissett Income Fund)

Bissett Canadian High Dividend Corporate Class
Bissett Canadian Dividend Fund
Bissett Canadian Dividend Corporate Class
Bissett Canadian Short Term Bond Fund
Bissett Canadian Short Term Bond Yield Class
Bissett All Canadian Focus Fund
Bissett All Canadian Focus Corporate Class
Bissett Energy Corporate Class
Bissett U.S. Focus Corporate Class
Bissett Focus Balanced Fund
Bissett Focus Balanced Corporate Class
Bissett Strategic Income Fund
Bissett Strategic Income Corporate Class
Bissett Corporate Bond Yield Class (formerly Franklin Templeton Managed Corporate Yield Class)
Mutual Beacon Corporate Class
Mutual Beacon Fund
Mutual Discovery Corporate Class
Mutual Discovery Fund
Quotential Balanced Growth Corporate Class Portfolio
Quotential Balanced Growth Portfolio
Quotential Balanced Income Corporate Class Portfolio
Quotential Balanced Income Portfolio
Quotential Canadian Growth Corporate Class Portfolio
Quotential Canadian Growth Portfolio
Quotential Diversified Income Corporate Class Portfolio
Quotential Diversified Income Portfolio
Quotential Global Balanced Corporate Class Portfolio
Quotential Global Balanced Portfolio
Quotential Global Growth Corporate Class Portfolio
Quotential Global Growth Portfolio
Quotential Growth Corporate Class Portfolio
Quotential Growth Portfolio
Quotential Maximum Growth Corporate Class Portfolio
Quotential Maximum Growth Portfolio
Franklin Templeton Global Blend Corporate Class
Franklin Templeton Global Blend Fund
Franklin Templeton Money Market Corporate Class
Franklin Templeton Money Market Fund
Franklin Templeton Money Market Yield Class (formerly Franklin Templeton Short-Term Yield Class)
Franklin Templeton Treasury Bill Fund
Franklin Templeton U.S. Money Market Corporate Class
Franklin Templeton U.S. Money Market Fund
Franklin Templeton U.S. Money Market Yield Class (fromerly Franklin Templeton U.S. Short-Term Yield Class)
Principal Regulator - Ontario

Type and Date:
Final Simplified Prospectuses dated June 19, 2012
NP 11-202 Receipt dated June 21, 2012

Offering Price and Description:
Series A, F, O, R, S, T and T-USD units and Series A, F, I, O, R, S, T and T-USD shares @ Net Asset Value

Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Bissett Investment Management, a division of Franklin Templeton Investments Corp.
Franklin Templeton Investments Corp.

Promoter(s):
Franklin Templeton Investments Corp.

Project #1900450

Issuer Name:
BMO Guardian Floating Rate Income Fund
BMO Guardian Growth & Income Fund
BMO Guardian High Yield Bond Fund
BMO Guardian Monthly Dividend Fund Ltd.
BMO Guardian Monthly High Income Fund II
BMO Guardian Canadian Large Cap Equity Fund
BMO Guardian Enterprise Fund
BMO Guardian Global Absolute Return Fund
BMO Guardian Global Small Cap Fund
BMO Guardian Asian Growth and Income Fund
BMO Guardian Canadian Diversified Monthly Income Fund
BMO Guardian Global Diversified Fund
BMO Guardian Income Solution
BMO Guardian Conservative Solution
BMO Guardian Balanced Solution
BMO Guardian Growth Solution
BMO Guardian Aggressive Growth Solution
Principal Regulator - Ontario

Type and Date:
Final Simplified Prospectuses dated June 14, 2012
NP 11-202 Receipt dated June 21, 2012

Offering Price and Description:
Mutual Fund units or shares. Classic units or shares (''C''), F Class units or shares (''F''), F5 Class units (''F5''), I Class units (''I''), T5 Class units (''T5'') and T8 Class units (''T8'') @ Net Asset Value

Underwriter(s) or Distributor(s):
Guardian Group of Funds Ltd.
BMO Investments Inc.

Promoter(s):
-

Project #1906529

Issuer Name:
Brookfield Asset Management Inc.
Principal Regulator - Ontario

Type and Date:
Amendment No.1 dated June 13, 2012 to Base Shelf Prospectus dated June 7, 2011
NP 11-202 Receipt dated June 20, 2012

Offering Price and Description:
US$2,000,000,000.00: Debt Securities, Class A Preference Shares , Class A Limited Voting Shares

Underwriter(s) or Distributor(s):
-

Promoter(s):
-

Project #1736327

Issuer Name:
Esperanza Resources Corp.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated June 20, 2012
NP 11-202 Receipt dated June 20, 2012
Offering Price and Description:
27,214,700 Common Shares and 13,607,000 Common Share Purchase Warrants on exercise or deemed exercise of 27,214,000 Special Warrants
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
STONECAP SECURITIES INC.
Promoter(s):
-
Project #1921205

Issuer Name:
Fidelity Tactical Strategies Fund
Fidelity Far East Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated June 11, 2012 to the Simplified Prospectuses dated October 27, 2011 and Amendment #3 to the Annual Information Form dated October 27, 2011
NP 11-202 Receipt dated June 22, 2012
Offering Price and Description:
Series A, Series B, Series F, Series O, Series T5, Series T8, Series S5, Series S8, Series F5, and Series F8 Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Fidelity Investments Canada Limited
Promoter(s):
FIDELITY INVESTMENTS CANADA ULC
Project #1804872

Issuer Name:
Genivar Inc.
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated June 19, 2012
NP 11-202 Receipt dated June 19, 2012
Offering Price and Description:
9,375,000 Subscription Receipts each representing the right to receive one Common Share at a price of $24.00 per Common Share for aggregate gross proceeds of $225,000,000
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 Standard Ventures Corp.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated June 21, 2012
NP 11-202 Receipt dated June 21, 2012
Offering Price and Description:
US$ 10,000,000.00 Common Shares
Underwriter(s) or Distributor(s):
DAHLMAN ROSE & COMPANY CANADA, INC.
CASIMIR CAPITAL LTD.
TD SECURITIES INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
Promoter(s):
Jonathan T. Awde
Project #1921671

Issuer Name:
Harvest Canadian Income & Growth Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated June 20, 2012
NP 11-202 Receipt dated June 20, 2012
Offering Price and Description:
Series A, Series F and Series R Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Harvest Portfolios Group Inc.
Project #1903276

Issuer Name:
Horizons BetaPro COMEX® Gold Bullion Bull Plus ETF
Horizons BetaPro COMEX® Gold Bullion Bear Plus ETF
Horizons BetaPro NYMEX® Crude Oil Bull Plus ETF
Horizons BetaPro NYMEX® Crude Oil Bear Plus ETF
Horizons BetaPro NYMEX® Natural Gas Bull Plus ETF
Horizons BetaPro NYMEX® Natural Gas Bear Plus ETF
Horizons BetaPro US Dollar Bull Plus ETF
Horizons BetaPro US Dollar Bear Plus ETF
Horizons BetaPro US 30-year Bond Bear Plus ETF
Horizons BetaPro COMEX® Silver Bull Plus ETF
Horizons BetaPro COMEX® Silver Bear Plus ETF
Horizons BetaPro COMEX® Copper Bull Plus ETF
Horizons BetaPro COMEX® Copper Bear Plus ETF
Horizons BetaPro NYMEX® Natural Gas Inverse ETF
Horizons BetaPro NYMEX® Crude Oil Inverse ETF
Horizons BetaPro NYMEX® Long Natural Gas/Short Crude Oil Spread ETF
Horizons BetaPro NYMEX® Long Crude Oil/Short Natural Gas Spread ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated June 18, 2012
NP 11-202 Receipt dated June 21, 2012
Offering Price and Description:
Class A Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #1905970

Issuer Name:
Horizons BetaPro S&P/TSX 60 Bull Plus ETF
Horizons BetaPro S&P/TSX 60 Bear Plus ETF
Horizons BetaPro S&P/TSX Global Base Metals Bull Plus ETF
Horizons BetaPro S&P/TSX Global Base Metals Bear Plus ETF
Horizons BetaPro S&P/TSX Capped Financials Bull Plus ETF
Horizons BetaPro S&P/TSX Capped Financials Bear Plus ETF
Horizons BetaPro S&P/TSX Capped Energy Bull Plus ETF
Horizons BetaPro S&P/TSX Capped Energy Bear Plus ETF
Horizons BetaPro S&P/TSX Global Gold Bull Plus ETF
Horizons BetaPro S&P/TSX Global Gold Bear Plus ETF
Horizons BetaPro S&P 500® Bull Plus ETF
Horizons BetaPro S&P 500® Bear Plus ETF
Horizons BetaPro NASDAQ-100® Bull Plus ETF
Horizons BetaPro NASDAQ-100® Bear Plus ETF
Horizons BetaPro MSCI Emerging Markets Bull Plus ETF
Horizons BetaPro MSCI Emerging Markets Bear Plus ETF
Horizons BetaPro S&P/TSX 60 Inverse ETF
Horizons BetaPro S&P/TSX Capped Financials Inverse ETF
Horizons BetaPro S&P/TSX Capped Energy Inverse ETF
Horizons BetaPro S&P/TSX Global Gold Inverse ETF
Horizons BetaPro S&P 500® Inverse ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus ted June 18, 2012
NP 11-202 Receipt dated June 21, 2012
Offering Price and Description:
Class A Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #1905968

Issuer Name:
Horizons COMEX® Copper ETF
Horizons COMEX® Gold ETF
Horizons COMEX® Silver ETF
Horizons Winter-Term NYMEX® Crude Oil ETF
Horizons Winter-Term NYMEX® Natural Gas ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated June 18, 2012
NP 11-202 Receipt dated June 21, 2012
Offering Price and Description:
Class A Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #1905973

Issuer Name:
Mackenzie Saxon Explorer Class
Principal Regulator - Ontario
Type and Date:
Amendment #4 dated June 15, 2012 to Final Simplified Prospectus and Annual Information Form dated September 30, 2011
NP 11-202 Receipt dated June 20, 2012
Offering Price and Description:
Series A, F, O, G and T8 Securities @ Net Asset Value
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
Promoter(s):
MACKENZIE FINANCIAL CORPORATION
Project #1789999

Issuer Name:
Movarie Capital Ltd.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated June 13, 2012
NP 11-202 Receipt dated June 19, 2012
Offering Price and Description:
$600,000.00 - 4,000,000 Common Shares Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Mark Orsmond
Project #1905516

Issuer Name:
Pender Corporate Bond Fund
Pender Small Cap Opportunities Fund
Pender Balanced Fund
Pender Canadian Equity Fund
Principal Regulator - British Columbia
Type and Date:
Final Simplified Prospectus dated June 19, 2012
NP 11-202 Receipt dated June 19, 2012
Offering Price and Description:
Class A, Class F and Class H units
Underwriter(s) or Distributor(s):
-
Promoter(s):
PENDERFUND CAPITAL MANAGEMENT LTD.
Project #1904395

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Name	From: HIM Monegy, Inc. To: Monegy Inc.	Portfolio Manager Exempt Market Dealer	June 1, 2012
Change of Name	From: Harris Investment Management Inc. To: BMO Asset Management Corp.	Portfolio Manager Commodity Trading Manager	June 1, 2012

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 Notice of Commission Approval – IIROC Rules Notice – UMIR – Provisions Respecting Electronic Trading

IIROC RULES NOTICE
PROVISIONS RESPECTING ELECTRONIC TRADING

12-0200
June 28, 2012

Executive Summary

On June 27, 2012, the Board of Directors ("Board") of IIROC approved the publication for comment of proposed amendments to UMIR respecting certain requirements for electronic trading on Canadian marketplaces ("Proposed Amendments"). Concurrent with this notice, the Canadian Securities Administrators ("CSA") are publishing National Instrument 23-103 *Electronic Trading* and its Companion Policy ("ETR").

The Proposed Amendments would:

- align the requirements of UMIR to the ETR;
- expand the existing supervisory requirements for trading to specifically include the establishment and maintenance of risk management and supervisory controls, policies and procedures related to access to one or more marketplaces and/or the use of an automated order system;
- permit, in certain circumstances, a Participant to authorize an investment dealer to perform on its behalf the setting or adjustment of a risk management or supervisory control, policy or procedure to an investment dealer by a written agreement;
- impose specific gatekeeper obligations on a Participant who has authorized an investment dealer to perform on its behalf the setting or adjustment of a risk management or supervisory control, policy or procedure to an investment dealer;
- clarify the circumstances under which a trade may be cancelled, varied or corrected with notice to, or the consent of, a Market Regulator; and
- make several editorial changes or consequential amendments to certain provisions including the incorporation into UMIR of defined terms used in the ETR.

The most significant impacts of the Proposed Amendments would be to:

- ensure that Participants and Access Persons adopt, document and maintain a system of risk management and supervisory controls, policies and procedures reasonably designed to manage the risks associated with electronic trading and access to marketplaces;
- ensure that Participants and Access Persons are effectively supervising trading activity and are accounting for the risks associated with electronic access to marketplaces in their supervisory and compliance monitoring procedures; and
- require an appropriate level of understanding, ongoing testing and appropriate monitoring of any automated order systems in use by a Participant, Access Person, or any client of the Participant.

IIROC would expect that, if the Proposed Amendments are approved by the Recognizing Regulators, the amendments would be implemented on the later of:

- ***March 1, 2013, the date the ETR becomes effective; and***

- ***120 days following the publication of notice of approval of the amendments.***

The CSA expects to issue in September of 2012 a proposal for a National Instrument which will cover aspects of the provision of third-party access to marketplaces, including direct electronic access. Concurrent with this CSA initiative, IIROC would expect to issue additional proposed amendments to UMIR to ensure alignment with the proposed National Instrument.

1. Policy Development Process

IIROC has been recognized as a self-regulatory organization by each of the Canadian provincial securities regulatory authorities (the "Recognized Regulators") and, as such, is authorized to be a regulation services provider for the purposes of National Instrument 21-101 ("Marketplace Operation Instrument") and National instrument 23-101 ("CSA Trading Rules").

As a regulation services provider, IIROC administers and enforces trading rules for the marketplaces that retain the services of IIROC.[1] IIROC has adopted, and the Recognizing Regulators have approved, UMIR as the market integrity trading rules that will apply in any marketplace that retains IIROC as its regulation services provider.

The Market Rules Advisory Committee ("MRAC") of IIROC has reviewed the Proposed Amendments. MRAC is an advisory committee comprised of representatives of each of: the marketplaces for which IIROC acts as a regulation services provider; Participants; institutional investors and subscribers; and the legal and compliance community.[2]

The text of the Proposed Amendments is set out in Appendix "A". The Proposed Amendments are designed to align UMIR with the requirements of the ETR, and as such, the Board has determined the Proposed Amendments to be in the public interest. Comments are requested on all aspects of the Proposed Amendments. Comments should be in writing and delivered by ***September 26, 2012*** to:

James E. Twiss,
Vice-President, Market Regulation Policy,
Investment Industry Regulatory Organization of Canada,
Suite 2000
121 King Street West,
Toronto, Ontario. M5H 3T9
Fax : 416.646.7265
e-mail : jtwiss@iiroc.ca

Commentators should be aware that a copy of their comment letter will be made publicly available on the IIROC website (www.iiroc.ca under the heading "Policy" and sub-heading "Market Proposals/Comments") upon receipt. A summary of the comments contained in each submission will also be included in a future IIROC Notice.

After considering the comments on the Proposed Amendments received in response to this Request for Comments together with any comments of the Recognizing Regulators, IIROC may recommend that revisions be made to the Proposed Amendments. If the revisions are not of a material nature, the Board has authorized the President to approve the revisions on behalf of IIROC and the Proposed Amendments as revised will be subject to approval by the Recognizing Regulators. If the revisions are material, the Proposed Amendments as revised will be submitted to the Board for ratification and, if ratified, will be republished for further public comment.

[1] Presently, IIROC has been retained to be the regulation services provider for: Alpha Exchange Inc. ("Alpha"), Canadian National Stock Exchange ("CNSX"), Toronto Stock Exchange ("TSX") and TSX Venture Exchange ("TSXV"), each as an "exchange" for the purposes of the Marketplace Operation Instrument ("Exchange"); and for Bloomberg Tradebook Canada Company ("Bloomberg"), Chi-X Canada ATS Limited ("Chi-X"), Instinet Canada Cross Ltd. ("Instinet"), Liquidnet Canada Inc. ("Liquidnet"), Omega ATS Limited ("Omega"), TMX Select ("TMX Select") and TriAct Canada Marketplace LP (the operator of "MATCH Now"), each as an alternative trading system ("ATS"). CNSX presently operates an "alternative market" known as "Pure Trading" that is entitled to trade securities that are listed on Exchanges and that presently trades securities listed on the TSX and TSXV.

[2] The review by MRAC of the Proposed Amendments should not be construed as approval or endorsement of the Proposed Amendments. Members of MRAC may express their personal views on topics and that advice may not represent the views of their respective organizations as expressed during the public comment process.

2. Background to the Proposed Amendments

2.1 Electronic Trading Rule

2.1.1 Framework for Regulation of Electronic Trading

On April 8, 2011, the CSA published proposed National Instrument 23-103 and Companion Policy ("2011 Proposal") for comment.[3] The 2011 Proposal was designed to address areas of concern and risks brought about by electronic trading. Given the increased use of technology driving all aspects of trading and access to marketplaces, as well as the increasing speed at which trading occurs, Canadian regulators as well as regulators in other jurisdictions are introducing frameworks to manage the risks. Such risks include those relating to liability, credit, market integrity, sub-delegation, technology or systems and regulatory arbitrage.

A number of international initiatives were reviewed and considered in the development of the ETR, including the Securities and Exchange Commission Rule 15c3-5 *Risk Management Controls for Brokers or Dealers with Market Access*[4] as well as the International Organization of Securities Commissions (IOSCO) Report *Principles for Direct Electronic Access to Marketplaces.*[5] The IOSCO report makes recommendations such as minimum financial standards for clients with direct electronic access, and establishing controls to manage the risks associated with electronic trading. The requirements of the ETR are consistent with those recommendations related to governing electronic trading.

Concurrent with this notice, the CSA is publishing the final ETR which will become effective on March 1, 2013. For further information relating to the ETR, please refer to www.osc.gov.on.ca.

The ETR introduces a comprehensive framework designed to address areas of concern and risks brought about by electronic trading. Generally, the ETR places responsibility for managing risks and maintaining supervisory controls, policies and procedures related to electronic trading on:

- a "marketplace participant" (defined as: a member of an exchange; user of a Quotation and Trade Reporting System; or subscriber of an ATS) whether trading is of a proprietary nature or on behalf of clients; and
- a marketplace.

2.1.2 Requirements Applicable to Marketplace Participants

The ETR builds on the obligations outlined in Section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*[6] ("NI 31-103") under which a registered firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation and manage the risks associated with its business in accordance with prudent business practices.

The ETR requires that these risk management and supervisory controls, policies and procedures must be reasonably designed to:

- ensure that all orders are monitored pre- and post-trade;
- systematically limit the financial exposure of the marketplace participant;
- ensure compliance with all marketplace and regulatory requirements;
- ensure the marketplace participant can stop or cancel the entry of orders to a marketplace;
- ensure the marketplace participant can suspend or terminate any marketplace access granted to a client; and
- ensure the entry of orders does not interfere with fair and orderly markets.

A participant dealer[7] may on a reasonable basis, authorize an investment dealer to perform on its behalf the setting or adjustment of a specific risk management or supervisory control, policy or procedure to an investment dealer under certain

3 Published at (2011) 34 OSCB beginning at page 4133.

4 Published at: http://www.sec.gov/rules/final/2010/34-63241.pdf.

5 Published at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD332.pdf.

6 Published at: http://www.osc.gov.on.ca/documents/en/Securities-Category3/ni_20120228_31-103_unofficial-consolidated.pdf.

7 The term "participant dealer" is defined in ETR as "a marketplace participant that is an investment dealer".

circumstances where the investment dealer's relationship with an ultimate client would provide them with better access to information, and would thus provide for a more effective setting or adjusting of the control, policy or procedure. Granting such an authorization would require a written agreement between the participant dealer and the investment dealer, and a regular and ongoing assessment of the adequacy and effectiveness of such an agreement.

2.1.3 Requirements Applicable to Use of Automated Order Systems

The ETR establishes requirements surrounding the use of automated order systems.[8] A marketplace participant is required to take all reasonable steps to ensure that any use of an automated order system either by itself or by any client does not interfere with fair and orderly markets. Similarly, any client of a marketplace participant is itself obligated to take reasonable steps to ensure the same.

A marketplace participant must also have a level of knowledge and understanding of any automated order system used by itself or a client that is sufficient to identify and manage any risks associated with its use. A marketplace participant must also ensure that each automated order system is tested prior to use, and at least annually thereafter, and have controls in place to immediately disable and prevent orders generated by an automated order system from reaching a marketplace.

2.1.4 Requirements Applicable to Marketplaces

In addition to marketplace participants, the ETR also recognizes the role of the marketplace in managing the risks associated with electronic trading. The ETR places a requirement on a marketplace to prevent the execution of orders from exceeding price and/or volume thresholds set by the regulation services provider or by a marketplace if it is a recognized exchange or quotation and trade reporting system that directly monitors the conduct of its members or users and enforces certain requirements set pursuant to the CSA Trading Rules.[9]

The ETR also sets outs specific conditions under which a marketplace may cancel, vary or correct a trade executed on that marketplace. The marketplace must establish, maintain and ensure compliance with reasonable policies and procedures that clearly outline how a variation, cancellation or correction can occur, and must make these policies and procedures publicly available.

Additionally, the ETR requires a marketplace to provide a marketplace participant with access to its order and trade information on an immediate basis and on reasonable terms, to ensure that marketplace participants can effectively implement the risk management and supervisory controls policies and procedures required by the rule.

2.1.5 Future Initiatives

Part 3 of the 2011 Proposal outlined requirements which were applicable to Participants providing electronic access to marketplaces to clients (including to other Participants in the capacity as jitney). It set out specific requirements regarding:

- the provision of such access;
- standards to be applied before granting access;
- specific elements to be included in a written agreement;
- training of clients;
- client identifiers for regulatory purposes; and
- clients trading on behalf of their own clients.

In the coming months, the CSA expects to issue a proposal for a National Instrument which will republish and expand on these elements of the 2011 Proposal. Concurrent with this CSA initiative, IIROC would expect to issue additional proposed amendments to UMIR to ensure alignment with the proposed National Instrument.

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[8] The term "automated order system" is defined in ETR as "a system used to automatically generate or electronically transmit orders that are made on a pre-determined basis". As set out in section 1.2(1) of National Instrument 23-103 CP, an automated order system would encompass "both hardware and software used to generate or electronically transmit orders on a pre-determined basis and would include smart order routers and trading algorithms that are used by marketplace participants, offered by marketplace participants to clients or developed or used by clients."

[9] See section 8 of ETR. IIROC has sought public comment on the approach which should be adopted to the establishment of acceptable marketplace thresholds. See IIROC Notice 12-0162 – Rules Notice – Request for Comment – UMIR – *Request for Comments on Marketplace Thresholds* (May 10, 2012).

2.2 Supervision Obligations for Electronic Trading under UMIR

Currently, Rule 7.1 of UMIR establishes trading supervision obligations which Participants must follow, including:

- adopting written policies and procedures to be followed by directors, officers, partners and employees of the Participant that are adequate, taking into account the business and affairs of the Participant, to ensure compliance with UMIR and each Policy; and
- complying, prior to the entry of an order on a marketplace, with:
    - applicable regulatory standards with respect to the review, acceptance and approval of orders,
    - the policies and procedures adopted, and
    - all requirements of UMIR and each Policy.

Policy 7.1 of UMIR elaborates further on the responsibility of Participants for trading supervision and compliance, and certain elements of Policy 7.1 relate more particularly to electronic trading. Specifically, the obligation to supervise applies whether the order is entered on a marketplace:

- by a trader employed by the Participant;
- by an employee of the Participant through an order routing system;
- directly by a client and routed to a marketplace through the trading system of the Participant; or
- by any other means.

The Participant maintains responsibility for any order which is entered on a marketplace without the involvement of a trader employed by the Participant, as an example when the client maintains a "systems interconnect arrangement" in accordance with marketplace requirements. In such circumstances adequate supervision policies and procedures are required to address the potential additional risk exposure with orders not directly handled by the Participant but that remain the Participant's responsibility.

3. Discussion of the Proposed Amendments

The following is a summary of the principal components of the Proposed Amendments:

3.1 Trading Supervision Obligations

3.1.1 Risk Management and Supervisory Controls, Policies and Procedures

Rule 7.1 currently establishes trading supervision obligations which Participants must follow, including the establishment of written policies and procedures to ensure compliance with UMIR. With the ETR providing a new framework designed to mitigate the risks of electronic trading, the Proposed Amendments add several new subsections to align the supervisory requirements of Rule 7.1 with the requirements of the ETR.

The Proposed Amendments would require that a Participant or Access Person adopt a system of risk management controls designed to ensure the management of risks specifically associated with electronic trading. Particularly, they should be designed to manage the risks associated with access to one or more marketplaces, and if applicable, the use of any automated order system, by a Participant, a client of the Participant or an Access Person.

Proposed Part 7 of Policy 7.1 provides further information regarding the requirements set out in Rule 7.1, and details the expectations in regard to the elements of the risk management and supervisory controls, policies and procedures which must be employed by Participants and Access Persons. These must include:

- automated controls to examine each order before entry on a marketplace to prevent the entry of an order which would result in:
    - the Participant or Access Person exceeding pre-determined credit or capital thresholds,
    - a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant to that client, or

- o the Participant, Access Person or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities;

- provisions to prevent the entry of an order that is not in compliance with Requirements;[10]

- provisions of immediate order and trade information to compliance staff of the Participant or Access Person; and

- regular post-trade monitoring for compliance with Requirements.

Once established, the Proposed Amendments would require the Participant to review and confirm at least annually, that the risk management and supervisory controls, policies and procedures are adequate, maintained and consistently applied, and that any deficiencies have been documented and remedied promptly.

3.1.2 Authorization to Set or Adjust Risk Management and Supervisory Controls, Policies and Procedures

Given that in certain circumstances, particular controls may be better placed under the direction of another dealer, proposed new subsection (7) of Rule 7.1 would, on a reasonable basis, allow the Participant to authorize an investment dealer to perform on its behalf the setting or adjustment of a specific risk management or supervisory control, policy or procedure to an "investment dealer".[11] Additionally, the Proposed Amendments would provide the same flexibility provided by the ETR with respect to the development or implementation of such controls, and thus a Participant would be permitted to use the services of a third party provider that is independent of each client of the Participant, other than affiliates of the Participant. It is important to note that under the ETR, whether or not a third party solution is utilized, only the Participant is permitted to directly and exclusively set and adjust its supervisory and risk management controls.

Proposed new subsection (8) of Rule 7.1 outlines specific requirements if either an authorization is made to an investment dealer or if a third party provider is utilized. Either situation requires a written agreement that will preclude the investment dealer or third party from providing any other person control over any aspect of the control, policy or procedure. Further, unless the investment dealer subject to the authorization agreement is also a Participant, subsection (8) will preclude any authorization with respect to an account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest (other than that of commissions received on transactions or a reasonable fee for the administration of the account).

The policy rationale for permitting a Participant to authorize an investment dealer to perform on its behalf the setting or adjusting of a supervisory and risk management control is the recognition that situations exist where a participant dealer may determine that another investment dealer has a relationship with the ultimate client such that the investment dealer, having better access to information relating to the ultimate client, would be in a position to more effectively set or adjust the control, policy or procedure. As such, the Proposed Amendments only provide for an authorization with respect to accounts where the investment dealer is in fact trading for an ultimate client, and not in circumstances where there is no ultimate client and the trading is being made on a proprietary basis.

Upon entering into a written agreement pursuant to subsection (8), the Proposed Amendments would require disclosure of the name and contact information of the investment dealer or third party to the Market Regulator, as well as any change in this information. The provision of this information will allow the Market Regulator to contact the investment dealer or third party to make enquiries about the application of the controls, policies or procedures to orders or trades in situations when additional information is needed.

If the Participant has authorized to an investment dealer or has utilized the services of a third party provider, the Participant is also required to review and confirm at least annually by the anniversary date of the written agreement with the investment dealer or third party, that the risk management and supervisory controls, policies and procedures are adequate, maintained and consistently applied, that any deficiencies have been documented and remedied promptly, and that the investment dealer or third party remains in compliance with the written agreement.

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[10] "Requirements" include UMIR, applicable securities regulation, requirements of any self-regulatory organization applicable to the activity of the account and the rules and policies of any marketplace on which the account activity takes place. In particular, a Participant or Access Person that uses an automated order system must have appropriate parameters, policies and procedures to detect, prior to entry, an order that is "clearly erroneous" or "unreasonable" and which would interfere with fair and orderly markets if entered. See "Specific Provisions Applicable to Automated Order Systems".

[11] Under the Proposed Amendments, the term "investment dealer" would be interpreted as "an investment dealer for the purposes of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations"*.

3.2 Specific Provisions Applicable to Automated Order Systems

In addition to the trading supervision obligations established by proposed amendments to Rule 7.1 described above, proposed new Part 8 to Policy 7.1 sets out specific supervisory provisions related to the use of automated order systems. As noted earlier, the risk management and supervisory controls, policies and procedures should be designed to manage the risk associated with access to one or more marketplaces, and if applicable, the use of any automated order system, by a Participant, Access Person, or any client.

The Proposed Amendments would require that each Participant or Access Person have a level of knowledge and understanding of any automated order system used by the Participant, Access Person or a client of either. This level of knowledge should be sufficient to allow the Participant or Access Person to identify and manage risks associated with the use of the automated order system.

The Proposed Amendments would require each Participant or Access Person to ensure that all automated order systems used by the Participant, any client of the Participant or an Access Person are tested in accordance with prudent business practices both initially before being used for the first time, and at least annually thereafter. This testing must be detailed in a written record in order to clearly demonstrate the testing undertaken by the Participant, Access Person and any third party services utilized to employ the automated order system or the risk management and supervisory controls, policies and procedures.

In establishing the parameters for the monitoring of order flow required under both the ETR and the Proposed Amendments, a Participant or Access Person should consider the strategy or strategies being employed by any automated order systems in use, and the potential market impact of defining such parameters inappropriately. In determining the appropriate scope of the order and trade parameters, policies and procedures the Participant or Access Person should, at a minimum, ensure they are set to prevent an order from exceeding:

- the marketplace thresholds[12] applicable to the marketplace on which the order is entered, or
- the limits publicly disclosed by IIROC for the exercise of the power of a Market Integrity Official under Rule 10.9 of UMIR for the triggering of a single-stock circuit breaker or regulatory intervention for the variation or cancellation of trade.[13]

Generally, it is expected that the risk management and supervisory controls, policies and procedures will be reasonably designed to prevent the entry of orders which would interfere with the operation of fair and orderly markets. The supervision and compliance procedures adopted by a Participant or Access Person should if applicable, contain detailed guidance on how the testing of client orders and trades is to be conducted to ensure that each automated order system is tested assuming various market conditions both initially and on at least an annual basis going forward.

Each Participant or Access Person must also have the capability to immediately disable any automated order system used by themselves or any client of the Participant, and thus prevent any orders generated by such system from reaching a marketplace. This would provide the Participant or Access Person the ability to intervene in the event of a malfunction or a situation where a system was being used improperly. A Participant or Access Person is ultimately responsible for any order entered or any trade executed on a marketplace, and this does not exclude situations where an automated order system malfunctions or is improperly used. Such responsibilities include situations where a malfunction causes a “runaway” algorithm even if the malfunction is attributed to an aspect of the automated order system that could not be accessed by the Participant or Access Person for purposes of testing.

3.3 Variation, Cancellation and Correction of Trades

Currently, Rule 7.11 prevents the cancellation or variation in price, volume or settlement date of an executed trade except in specific circumstances. Part 4 of the ETR sets out specific rules detailing when a marketplace can cancel, vary or correct a trade, and as such the language of Rule 7.11 is proposed to be amended to reflect this new framework. It will now provide for the correction of a trade in addition to the cancellation and variation, and also stipulate that a marketplace can only take such actions:

- with the prior consent of the Market Regulator if the variation, cancellation or correction is necessary to correct an error caused by:

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[12] For further information on “marketplace thresholds” see IIROC Notice 12-0162 – Rules Notice – Request for Comments – UMIR – *Request for Comments on Marketplace Thresholds* (May 10, 2012).

[13] For further information see IIROC Notice IIROC Notice 12-040 – Rules Notice – Guidance Note – UMIR – *Guidance Respecting Implementation of Single-Stock Circuit Breakers* (February 2, 2012) and IIROC Notice 12-0112 – Rules Notice – Request for Comments – UMIR – *Proposed Guidance on Regulatory Intervention for the Variation or Cancellation of Trades* (March 30, 2012).

- a system or technological malfunction of the marketplace itself, or
- an individual acting on behalf of the marketplace; or

- with notice to the Market Regulator immediately following the variation, cancellation or correction:
  - prior to the settlement of the trade by:
    - the marketplace at the request of a party to the trade and with the consent of each Participant or Access Person that is a party to the trade, or
    - the clearing agency through which the trade is or was to be cleared and settled, and
  - after the settlement of the trade, by each Participant and Access Person that is a party to the trade.

3.4 Gatekeeper Obligations with Respect to Electronic Trading

As previously noted, under the Proposed Amendments, Rule 7.1 of UMIR would allow for a Participant to authorize an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure to an investment dealer, or to utilize the services of a third party provider. Proposed new Rule 10.17 of UMIR establishes certain gatekeeper obligations, and will require that in either of the above situations, the Participant must notify the Market Regulator if either the written agreement which sets out the terms of such arrangements has been terminated, or if the Participant has reason to believe that the investment dealer or third party has failed to remedy any deficiency identified by the Participant in its regular review.

3.5 Editorial and Consequential Amendments

The Proposed Amendments would make several editorial or consequential amendments including:

- adding a definition of ETR to Rule 1.1;
- adding clause (c) to Rule 1.2 to note that every term used in UMIR which is defined or interpreted in the ETR (particularly, "automated order system", "marketplace and regulatory requirements" and "participant dealer") has the meaning ascribed to it in the ETR;
- deleting phrases in Part 1 of Policy 7.1 to reflect the new rule framework in place under the ETR; and
- adding language to Part 1 of Policy 7.1 to reflect proposed guidance on the use of the "short-marking exempt" designation.[14]

4. Summary of the Impact of the Proposed Amendments

The following is a summary of the most significant impacts of the adoption of the Proposed Amendments. The Proposed Amendments would:

- ensure that Participants and Access Persons adopt, document and maintain a system of risk management and supervisory controls, policies and procedures reasonably designed to manage the risks associated with electronic trading and access to marketplaces;
- ensure that Participants and Access Persons are effectively supervising trading activity and are accounting for the risks associated with electronic access to marketplaces in their supervisory and compliance monitoring procedures; and
- require an appropriate level of understanding, ongoing testing and appropriate monitoring of any automated order systems in use by a Participant, any client of the Participant or an Access Person.

If the Proposed Amendments are adopted, Access Persons would have to specifically introduce risk management and supervisory controls, policies and procedures with respect to their direct trading on a marketplace as an Access Person (and not through a Participant). This will parallel a requirement on Access Persons introduced in the ETR. However, Access Persons

[14] For further information, see IIROC Notice 12-0079 – Rules Notice – Request for Comments – UMIR – *Proposed Guidance on "Short Sale" and "Short-Marking Exempt" Order Designations* (March 2, 2012).

presently only have access to one marketplace which operates as a “negotiation” dark pool marketplace. The requirement will have little practical impact on an Access Person unless they become a subscriber to a new marketplace that is transparent.

There may be impacts to the market in the form of minimal additional latency on some order flow. Any additional latency will also be dependent on the type of trading strategies in use and the nature of the controls and risk management filters already in place. To the extent that additional latency may result, it is not expected to have a significant impact on the majority of trading. Persons employing trading strategies that rely on ultra-low latency connections may have to re-evaluate how they obtain access to a marketplace.

5. Technological Implications and Implementation Plan

The Proposed Amendments will impose obligations on Participants and Access Persons to ensure that the risks associated with electronic trading are appropriately addressed through the establishment of reasonably designed risk management and supervisory controls, policies and procedures. The Proposed Amendments would require pre-trade automated controls to prevent the entry of orders which would result in either the Participant or Access Person, or any client, exceeding pre-determined thresholds which would include credit or capital, as well as limits on the value or volume of unexecuted orders for a particular security or class of securities.

It is expected a registered firm would already establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices as required both under section 11.1 of NI 31-103 and under Rule 7.1 and Policy 7.1. Additionally, those firms providing clients with electronic access to marketplaces would already be subject to similar requirements under the access rules of the various marketplaces to which the Participant or Access Person directs orders. Technology work and associated costs will likely be required, but the extent of these costs will vary dependent on the level of sophistication of current practices, and the nature of the business activities of the Participant or Access Person.

IIROC would expect that, if the Proposed Amendments are approved by the Recognizing Regulators, the amendments would become effective on the date IIROC publishes notice of approval of the amendments, and the implementation date will be the later of:

- ***March 1, 2013, the date the ETR becomes effective; and***
- ***120 days following the publication of notice of approval of the amendments.***

Appendix A – Provisions Respecting Electronic Trading

The Universal Market Integrity Rules are hereby amended as follows:

1. Rule 1.1 is amended by adding the following definition of "Electronic Trading Rules":

   "Electronic Trading Rules" means National Instrument 23-103 *Electronic Trading* as amended, supplemented and in effect from time to time.

2. Rule 1.2 is amended by:

   (a) deleting the word "and" at the end of clause (b);

   (b) renumbering clause (c) of subsection (1) as clause (d), and

   (c) inserting the following as clause (c) of subsection (1):

   (c) defined or interpreted in the Electronic Trading Rules has the meaning ascribed to it in that National Instrument.

3. Rule 7.1 is amended by adding the following subsections:

   (6) Notwithstanding any other provision of this Rule, a Participant or an Access Person shall adopt, document and maintain a system of risk management and supervisory controls, policies and procedures reasonably designed, in accordance with prudent business practices, to ensure the management of the financial, regulatory and other risks associated with:

   (a) access to one or more marketplaces; and

   (b) if applicable, the use by the Participant, any client of the Participant or the Access Person of an automated order system.

   (7) A Participant may, on a reasonable basis:

   (a) authorize an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure; or

   (b) use the services of a third party that provides risk management and supervisory controls, policies and procedures.

   (8) An authorization over the setting or adjusting of a specific risk management or supervisory control, policy or procedure or retaining the services of a third party under subsection (7) must be in a written agreement with the investment dealer or third party that;

   (a) precludes the investment dealer or third party from providing any other person control over any aspect of the specific risk management or supervisory control, policy or procedure;

   (b) unless the authorization is to an investment dealer that is a Participant, precludes the authorization to the investment dealer over the setting or adjusting of a specific risk management or supervisory control, policy or procedure respecting an account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest other than an interest in the commission charged on a transaction or reasonable fee for the administration of the account; and

   (c) precludes the use of a third party unless the third party is independent of each client of the Participant other than affiliates of the Participant.

   (9) A Participant shall forthwith notify the Market Regulator:

   (a) upon entering into a written agreement with an investment dealer or third party described in subsection (8), of:

   (i) the name of the investment dealer or third party, and

(ii) the contact information for the investment dealer or the third party which will permit the Market Regulator to deal with the investment dealer or third party immediately following the entry of an order or execution of a trade for which the Market Regulator wants additional information; and

(b) of any change in the information described in clause (a).

(10) The Participant shall review and confirm:

(a) at least annually that:

(i) the risk management and supervisory controls, policies and procedures under subsection (6) are adequate,

(ii) the Participant has maintained and consistently applied the risk management and supervisory controls, policies and procedures since the establishment of the controls, policies and procedures or the date of the last annual review, and

(iii) any deficiency in the adequacy of a control, policy or procedure has been documented and promptly remedied;

(b) if the Participant has authorized an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure or retained the services of a third party, at least annually by the anniversary date of the written agreement with the investment dealer or third party that:

(i) the risk management and supervisory controls, policies and procedures adopted by the investment dealer or third party under subsection (6) are adequate,

(ii) the investment dealer or third party has maintained and consistently applied the risk management and supervisory controls, policies and procedures since the establishment of the controls, policies and procedures or the date of the last annual review, and

(iii) any deficiency in the adequacy of a control, policy or procedure has been documented by the Participant and promptly remedied by the investment dealer or third party, and

(iv) the investment dealer or third party is in compliance with the written agreement with the Participant.

4. Rule 7.11 is amended by:

(a) inserting in the title the words " and Correction" after the word "Cancellation";

(b) inserting in clause (b) the phrase "or corrected" immediately following the word "varied";

(c) deleting clause (d) and inserting the following clauses:

(d) with the prior consent of the Market Regulator, if the variation, cancellation or correction would be necessary to correct an error caused by a system or technological malfunction of the marketplaces systems or equipment or caused by an individual acting on behalf of the marketplace; or

(e) with notice to the Market Regulator immediately following the variation, cancellation or correction of the trade in such form and manner as may be required by the Market Regulator and such notice shall be given, if the variation, cancellation or correction is made:

(i) prior to the settlement of the trade, by:

(A) the marketplace on which the trade was executed at the request of a party to the trade and with the consent of each Participant and Access Person that is a party to the trade, or

(B) the clearing agency through which the trade is or was to be cleared and settled, and

(ii) after the settlement of the trade, by each Participant and Access Person that is a party to the trade.

5. Part 10 is amended by adding the following as Rule 10.17:

Gatekeeper Obligations with Respect to Electronic Trading

(1) A Participant that has, under Rule 7.1, authorized an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure or the provision of risk management or supervisory controls, policies and procedures to a third party shall forthwith report to the Market Regulator the fact that:

(a) the written agreement with the investment dealer or third party has been terminated; or

(b) the Participant knows or has reason to believe that the investment dealer or third party has failed to promptly remedy any deficiency identified by the Participant.

The Policies to the Universal Market Integrity Rules are hereby amended as follows:

1. Part 1 of Policy 7.1 is amended by:

(a) replacing at the start of the seventh paragraph the word “Where” with the word “When”;

(b) deleting in the seventh paragraph the phrase “(for example by a client with a systems interconnect arrangement in accordance with Policy 2-501 of the Toronto Stock Exchange)”;

(c) adding at the end of the third bullet of the eight paragraph the phrase “other than a client required to use the “short-marking exempt” designation” ; and

(d) deleting at the end of the fourth bullet of the eighth paragraph the phrase “(unless the trading system of the Participant restricts trading activities in affected securities”.

2. Part 2 of Policy 7.1 is amended by:

(a) deleting the phrases “Participants are reminded that”, “the entry of”, and “(For example, for Participants that are Participating Organizations of the TSE, reference should be made to the Policy on “Connection of Eligible Clients of Participating Organizations)”; and

(b) adding the word “entered” immediately before the phrase “must comply”.

3. Part 3 of Policy 7.1 is amended in respect of the table of Minimum Compliance Procedures for Trading Supervision UMIR and Policies by:

(a) adding reference to “Electronic Access to Marketplaces”, “Rule 7.1” and “Securities Legislation” and associated compliance review procedures;

(b) amending the term “restricted list” to “restricted security”;

(c) amending the term “firm restricted list” to “firm trading restriction”; and

(d) deleting references to Rule 7.8 and Rule 7.9 and substituting reference to Rule 7.7 in regard to “restricted issues”.

4. Policy 7.1 is further amended by adding the following Parts:

Part 7 – Specific Provisions Applicable to Direct Electronic Access

Trading supervision related to electronic access to marketplaces must be performed by a Participant or Access Person in accordance with a documented system of risk management and supervisory controls,

policies and procedures reasonably designed to ensure the management of the financial, regulatory and other risks associated with electronic access to marketplaces.

The risk management and supervisory controls, policies and procedures employed by a Participant or Access Persons must include:

- automated controls to examine each order before entry on a marketplace to prevent the entry of an order which would result in:
    - the Participant or Access Person exceeding pre-determined credit or capital thresholds,
    - a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant or to that client, or
    - the Participant, Access Person or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities;
- provision to prevent the entry of an order this is not in compliance with Requirements;
- provision of immediate order and trade information to compliance staff of the Participant or Access Person; and
- regular post-trade monitoring for compliance with Requirements.

A Participant or Access Person is responsible and accountable for all functions that they outsource to a service provider as set out in Part 11 of Companion Policy 31-103CP *Registration Requirements and Exemptions*.

Supervisory and compliance monitoring procedures must be designed to detect and prevent account activity that is or may be a violation of Requirements which includes applicable securities legislation, requirements of any self-regulatory organization applicable to the account activity and the rules and policies of any marketplace on which the account activity takes place. These procedures must include "post-order entry" compliance testing enumerated under Part 1 of Policy 7.1 to detect orders that are not in compliance with specific rules, and by addressing steps to monitor trading activity, as provided under Part 5 of Policy 7.1, of any person who has multiple accounts, with the Participant and other accounts in which the person has an interest or over which the person has direction or control.

Part 8 – Specific Provisions Applicable to Automated Order Systems

Trading supervision by a Participant or Access Person must be in accordance with a documented system of risk management and supervisory controls, policies and procedures reasonably designed to ensure the management of the financial, regulatory and other risks associated with the use of an automated order system by the Participant, the Access Person or any client of the Participant.

Each Participant or Access Person must have a level of knowledge and understanding of any automated order system used by the Participant, the Access Person or any client of the Participant that is sufficient to allow the Participant or Access Person to identify and manage the risks associated with the use of the automated order system.

The Participant or Access Person must ensure that every automated order system used by the Participant, the Access Person or any client of the Participant is tested in accordance with prudent business practices initially before use and at least annually thereafter. A written record must be maintained with sufficient details to demonstrate the testing of the automated order system undertaken by the Participant, Access Person and any third party employed to provide the automated order system or risk management or supervisory controls, policies and procedures.

The scope of appropriate order and trade parameters, policies and procedures should be tailored to the strategy or strategies being pursued by an automatic order system with due consideration to the potential market impact of defining such parameters too broadly and in any event must be set so as not to exceed the marketplace thresholds applicable to the marketplace on which the order is entered or would otherwise exceed the limits publicly disclosed by the Market Regulator for the exercise of the power of a Market Integrity Official under Rule 10.9 of UMIR.

The Market Regulator expects the risk management and supervisory controls, policies and procedures to comply with the Electronic Trading Rules and be reasonably designed to prevent the entry of any order that would interfere with fair and orderly markets. This includes adoption of compliance procedures for trading by clients, if applicable, containing detailed guidance on how testing of client orders and trades is to be conducted to ensure that prior to engagement and at least annually thereafter, each automated order system is satisfactorily tested assuming various market conditions. In addition to regular testing of the automated order systems, preventing interference with fair and orderly markets requires development of pre-programmed internal parameters to prevent or "flag" with alerts on a real-time basis, the entry of orders and execution of trades by an automated order system that exceed certain volume, order, price or other limits.

Each Participant or Access Person must have the ability to immediately override or disable automatically any automated order system and thereby prevent orders generated by the automated order system from being entered on any marketplace.

Notwithstanding any outsourcing or authorization over of risk management and supervision controls, a Participant or Access Person is responsible for any order entered or any trade executed on a marketplace, including any order or trade resulting from the improper operation or malfunction of the automated order system. This responsibility includes instances in which the malfunction which gave rise to a "runaway" algorithm is attributed to an aspect of the algorithm or automated order system that was not "accessible" to the Participant or Access Person for testing.

Appendix B – Text of UMIR to Reflect Proposed Amendments Respecting Electronic Trading

Text of Provision Following Adoption of the Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments
1.1 Definitions **"Electronic Trading Rules"** means National Instrument 23-103 *Electronic Trading* as amended, supplemented and in effect from time to time.	**1.1 Definitions** **"Electronic Trading Rules"** means National Instrument 23-103 *Electronic Trading* as amended, supplemented and in effect from time to time.
1.2 Interpretation (1) Unless otherwise defined or interpreted, every term used in UMIR that is: (a) defined in subsection 1.1(3) of National Instrument 14-101*Definitions* has the meaning ascribed to it in that subsection; (b) defined or interpreted in the Marketplace Operation Instrument has the meaning ascribed to it in that National Instrument; (c) defined or interpreted in the Electronic Trading Rules has the meaning ascribed to it in that National Instrument; and (d) a reference to a requirement of an Exchange or a QTRS shall have the meaning ascribed to it in the applicable Marketplace Rule.	**1.2 Interpretation** (1) Unless otherwise defined or interpreted, every term used in UMIR that is: (a) defined in subsection 1.1(3) of National Instrument 14-101 *Definitions* has the meaning ascribed to it in that subsection; (b) defined or interpreted in the Marketplace Operation Instrument has the meaning ascribed to it in that National Instrument; (c) defined or interpreted in the Electronic Trading Rules has the meaning ascribed to it in that National Instrument; and (d) a reference to a requirement of an Exchange or a QTRS shall have the meaning ascribed to it in the applicable Marketplace Rule.
7.1 Trading Supervision Obligations … (6) Notwithstanding any other provision of this Rule, a Participant or an Access Person shall adopt, document and maintain a system of risk management and supervisory controls, policies and procedures reasonably designed, in accordance with prudent business practices, to ensure the management of the financial, regulatory and other risks associated with: (a) access to one or more marketplaces; and (b) if applicable, the use by the Participant, any client of Participant or the Access Person of an automated order system.	**7.1 Trading Supervision Obligations** … (6) Notwithstanding any other provision of this Rule, a Participant or an Access Person shall adopt, document and maintain a system of risk management and supervisory controls, policies and procedures reasonably designed, in accordance with prudent business practices, to ensure the management of the financial, regulatory and other risks associated with: (a) access to one or more marketplaces; and (b) if applicable, the use by the Participant, any client of the Participant or the Access Person of an automated order system.
(7) A Participant may, on a reasonable basis: (a) authorize an investment dealer on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure; or (b) use the services of a third party that provides risk management and supervisory controls, policies and procedures.	(7) A Participant may, on a reasonable basis: (a) authorize an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure; or (b) use the services of a third party that provides risk management and supervisory controls, policies and procedures.
(8) An authorization over the setting or adjusting of a specific risk management or supervisory control, policy or procedure or retaining the services of a third party under subsection (7) must be in a written agreement with the investment dealer or third party that;	(8) An authorization over the setting or adjusting of a specific risk management or supervisory control, policy or procedure or retaining the services of a third party under subsection (7) must be in a written agreement with the investment dealer or third party that;

Text of Provision Following Adoption of the Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of the Proposed Amendments
(a) precludes the investment dealer or third party from providing any other person control over any aspect of the specific risk management or supervisory control, policy or procedure; (b) unless the authorization is to an investment dealer that is a Participant, precludes the authorization to the investment dealer over the setting or adjusting of a specific risk management or supervisory control, policy or procedure respecting an account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest other than an interest in the commission charged on a transaction or reasonable fee for the administration of the account; and (c) precludes the use of a third party unless the third party is independent of each client of the Participant other than affiliates of the Participant.	(a) precludes the investment dealer or third party from providing any other person control over any aspect of the specific risk management or supervisory control, policy or procedure; (b) unless the authorization is to an investment dealer that is a Participant, precludes the authorization to the investment dealer over the setting or adjusting of a specific risk management or supervisory control, policy or procedure respecting an account in which the investment dealer or a related entity of the investment dealer holds a direct or indirect interest other than an interest in the commission charged on a transaction or reasonable fee for the administration of the account; and (c) precludes the use of a third party unless the third party is independent of each client of the Participant other than affiliates of the Participant.
(9) A Participant shall forthwith notify the Market Regulator: (a) upon entering into a written agreement with an investment dealer or third party described in subsection (8), of: (i) the name of the investment dealer or third party, and (ii) the contact information for the investment dealer or the third party which will permit the Market Regulator to deal with the investment dealer or third party immediately following the entry of an order or execution of a trade for which the Market Regulator wants additional information; and (b) of any change in the information described in clause (a).	(9) A Participant shall forthwith notify the Market Regulator: (a) upon entering into a written agreement with an investment dealer or third party described in subsection (8), of: (i) the name of the investment dealer or third party, and (ii) the contact information for the investment dealer or the third party which will permit the Market Regulator to deal with the investment dealer or third party immediately following the entry of an order or execution of a trade for which the Market Regulator wants additional information; and (b) of any change in the information described in clause (a).
(10) The Participant shall review and confirm: (a) at least annually that: (i) the risk management and supervisory controls, policies and procedures under subsection (6) are adequate, (ii) the Participant has maintained and consistently applied the risk management and supervisory controls, policies and procedures since the establishment of the controls, policies and procedures or the date of the last annual review, and (iii) any deficiency in the adequacy of a control, policy or procedure has been documented and promptly remedied;	(10) The Participant shall review and confirm: (a) at least annually that: (i) the risk management and supervisory controls, policies and procedures under subsection (6) are adequate, (ii) the Participant has maintained and consistently applied the risk management and supervisory controls, policies and procedures since the establishment of the controls, policies and procedures or the date of the last annual review, and (iii) any deficiency in the adequacy of a control, policy or procedure has been documented and promptly remedied;

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(b) if the Participant has authorized an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure to an investment dealer or retained the services of a third party, at least annually by the anniversary date of the written agreement with the investment dealer or third party that: (i) the risk management and supervisory controls, policies and procedures adopted by the investment dealer or third party under subsection (6) are adequate, (ii) the investment dealer or third party has maintained and consistently applied the risk management and supervisory controls, policies and procedures since the establishment of the controls, policies and procedures or the date of the last annual review, and (iii) any deficiency in the adequacy of a control, policy or procedure has been documented by the Participant and promptly remedied by the investment dealer or third party, and (iv) the investment dealer or third party is in compliance with the written agreement with the Participant.	(b) if the Participant has authorized an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure to an investment dealer or retained the services of a third party, at least annually by the anniversary date of the written agreement with the investment dealer or third party that: (i) the risk management and supervisory controls, policies and procedures adopted by the investment dealer or third party under subsection (6) are adequate, (ii) the investment dealer or third party has maintained and consistently applied the risk management and supervisory controls, policies and procedures since the establishment of the controls, policies and procedures or the date of the last annual review, and (iii) any deficiency in the adequacy of a control, policy or procedure has been documented by the Participant and promptly remedied by the investment dealer or third party, and (iv) the investment dealer or third party is in compliance with the written agreement with the Participant.
7.11 Variation, Cancellation and Correction of Trades No trade executed on a marketplace shall, subsequent to the execution of the trade, be: (a) cancelled; or (b) varied or corrected with respect to: (i) the price of the trade, (ii) the volume of the trade, or (iii) the date for settlement of the trade, except: (c) by the Market Regulator in accordance with UMIR; (d) with the prior consent of the Market Regulator, if the variation, cancellation or correction would be necessary to correct an error caused by a system or technological malfunction of the marketplace's systems or equipment or caused by an individual acting on behalf of the marketplace; or (e) with notice to the Market Regulator immediately following the variation, cancellation or correction of the trade in such form and manner as may be required by	**7.11 Variation, Cancellation and Correction of Trades** No trade executed on a marketplace shall, subsequent to the execution of the trade, be: (a) cancelled; or (b) varied or corrected with respect to: (i) the price of the trade, (ii) the volume of the trade, or (iii) the date for settlement of the trade, except: (c) by the Market Regulator in accordance with UMIR; (d) with the prior consent of the Market Regulator, if the variation, cancellation or correction would be necessary to correct an error caused by a system or technological malfunction of the marketplace's systems or equipment or caused by an individual acting on behalf of the marketplace; or (e) with notice to the Market Regulator immediately following the variation, cancellation or correction of the trade in such form and manner as may be required by

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the Market Regulator and such notice shall be given, if the variation, cancellation or correction is made: (i) prior to the settlement of the trade, by: (A) the marketplace on which the trade was executed at the request of a party to the trade and with the consent of each Participant and Access Person that is a party to the trade, or (B) the clearing agency through which the trade is or was to be cleared and settled, and (ii) after the settlement of the trade, by each Participant and Access Person that is a party to the trade.	the Market Regulator and such notice shall be given, if the variation, cancellation or correction is made: (i) prior to the settlement of the trade, by: (A) the marketplace on which the trade was executed at the request of a party to the trade and with the consent of each Participant and Access Person that is a party to the trade, or (B) the clearing agency through which the trade is or was to be cleared and settled, and (ii) after the settlement of the trade, by each Participant and Access Person that is a party to the trade.
10.17 Gatekeeper Obligations with Respect to Electronic Trading (1) A Participant that has, under Rule 7.1, authorized an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure to an investment dealer or the provision of risk management or supervisory controls, policies and procedures to a third party shall forthwith report to the Market Regulator the fact that: (a) the written agreement with the investment dealer or third party has been terminated; or (b) the Participant knows or has reason to believe that the investment dealer or third party has failed to promptly remedy any deficiency identified by the Participant.	**10.17 Gatekeeper Obligations with Respect to Electronic Trading** (1) A Participant that has, under Rule 7.1, authorized an investment dealer to perform on its behalf the setting or adjusting of a specific risk management or supervisory control, policy or procedure to an investment dealer or the provision of risk management or supervisory controls, policies and procedures to a third party shall forthwith report to the Market Regulator the fact that: (a) the written agreement with the investment dealer or third party has been terminated; or (b) the Participant knows or has reason to believe that the investment dealer or third party has failed to promptly remedy any deficiency identified by the Participant.
Policy 7.1 – Trading Supervision Obligations **Part 1 – Responsibility for Supervision and Compliance** … In performing the trading supervision obligations, the Participant will act as a "gatekeeper" to help prevent and detect violations of applicable Requirements. When an order is entered on a marketplace without the involvement of a trader, the Participant retains responsibility for that order and the supervision policies and procedures should adequately address the additional risk exposure which the Participant may have for orders that are not directly handled by staff of the Participant. For example, it may be appropriate for the Participant to sample for compliance testing a higher percentage of orders that have been entered directly by clients than the percentage of orders sampled in other circumstances. In addition, the "post-order entry" compliance testing should recognize that the limited involvement of staff of the Participant in the entry of orders by a direct access client may restrict the ability of the Participant to detect orders that	**Policy 7.1 – Trading Supervision Obligations** **Part 1 – Responsibility for Supervision and Compliance** … In performing the trading supervision obligations, the Participant will act as a "gatekeeper" to help prevent and detect violations of applicable Requirements. When an order is entered on a marketplace without the involvement of a trader the Participant retains responsibility for that order and the supervision policies and procedures should adequately address the additional risk exposure which the Participant may have for orders that are not directly handled by staff of the Participant. For example, it may be appropriate for the Participant to sample for compliance testing a higher percentage of orders that have been entered directly by clients than the percentage of orders sampled in other circumstances. In addition, the "post-order entry" compliance testing should recognize that the limited involvement of staff of the Participant in the entry of orders by a direct access client may restrict the ability of the Participant to detect orders that

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are not in compliance with specific rules. For example, "post-order entry" compliance testing may be focused on whether an order entered by a direct access client: • has created an artificial price contrary to Rule 2.2; • is part of a "wash trade" (in circumstances when the client has more than one account with the Participant); • is an unmarked short sale (if the trading system of the Participant does not automatically code as "short" any sale of a security not then held in the account of the client other than a client required to use the "short-marking exempt" designation); and • has complied with other order marking requirements and in particular the requirement to mark an order as from an insider or designated shareholder.	are not in compliance with specific rules. For example, "post-order entry" compliance testing may be focused on whether an order entered by a direct access client: • has created an artificial price contrary to Rule 2.2; • is part of a "wash trade" (in circumstances where the client has more than one account with the Participant); • is an unmarked short sale (if the trading system of the Participant does not automatically code as "short" any sale of a security not then held in the account of the client other than a client required to use the "short-marking exempt" designation); and • has complied with order marking requirements and in particular the requirement to mark an order as from an insider or significant shareholder.
Policy 7.1 – Trading Supervision Obligations **Part 2 – Minimum Element of a Supervision System** … The Market Regulator recognizes that there is no one supervision system that will be appropriate for all Participants. Given the differences among firms in terms of their size, the nature of their business, whether they are engaged in business in more than one location or jurisdiction, the experience and training of its employees and the fact that effective jurisdiction can be achieved in a variety of ways, this Policy does not mandate any particular type or method of supervision of trading activity. Furthermore, compliance with this Policy does not relieve Participants from complying with specific Requirements that may apply in certain circumstances. In particular, in accordance with subsection (2) of Rule 10.1, orders entered (including orders entered by a client, an investment dealer under a routing arrangement or by a client through an order execution services) must comply with the Marketplace Rules on which the order is entered and the Marketplace Rules on which the order is executed. …	**Policy 7.1 – Trading Supervision Obligations** **Part 2 – Minimum Element of a Supervision System** … The Market Regulator recognizes that there is no one supervision system that will be appropriate for all Participants. Given the differences among firms in terms of their size, the nature of their business, whether they are engaged in business in more than one location or jurisdiction, the experience and training of its employees and the fact that effective jurisdiction can be achieved in a variety of ways, this Policy does not mandate any particular type or method of supervision of trading activity. Furthermore, compliance with this Policy does not relieve Participants from complying with specific Requirements that may apply in certain circumstances. In particular, in accordance with subsection (2) of Rule 10.1, orders entered must comply with the Marketplace Rules on which the order is entered and the Marketplace Rules on which the order is executed. …
Policy 7.1 – Trading Supervision Obligations **Part 3 – Minimum Compliance Procedures for Trading on a Marketplace** **Minimum Compliance Procedures** | **Compliance Review Procedures** | **Potential Information Sources** | **Frequency and Sample Size**	**Policy 7.1 – Trading Supervision Obligations** **Part 3 – Minimum Compliance Procedures for Trading on a Marketplace** **Minimum Compliance Procedures** | **Compliance Review Procedures** | **Potential Information Sources** | **Frequency and Sample Size** Restricted Security Rule 2.2 | • review for any trading of restricted issues done by | • order tickets • the diary list • trading blotters | • daily

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Restricted Security Rule 2.2 Rule 7.7	• review for any trading of restricted issues done by proprietary or employee accounts	• order tickets • the diary list • trading blotters • firm trading restriction • monthly statements	• daily
Electronic Access to Marketplaces Rules 7.1 Securities Legislation	• pre-trade order review: • prevent entry of orders on an order-by order basis that exceed pre-defined price and size parameters; • prevent entry of orders that do not comply with marketplace and regulatory requirements • systematically prevent one or more orders from exceeding pre-determined credit and capital thresholds. • monitor for unauthorized access to trading systems of Participant or Access Person.	• automated pre-trade controls • real-time alert systems • immediate order and trade information including execution reports.	• daily

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Rule 7.7	proprietary or employee accounts	• firm trading restriction • monthly statements	
Electronic Access to Marketplaces Rules 7.1 Securities Legislation	• pre-trade order review: • prevent entry of orders on an order-by order basis that exceed pre-defined price and size parameters; • prevent entry of orders that do not comply with marketplace and regulatory requirements • systematically prevent one or more orders from exceeding pre-determined credit and capital thresholds. • monitor for unauthorized access to trading systems of Participant or Access Person.	• automated pre-trade controls • real-time alert systems • immediate order and trade information including execution reports.	• daily

Policy 7.1 – Trading Supervision Obligations

Part 7 – Specific Provisions Applicable to Electronic Access to Marketplaces

Trading supervision related to electronic access to marketplaces must be performed by a Participant or Access Person in accordance with a documented system of risk management and supervisory controls, policies and procedures reasonably designed to ensure the management of the financial, regulatory and other risks associated with electronic access to marketplaces.

Policy 7.1 – Trading Supervision Obligations

Part 7 – Specific Provisions Applicable to Electronic Access to Marketplaces

Trading supervision related to electronic access to marketplaces must be performed by a Participant or Access Person in accordance with a documented system of risk management and supervisory controls, policies and procedures reasonably designed to ensure the management of the financial, regulatory and other risks associated with electronic access to marketplaces.

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The risk management and supervisory controls, policies and procedures employed by a Participant or Access Persons must include: • automated controls to examine each order before entry on a marketplace to prevent the entry of an order which would result in: o the Participant or Access Person exceeding pre-determined credit or capital thresholds, o a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant to that client, or o the Participant, Access Person or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities; • provision to prevent the entry of an order that is not in compliance with Requirements; • provision of immediate order and trade information to compliance staff of the Participant or Access Person; and • regular post-trade monitoring for compliance with Requirements. A Participant or Access Person is responsible and accountable for all functions that they outsource to a service provider as set out in Part 11 of Companion Policy 31-103CP *Registration Requirements and Exemptions*. Supervisory and compliance monitoring procedures must be designed to detect and prevent account activity that is or may be a violation of Requirements which includes applicable securities legislation, requirements of any self-regulatory organization applicable to the account activity and the rules and policies of any marketplace on which the account activity takes place. These procedures must include "post-order entry" compliance testing enumerated under Part 1 of Policy 7.1 to detect orders that are not in compliance with specific rules, and by addressing steps to monitor trading activity, as provided under Part 5 of Policy 7.1, of any person who has multiple accounts, with the Participant and other accounts in which the person has an interest or over which the person has direction or control.	The risk management and supervisory controls, policies and procedures employed by a Participant or Access Persons must include: • automated controls to examine each order before entry on a marketplace to prevent the entry of an order which would result in: o the Participant or Access Person exceeding pre-determined credit or capital thresholds, o a client of the Participant exceeding pre-determined credit or other limits assigned by the Participant to that client, or o the Participant, Access Person or client of the Participant exceeding pre-determined limits on the value or volume of unexecuted orders for a particular security or class of securities; • provision to prevent the entry of an order that is not in compliance with Requirements; • provision of immediate order and trade information to compliance staff of the Participant or Access Person; and • regular post-trade monitoring for compliance with Requirements. A Participant or Access Person is responsible and accountable for all functions that they outsource to a service provider as set out in Part 11 of Companion Policy 31-103CP *Registration Requirements and Exemptions*. Supervisory and compliance monitoring procedures must be designed to detect and prevent account activity that is or may be a violation of Requirements which includes applicable securities legislation, requirements of any self-regulatory organization applicable to the account activity and the rules and policies of any marketplace on which the account activity takes place. These procedures must include "post-order entry" compliance testing enumerated under Part 1 of Policy 7.1 to detect orders that are not in compliance with specific rules, and by addressing steps to monitor trading activity, as provided under Part 5 of Policy 7.1, of any person who has multiple accounts, with the Participant and other accounts in which the person has an interest or over which the person has direction or control.
Policy 7.1 – Trading Supervision Obligations **Part 8 – Specific Provisions Applicable to Automated Order Systems** Trading supervision by a Participant or Access Person must be in accordance with a documented system of risk management and supervisory controls, policies and procedures reasonably designed to ensure the	**Policy 7.1 – Trading Supervision Obligations** **Part 8 – Specific Provisions Applicable to Automated Order Systems** Trading supervision by a Participant or Access Person must be in accordance with a documented system of risk management and supervisory controls, policies and procedures reasonably designed to ensure the management

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management of the financial, regulatory and other risks associated with the use of an automated order system by the Participant, the Access Person or any client of the Participant. Each Participant or Access Person must have a level of knowledge and understanding of any automated order system used by the Participant, the Access Person or any client of the Participant that is sufficient to allow the Participant or Access Person to identify and manage the risks associated with the use of the automated order system. The Participant or Access Person must ensure that every automated order system used by the Participant, the Access Person or any client of the Participant is tested in accordance with prudent business practices initially before use and at least annually thereafter. A written record must be maintained with sufficient details to demonstrate the testing of the automated order system undertaken by the Participant, Access Person and any third party employed to provide the automated order system or risk management or supervisory controls, policies and procedures. The scope of appropriate order and trade parameters, policies and procedures should be tailored to the strategy or strategies being pursurd by an automatic order system with due consideration to the potential market impact of defining such parameters too broadly and in any event must be set so as not to exceed the marketplace thresholds applicable to the marketplace on which the order is entered or would otherwise exceed the limits publicly disclosed by the Market Regulator for the exercise of the power of a Market Integrity Official under Rule 10.9 of UMIR. The Market Regulator expects the risk management and supervisory controls, policies and procedures to comply with the Electronic Trading Rules and be reasonably designed to prevent the entry of any order that would interfere with fair and orderly markets. This includes adoption of compliance procedures for trading by clients, if applicable, containing detailed guidance on how testing of client orders and trades is to be conducted to ensure that prior to engagement and at least annually thereafter, each automated order system is satisfactorily tested assuming various market conditions. In addition to regular testing of the automated order systems, preventing interference with fair and orderly markets requires development of pre-programmed internal parameters to prevent or “flag” with alerts on a real-time basis, the entry of orders and execution of trades by an automated order system that exceed certain volume, order, price or other limits. Each Participant or Access Person must have the ability to immediately override or disable automatically any automated order system and thereby prevent orders generated by the automated order system from being entered on any marketplace. Notwithstanding any outsourcing or permitted authorization	of the financial, regulatory and other risks associated with the use of an automated order system by the Participant, the Access Person or any client of the Participant. Each Participant or Access Person must have a level of knowledge and understanding of any automated order system used by the Participant, the Access Person or any client of the Participant that is sufficient to allow the Participant or Access Person to identify and manage the risks associated with the use of the automated order system. The Participant or Access Person must ensure that every automated order system used by the Participant, the Access Person or any client of the Participant is tested in accordance with prudent business practices initially before use and at least annually thereafter. A written record must be maintained with sufficient details to demonstrate the testing of the automated order system undertaken by the Participant, Access Person and any third party employed to provide the automated order system or risk management or supervisory controls, policies and procedures. The scope of appropriate order and trade parameters, policies and procedures should be tailored to the strategy or strategies being pursued by an automatic order system with due consideration to the potential market impact of defining such parameters too broadly and in any event must be set so as not to exceed the marketplace thresholds applicable to the marketplace on which the order is entered or would otherwise exceed the limits publicly disclosed by the Market Regulator for the exercise of the power of a Market Integrity Official under Rule 10.9 of UMIR. The Market Regulator expects the risk management and supervisory controls, policies and procedures to comply with the Electronic Trading Rules and be reasonably designed to prevent the entry of any order that would interfere with fair and orderly markets. This includes adoption of compliance procedures for trading by clients, if applicable, containing detailed guidance on how testing of client orders and trades is to be conducted to ensure that prior to engagement and at least annually thereafter, each automated order system is satisfactorily tested assuming various market conditions. In addition to regular testing of the automated order systems, preventing interference with fair and orderly markets requires development of pre-programmed internal parameters to prevent or “flag” with alerts on a real-time basis, the entry of orders and execution of trades by an automated order system that exceed certain volume, order, price or other limits. Each Participant or Access Person must have the ability to immediately override or disable automatically any automated order system and thereby prevent orders generated by the automated order system from being entered on any marketplace. Notwithstanding any outsourcing or permitted authorization over risk management and supervision controls, a

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over risk management and supervision controls, a Participant or Access Person is responsible for any order entered or any trade executed on a marketplace, including any order or trade resulting from the improper operation or malfunction of the automated order system. This responsibility includes instances in which the malfunction which gave rise to a "runaway" algorithm is attributed to an aspect of the algorithm or automated order system that was not "accessible" to the Participant or Access Person for testing.	Participant or Access Person is responsible for any order entered or any trade executed on a marketplace, including any order or trade resulting from the improper operation or malfunction of the automated order system. This responsibility includes instances in which the malfunction which gave rise to a "runaway" algorithm is attributed to an aspect of the algorithm or automated order system that was not "accessible" to the Participant or Access Person for testing.

13.2 Marketplaces

13.2.1 Chi-X Canada ATS Ltd. – Notice of Proposed Changes and Request for Comment

CHI-X CANADA ATS LIMITED

NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Chi-X Canada ATS Limited has announced its plans to implement the changes described below on August 3, 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" (OSC Staff Notice 21-703). Pursuant to OSC Staff Notice 21-703, market participants are invited to provide the Commission with comment on the proposed changes.

Comment on the proposed changes should be in writing and submitted by July 30, 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

Matthew Thompson
Chief Compliance Officer
Chi-X Canada ATS Limited
130 King St., W, Suite 2105
Toronto, ON M5X 1E3
Email: matthew.thompson@chi-x.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, a notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

CHI-X CANADA ATS LIMITED

NOTICE OF PROPOSED CHANGES

Chi-X Canada ATS Limited ("Chi-X Canada") has announced its plans to implement the change described below August 3, 2012 unless otherwise noted. It is publishing this Notice of Proposed Changes in accordance with the requirements set out in OSC Staff Notice 21-703.

Description of Proposed Changes and Reasons for Changes

Chi-X Canada is introducing specialty crosses to its functionality. Subscribers will be able to select three new specialty crosses: Basis Cross; VWAP Cross; and Contingent Cross. Basis and VWAP crosses are not required to print within the CBBO, and will not update the national last sale price.

- Basis Cross – A cross of at least 80% of the component share weighting of the basket of securities, index participation unit, or derivative instrument that is the subject of the basis trade. In accordance with UMIR, prior to execution, the Subscriber shall report details of the transaction to IIROC.

- VWAP Cross – A VWAP cross is a cross of a security at the volume weighted average price of multiple trades on a marketplace or on a combination of marketplaces over a specified time period. The volume weighted average price is the ratio of value traded to total volume. In accordance with UMIR, where applicable, prior to execution, the Subscriber shall report details of the transaction to IIROC.

- Contingent Cross – A cross resulting from a paired order placed by a Participant on behalf of a client to execute an order on a security that is contingent on the execution of a second order placed by the same client for an offsetting volume of a related security as defined in UMIR.

Impact of the Changes

The addition of specialty crosses to Chi-X Canada's suite of order types will enable Subscribers to execute specialty transactions often including one trade involving a derivative and a second trade involving an equity or basket of equity securities that is required to be printed on a marketplace by Canadian regulation.

Consultations

Chi-X has consulted with industry participants who supported the proposed change.

Existence of Proposed Change in the Market

Similar order types are currently available in the Canadian capital markets. VWAP and Basis crosses are supported by the TSX, Alpha Exchange, Pure Trading, and OMEGA. Contingent crosses are supported by TSX and Pure Trading.

Any questions regarding these changes should be addressed to Matthew Thompson, Chi-X Canada: matthew.thompson@chi-xcanada.com, T: 416 304-6376

13.2.2 Chi-X Canada ATS Ltd. – Notice of Proposed Changes and Request for Comment

CHI-X CANADA ATS LIMITED

NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Chi-X Canada ATS Limited has announced its plans to implement the changes described below on August 3, 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" (OSC Staff Notice 21-703). Pursuant to OSC Staff Notice 21-703, market participants are invited to provide the Commission with comment on the proposed changes.

Comment on the proposed changes should be in writing and submitted by July 30, 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

Dan Kessous
Chief Executive Officer
Chi-X Canada ATS Limited
130 King St., W, Suite 2105
Toronto, ON M5X 1E3
Email: dan.kessous@chi-x.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, a notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

CHI-X CANADA ATS LIMITED
NOTICE OF PROPOSED CHANGES

Chi-X Canada ATS Limited ("Chi-X Canada") has announced its plans to implement the change described below on August 3, 2012 unless otherwise noted. It is publishing this Notice of Proposed Changes in accordance with the requirements set out in OSC Staff Notice 21-703.

Description of Proposed Changes and Reasons for Changes

Chi-X Canada will be enhancing its current self-trade prevention mechanism as follows:

Current functionality: Subscribers may elect to not permit orders to execute against orders entered with the same firm trader ID. Orders that would otherwise result in a "wash trade" are canceled.

Additional functionality: The proposed changes would allow Subscribers:

(1) to specify which order (active or passive) gets canceled; and

(2) if there is a difference in the number of shares between the two orders, to determine whether the difference gets booked or canceled.

Impact of the Changes

The proposed changes to the self-trade prevention feature will provide Subscribers with improved control on how their orders get canceled to prevent a "wash trade".

Currently when self-trade prevention is enabled for a particular trader ID, the active order is canceled to prevent the self-trade. The enhanced functionality will allow Subscribers to manage which of their active or passive order is being canceled.

In the case where the orders are different in share quantity, Subscribers will be able to choose to have the larger order reduced in size and booked and the smaller order canceled.

Consultations

Chi-X has consulted with industry participants who supported the proposed change.

Existence of Proposed Change in the Market

Although Chi-X, TSX and Alpha all offer one implementation of self-trade prevention, no other marketplace in Canada offers Subscribers the choice of multiple implementation options.

However other markets outside of Canada offer more than one choice of self-trade prevention. BATS Exchanges for instance offer *"Cancel Newest"*, *"Cancel Oldest"* as well as *"Decrement and Cancel"*.

Any questions regarding these changes should be addressed to Dan Kessous, Chi-X Canada: dan.kessous@chi-xcanada.com, T: 416-304-6372

13.2.3 Liquidnet Canada Inc. – Notice of Proposed Changes and Request for Comment

LIQUIDNET CANADA INC.
NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Liquidnet Canada announced its plans to implement the changes described below after July 23, 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" (OSC Staff Notice 21-703). Pursuant to OSC Staff Notice 21-703, market participants are invited to provide the Commission with comment on the proposed introduction of the Broker Blocks functionality. Comments on the proposed change should be in writing and submitted by July 30, 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

Sophia Lee
General Counsel
498 Seventh Avenue
New York, NY 10018
Email: SLee@liquidnet.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, a notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

LIQUIDNET CANADA - NOTICE OF PROPOSED CHANGES

Liquidnet Canada has announced plans to implement the changes described below. It is publishing this Notice of Proposed Changes in accordance with the requirements set forth in OSC Staff Notice 21-703.

Any question regarding these changes should be addressed to Robert Young, Chief Executive Officer; ryoung@liquidnet.com 416-594-2450.

Description of Proposed Changes and Reason for Changes

The Liquidnet Canada ATS will accept firm agency ("client") orders from IIROC participants ("streaming liquidity partners" or "SLPs") that are (a) IOC ("Stream Orders") or (b) day orders ("Broker Blocks") that meet the minimum order size criteria described below. The Stream Orders have been previously approved by the OSC; we are now also introducing Broker Blocks. We are also proposing to introduce Broker Blocks due to broadened demand for dark crossing. The midpoint trades will reduce market impact resulting from post-trade information and will provide price improvement to both sides of the trade.

Stream Description (Previously approved)

- For each SLP order, the SLP must specify the security, side (buy or sell) and quantity. The SLP can also specify a limit price. If no price is specified, Liquidnet will impute the following price constraint:
    - Current best bid (in the case of a streaming sell order)
    - Current best ask (in the case of a streaming buy order)
- All of these orders will be executed at the mid-price at the time of execution. In addition, execution will only occur if the execution price is within the price constraint of the streaming order and the price constraint of contra-subscribers' order.
- "Mid-price" means the mid-point between the best bid and best ask in the consolidated NBBO at the time of execution.
- If the spread is one cent, the mid-price is ½ cent above the best bid and ½ cent below the best ask. If the spread is zero (i.e., the best bid and best ask price are the same), the mid-price is the best bid/best ask. If the spread is negative (i.e., the best bid is higher than the best ask), Liquidnet will not execute the order.
- The quantity of any execution will be the lesser of the quantity of the streaming order and the quantity of the contra order.
- Liquidnet will not execute a streaming order until the market has opened (i.e. until the later of (a) the listing market has opened or (b) a trade has occurred on any lit marketplace).

Broker Blocks Description (New order type)

- Brokers that seek to execute blocks through Liquidnet would be subscribers of the Liquidnet Canada ATS. The minimum order size from a broker is 50 standard trading units; these orders are referred to as "broker block orders". In handling a broker block order, Liquidnet Canada creates a Supernatural order.
- The minimum order size for SLP day orders is 50 standard trading units.
- SLP day orders that meet a pre-defined size (otherwise referred to as "block tolerance") are treated as a contra indication to Liquidnet subscribers and will execute against all contra-side indications or orders in Liquidnet (which could include other SLP day orders).
- SLP day orders, if executed, will be executed at the mid-price.
- A Member can opt out of interacting with broker block orders by contacting its Relationship Manager.

Continuous Net Settlement

On February 27, 2012 Liquidnet was recognized by IIROC as an acceptable trade matching utility. Trades in Liquidnet by CDS members are continuous net settlement eligible.

Expected Impact

Broker Blocks

Liquidnet members will be able to interact with additional agency liquidity submitted by IIROC participants, with both achieving mid-point executions while minimizing market impact.

13.2.4 Chicago Mercantile Exchange Inc. – Notice of Commission Order – Application for Interim Exemptive Relief

CHICAGO MERCANTILE EXCHANGE INC.

APPLICATION FOR INTERIM EXEMPTIVE RELIEF

NOTICE OF COMMISSION ORDER

On June 19, 2012, the Commission granted Chicago Mercantile Exchange Inc. (CME) an interim exemption from the requirement in subsection 21.2(0.1) of the *Securities Act* (Ontario) (Act) to be recognized as a clearing agency. CME is exempted from the requirement until the earlier of (i) the date the Commission renders a subsequent order recognizing CME as a clearing agency under subsection 21.2(0.1) of the Act or exempting it from the requirement to be recognized as a clearing agency under section 147 of the Act, and (ii) June 30, 2013. The interim exemption order is subject to certain terms and conditions.

A copy of the interim exemption order is published in Chapter 2 of this Bulletin.

13.2.5 ICE Futures Canada, Inc. – Notice and Request for Comment – Application for Exemption from Recognition and Registration as an Exchange

ONTARIO SECURITIES COMMISSION ("COMMISSION")

NOTICE AND REQUEST FOR COMMENT

ICE FUTURES CANADA, INC.

APPLICATION FOR EXEMPTION FROM RECOGNITION AND REGISTRATION AS AN EXCHANGE

A. INTRODUCTION

ICE Futures Canada, Inc. ("ICE Futures Canada"), formerly known as the Winnipeg Commodity Exchange Inc., is currently carrying on business as a recognized commodity futures exchange in Ontario pursuant to the following orders:

(a) an order dated August 24, 1979 recognizing the Winnipeg Commodity Exchange Inc., as a commodity futures exchange (the "Commission's Previous Order");

(b) an order (the "Director's Exemption Order") dated August 24, 1979 exempting:

  (i) the Winnipeg Commodity Exchange Inc. from the requirement to make available copies of all current contract terms and conditions to registrants through an agent, and

  (ii) registered dealers and advisers from the requirement of furnishing a client with a copy of all current terms and conditions of any contract traded on the Winnipeg Commodity Exchange Inc.; and

(c) an order (the "Director's Acceptance Order") dated August 24, 1979 accepting the form of the commodity futures contracts and commodity futures options traded on the Winnipeg Commodity Exchange Inc.;

ICE Futures Canada has applied (the "Application") to the Commission requesting that the Commission issue orders to:

(a) revoke the Commission's Previous Order;

(b) revoke the Director's Exemption Order;

(c) revoke the Director's Acceptance Order;

(d) exempt ICE Futures Canada from the requirement to be recognized as an exchange under section 21 of the OSA;

(e) exempt ICE Futures Canada from the requirement to be registered as a commodity futures exchange under section 15 of the CFA;

(f) exempt trades in contracts on ICE Futures Canada by registered futures commissions merchants ("FCMs"), and any person or company who trades in a contract solely through an agent who is an FCM, from the requirements of section 33 of the CFA; and

(g) exempt trades in contracts on ICE Futures Canada by "hedgers" from the registration requirement under section 22 of the CFA; (collectively, "Draft Exemption Order").

The oversight of ICE Futures Canada will continue to follow the current regulatory process for the oversight of exchanges within Canada as set out in the *Memorandum of Understanding about the Oversight of Exchanges and Quotation and Trade Reporting Systems* entered into by the Commission, the Manitoba Securities Commission ("MSC"), the Alberta Securities Commission, the Autorité des marchés financiers, the British Columbia Securities Commission, and the Saskatchewan Financial Services Commission (the "MOU").

The MSC will continue to act as the lead regulator for ICE Futures Canada since ICE Futures Canada is registered as a commodity futures exchange and is recognized as a self-regulatory organization by the MSC.

B. DRAFT EXEMPTION ORDER

In its Application, ICE Futures Canada has addressed the criteria for exemption from recognition of a derivatives exchange recognized in another jurisdiction of the Canadian Securities Administrators. Subject to comments received, staff will

recommend that the Commission grant an exemption order with terms and conditions to ICE Futures Canada based on the proposed Draft Exemption Order attached as Appendix "A" to the Application.

The Draft Exemption Order requires ICE Futures Canada to comply with terms and conditions relating to:

1. Regulation of ICE Futures Canada,

2. Access,

3. Filing Requirements,

4. Rule and Product Review,

5. Financial Viability,

6. Information Sharing; and

7. Submission to Jurisdiction and Agent for Service.

C. COMMENT PROCESS

The Commission is publishing for public comment the Application and Draft Exemption Order. We are seeking comment on all aspects of the Application and Draft Exemption Order.

Please provide your comments in writing, via e-mail, on or before **July 30, 2012**, to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario M5H 3S8, e-mail: comments@osc.gov.on.ca.

Confidentiality of submissions will not be maintained and a summary of written comments received during the comment period will be published.

Questions may be referred to:

Tracy Stern
Manager, Market Regulation
Tel: 416-593-8167
tstern@osc.gov.on.ca

Sandra Blake
Senior Legal Counsel, Compliance & Registrant Regulation
Tel: 416-593-8115
sblake@osc.gov.on.ca

ICE Future Canada Inc. – Application

May 25, 2012

Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, ON M5H 3S8

Attention: Ms. Emily Sutlic, Senior Legal Counsel, Market Regulation

Dear Sirs and Mesdames:

ICE Futures Canada, Inc. – Application

ICE Futures Canada, Inc. (the "Exchange" or "ICE Futures Canada") formerly known as Winnipeg Commodity Exchange Inc., is currently carrying on business as a recognized commodity futures exchange in Ontario pursuant to the following orders:

(a) an order (the "Recognition Order") dated August 24, 1979 recognizing Winnipeg Commodity Exchange Inc., as a commodity futures exchange pursuant to section 34 of *The Commodity Futures Act (Ontario)* (the "CFA");

(b) an order (the "Director's Exemption Order") dated August 24, 1979 pursuant to clause 37(I)(b) and subsection 40(2) of the CFA exempting:

  (i) Winnipeg Commodity Exchange Inc. from the requirement to make available copies of all current contract terms and conditions to registrants through an agent, and

  (ii) registered dealers and advisers from the requirement of furnishing a client with a copy of all current terms and conditions of any contract traded on Winnipeg Commodity Exchange Inc.; and

(c) an order (the "Director's Acceptance Order") dated August 24, 1979 pursuant to section 36 of the CFA accepting the form of the commodity futures contracts and commodity futures options traded on Winnipeg Commodity Exchange Inc. (collectively, the "Previous Orders").

ICE Futures Canada hereby applies to the Ontario Securities Commission (the "OSC" or the "Commission") for the following orders:

(i) an order, pursuant to section 78 of the CFA, revoking the Recognition Order;

(ii) an order revoking the Director's Exemption Order**;**

(iii) an order, pursuant to section 60 of the CFA, revoking the Director's Acceptance Order;

(iv) an order pursuant to section 147 of *The Securities Act (Ontario)* (the "OSA") exempting ICE Futures Canada from the requirement to be recognized as an exchange under section 21 of the OSA;

(v) an order pursuant to section 80 of the CFA exempting ICE Futures Canada from the requirement to be registered as a commodity futures exchange under section 15 of the CFA;

(vi) an order pursuant to section 38 of the CFA exempting trades in contracts on ICE Futures Canada by registered Futures Commission Merchants ("FCMs"), and any person or company who trades in a contract solely through an agent who is an FCM, from the prohibition from trading on a commodity futures exchange unless recognized by the Commission under section 33 of the CFA ("FCM Relief"); and

(vii) an order pursuant to section 38 of the CFA exempting trades in contracts on ICE Futures Canada by "hedgers" from the registration requirement under section 22 of the CFA ("Hedger Relief").

(Collectively, the "Exemption Order")

The OSA, CFA and all regulations, rules, policies and notices of the OSC made there under are collectively referred to as the "Legislation".

Approval Criteria

OSC Staff has prescribed criteria that it will apply when considering applications by commodity futures exchanges recognized in another Canadian Securities Administrators (the "CSA") jurisdiction for exemption from registration and recognition. These criteria are similar to those prescribed in OSC Staff Notice 21-702 *Regulatory Approach for Foreign Based Stock Exchanges* ("Staff Notice 21-702") in relation to applications for recognition (or exemption from recognition) by foreign stock exchanges. For convenience, this Application is divided into the following Parts;

Part I Background

Part II Application of Approval Criteria to the Exchange
1. Regulation of the Exchange
2. Governance
3. Regulation of Products
4. Access
5. Regulation of Participants on the Exchange
6. Rulemaking
7. Due Process
8. Clearing and Settlement
9. Systems and Technology
10. Financial Viability
11. Transparency
12. Record Keeping
13. Outsourcing
14. Fees
15. Information Sharing and Regulatory Cooperation

Part III Submissions

Part I – Background

The Exchange is a Manitoba corporation, which has been continually in operation since it was founded in 1887. The Exchange facilitates trades in futures contracts and options on futures contracts in canola, western barley, milling wheat, durum wheat and barley (collectively, "ICE Futures Canada Contracts"). Historically the Exchange offered trading of futures contracts and options on futures contracts via open outcry floor trading. In December 2004, the Exchange became the first commodity futures exchange in North America to convert fully to an electronic trading system. That trading system, which was hosted by a major North American futures exchange, was transitioned to the electronic trading system (the "ICE Platform") owned and operated by IntercontinentalExchange, Inc. ("ICE") over the weekend of December 4 to 6, 2007.

The Exchange is ultimately owned by ICE, pursuant to a court approved acquisition of shares. The acquisition was completed on August 27, 2007. ICE is a public company governed by the laws of the State of Delaware and listed on the New York Stock Exchange. ICE and its affiliates are collectively referred to in this application as the "ICE Group".

The Exchange is the sole shareholder of ICE Clear Canada, Inc. ("ICE Clear Canada" or the "Clearinghouse"), which was formerly known as WCE Clearing Corporation. ICE Clear Canada is a Manitoba corporation and is designated as a recognized clearinghouse under Section 16(1) of *The Commodity Futures Act (Manitoba)* (the "CFA MB*")* pursuant to Order No. 5719 of The Manitoba Securities Commission (the "MSC"). In addition to being registered as a commodity futures exchange in Manitoba, ICE Futures Canada has received no-action relief from staff of the U.S. Commodity Futures Trading Commission (the "CFTC") and is regulated by the Autorité des marchés financiers Quebec (the "AMF") pursuant to an exemption order.

The Exchange proposes to offer direct electronic access to trading in ICE Futures Canada Contracts through the ICE Platform to participants in Ontario ("Ontario Participants"), who meet the eligibility criteria in the ICE Futures Canada Rules and who are either (i) entities registered as FCMs under the provisions of the CFA; or (ii) entities that seek to rely on the Hedger Relief ("Hedgers") as defined in Section 1(1) of the CFA.

ICE Futures Canada is currently carrying on business in Ontario pursuant to the Recognition Order and has registered Direct Access Trading Participants ("DATPs") which are FCMs and which are regulated in Ontario by the OSC. ICE Futures Canada wishes to be able to continue to do business with Ontario based entities which are registered as FCMs under the provisions of the CFA and would like to be able to grant DATP status to Ontario resident entities that meet the definition of a "Hedger" as defined in section 1(1) of the CFA. Hedgers are non-market intermediary commercial enterprises such as grain companies, producers, or processors that are exposed to the risks attendant upon fluctuations in the price of commodities. ICE Futures Canada also has Ontario residents registered in other categories, namely, Trading Participants, Merchant Participants and Ancillary Participants. Additional information on participants can be found in Part 5.1 Fair Access.

Part II – Application of Approval Criteria to ICE Futures Canada

1. REGULATION OF THE EXCHANGE

The exchange is recognized or authorized by another securities commission or similar regulatory authority in Canada and, where applicable, is in compliance with National Instrument 21-101 – Marketplace Operation and National Instrument 23-101 – *Trading Rules*, each as amended from time to time.

Pursuant to an order issued by the MSC on June 16, 2008 ("Order No. 5718") the Exchange is recognized as a self-regulatory organization by the MSC pursuant to subsection 14(1) of the CFA MB and registered as a commodity futures exchange pursuant to subsection 15(1) of the CFA MB.

The MSC imposes numerous reporting obligations on ICE Futures Canada including advising of disciplinary actions taken against any ICE Futures Canada Participant, investigations of business transacted on the ICE Platform, and defaults by ICE Futures Canada Participants. The MSC has access to all trade information, compliance data, and other operational information as it relates to the Exchange's operations. The MSC conducts operational reviews as it deems necessary and makes recommendations concerning matters relative to the enforcement of rules, preventing market manipulation and customer and market abuses, and ensuring the recording and safe storage of trade information. The MSC also has access, upon request, to all records maintained by ICE Futures Canada.

Rule amendments are provided to the MSC which reviews and determines whether to grant non-disapproval. In the majority of situations, non-disapproval is obtained prior to the implementation of the said rule amendments. In unique circumstances, the Exchange has utilized the provisions of section 17 of the CFA MB to implement a rule and then give notice of same to the MSC.

On an annual basis the Special Regulatory Committee (the "SRC") provides a report to the MSC on all matters of regulatory importance pursuant to the requirement of Recognition Order No. 5718. The SRC also provides an annual financial report of the operations of the Regulatory Division to the MSC. Further details on the SRC and its reporting obligations are set out in Section 6 of this application.

ICE Futures Canada has reporting obligations to the AMF pursuant to Decision No. 2010-PDG-0034 issued on February 23, 2010. The AMF is an Exempting Regulator pursuant to the Memorandum of Understanding Respecting the Oversight of Exchanges and Quotations and Trade Reporting Systems.

ICE Futures Canada has reporting obligations to the CFTC, Division of Market Oversight and Division of Clearing and Intermediary Oversight, pursuant to the requirements of a No-Action Letter and a Part 30.10 Order, respectively. On December 5, 2011 the CFTC voted unanimously to approve rules which require foreign exchanges (FBOTs) to register with the CFTC. The FBOT registration processes will replace the No-Action letter regime.

ICE Futures Canada also has reporting obligations to FINMA, the statutory regulatory authority for Switzerland, pursuant to an Order issued by FINMA on September 2, 2010.

ICE Futures Canada also has the ability to offer its products for trading on screens in other jurisdictions around the world. A Jurisdictions document is published and maintained on the website.

2. GOVERNANCE

2.1 The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange;

(b) that business and regulatory decisions are in keeping with its public interest mandate;

(c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:

(i) appropriate representation of independent directors, and

(ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest; and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers, and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

The Exchange is headed by a board of directors (the "Board") whose organization and constitution is governed by the provisions of *The Corporations Act (Manitoba).* As part of its recognition review process, the MSC reviewed the organization and structure of the Exchange, including the By-laws and Rules establishing the corporate governance and the composition of the Board, to ensure that the Exchange is in compliance with statutory requirements.

The By-laws and Rules of the Exchange, in conjunction with the corporate law of the Province of Manitoba, establish the responsibilities of the Board and its officers. In general, the day-to-day management activities are the responsibility of the officers of the Exchange, who are directly accountable to the Board and appointed by the Board.

The Board is able to provide effective governance through its President and senior management. Pursuant to By-law Article 4, the Board has control and management of the business of the Exchange, with all required powers. The Board may, and has, delegated authority to the officers of the Exchange pursuant to the By-law Article 6.

Board meetings take place, on average, 6 to 8 times per year. A simple majority decides an issue on the Board agenda. If there is a tie, there is no right to a casting vote, and accordingly the motion would not pass. The cases in which more than a simple majority of the votes are required include emergency action matters and suspension of trading (Article 13 of the By-law). Between meetings, the Board may authorize actions by way of written resolutions, provided all members of the Board respond to the resolution and agree on the action to be taken (By-laws, Article 4.09).

There are seven (7) individuals on the Board of Directors of ICE Futures Canada, three (3) of whom are independent directors. Independent means individual persons who are not registered Participants and/or shareholders or employees, officers or directors of Participants and/or shareholders of ICE Futures Canada. Order No. 5718 requires that only two (2) Board members be independent. The MSC has reviewed the board size to ensure it is large enough to deal with conflicts and has the ability to act independently. The ICE Futures Canada Rules and By-laws are available on the website. The Board delegates certain matters to committees, as set out in the By-laws and Rule 3. Committee members are drawn from a wide group of Participant categories and other persons with expertise. Committee sizes are sufficient to ensure representation from a wide range of interested persons.

The Board is required, pursuant to Order No. 5718, to empower the SRC and a Regulatory Division responsible for all matters concerning compliance and regulation for the Exchange. The SRC has been established to promote the protection of the public interest and protection of the integrity of the markets.

The SRC is a committee appointed by the Board, however it reports directly to the MSC on all matters affecting regulation and compliance, and effectively has board-like powers with respect to all matters pertaining to regulation and compliance.

The remuneration of directors and officers of ICE Futures Canada is reviewed on an annual basis by the Compensation Committee of ICE which is comprised entirely of directors that are independent of ICE and of ICE Futures Canada.

The ICE Group's global insurance program provides professional indemnity and directors and officers coverage to all directors and executive officers of ICE Futures Canada.

As set out above, ICE Futures Canada is ultimately a wholly owned subsidiary of ICE. ICE, as a publicly traded company, has a Nominating and Corporate Governance Committee. That committee would review any new proposed director for the Board. The ICE Nominating and Corporate Governance Committee has ratified a Policy regarding the Qualification and Nomination of Director Candidate (the "Policy"). The Committee would utilize the principles of the Policy in reviewing any new board applicants for ICE's subsidiary companies, including ICE Futures Canada.

The Policy includes direction on;

> The necessary qualifications of board candidates, which includes: persons who possess personal attributes of leadership, an ethical nature, a contributing nature, independence, interpersonal skills, and effectiveness. In addition, the experience attributes include financial acumen, general business experience, industry knowledge, diversity of views and special or unique business expertise. With respect to independent directors, the committee seeks to ensure a cross section of candidates with unique expertise in areas that the relevant board requires strength in, examples include legal & regulatory, financial & accounting expertise, business development and similar.

The process to be utilized by the Committee in identifying and evaluating director candidates, which process includes input from committee members, other directors of the Company, management of the company and shareholders of the company. Where appropriate, outside consultants and search firms are utilized. Once identified, the candidates are interviewed by the Chairman of the board, the Chief Executive Officer and one committee member. The full board is advised and kept updated.

The evaluation of existing directors, which is performed by the committee on an annual basis.

At the time of the acquisition of the Exchange in August 2007, the MSC was required to review and approve the transaction, which included a review of ICE, the Board, and the officers and employees, and its ability to operate a regulated exchange and clearinghouse. The Board members have been the same since the date of acquisition on August 27, 2007. Three members of the seven person Board are senior ICE executives, including the Chairman, Chief Financial Officer, and Senior V.P. Business Development, and each of these individuals has unique expertise and knowledge in the operation of global marketplaces, including regulated exchanges and clearinghouses, as set out in their biographies.

The three independent board members on the Board are Canadian residents with extensive expertise in the areas of banking and finance, law and regulation, and business and corporate governance, respectively.

All employees and officers of the Exchange are subject to detailed pre-employment screening which is conducted by an external, independent agency and includes credit review, verification of academic qualifications and employment history, and a review of the information supplied in support of the individual's application (including references). In addition, senior management appointees are subject to further checks on their professional memberships, qualifications, and directorships.

Article 4.18 of the General By-law deals with Conflict of Interests and applies to the Board and all committees of ICE Futures Canada. These conflicts of interest provisions require that disclosure of the conflict be made, and prohibit a Board or committee member from participating in such body's deliberations, or voting in any manner, in a matter in which they have a conflict of interest. The possibility of a significant and/or direct financial position in a matter constitutes a conflict of interest and where a conflict exists, Board and committee members must recuse themselves and not be involved in the deliberation and/or voting on the issue. If the number of withdrawals or recusals prevents a quorum then there is a process for dealing with the matter, including, where necessary, delegation to an ad hoc committee made up of persons who do not have conflicts with the matter under consideration. The minutes of all meetings must document the procedures followed to show compliance with the Article 4.18 of the By-law provisions.

3. REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are reviewed by the appropriate securities commission or similar regulatory authority, and are either approved by the appropriate authority or are subject to requirements established by the authority that must be met before implementation of a product or of changes to a product.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits and internal controls.

Prior to listing any new derivatives product, the Exchange conducts a substantial market review to confirm that there will be a proper market for the product. This includes a consultation process with all stakeholders that may have an interest in the contracts including end-users, grain companies, grain brokers, FCMs, academics, speculators, and Exchange staff. Critical to the introduction of a new contract is that the Exchange ensure the ongoing integrity of the cash market data underlying the contract at issue. Extensive consultation with industry participants, academics, trade groups, lobbying entities, consultants and others is instrumental in the development of a new contract. ICE Futures Canada reviews and adheres to the principles of contract design for physically settled commodity contracts as articulated in the "Principles for the Regulation and Supervision of Commodity Derivatives Markets" published by the International Organization of Securities Commissions ("IOSCO"), in September 2011, as they pertain to contract design (Chapter 3). Any new product must be approved by the MSC and must meet the regulatory requirements set out in Part 6 of the CFA MB.

Part 6 requires that prior to listing a new derivatives product, the Exchange must provide evidence to the MSC that;

a) more than occasional use is reasonably to be expected to be made of the contract for hedge trading;

b) each term or condition in the contract conforms to normal commercial practices; and

c) that the contract includes satisfactory levels of margin, daily price limits, daily trading limits, and speculative position limits.

In addition to requiring the pre-approval of the MSC, the Exchange must receive pre-approval from the CFTC pursuant to the provisions of the No Action Letter.

The terms and conditions of the ICE Futures Canada Contracts including speculative position limits, conform to the requirements of agricultural contracts traded on North America's derivative exchanges.

The extensive market consultation and Board approval processes to which all ICE Futures Canada Contracts are subject ensures that the terms and conditions of ICE Futures Canada Contracts are in conformity with normal business practices for trade in such products, that they meet the needs of the relevant commodity sector, and have widely acceptable specifications. ICE Futures Canada appoints a Contract Committee, an Electronic Trading Committee, and an Options Committee to ensure that there is ongoing dialogue with the users of the contracts to maintain relevance to the underlying cash markets.

ICE Futures Canada is responsible for all trading rules, for the surveillance of the market, and for ensuring the orderly trading and liquidation of contracts. Daily trading limits, price limits, and speculative position limits are set by the Exchange and compliance of same by market participants is monitored by the Regulatory Division.

All ICE Futures Canada Contracts are cleared and settled by ICE Clear Canada. ICE Clear Canada acts as a counterparty and financial guarantor to each transaction executed on ICE Futures Canada. ICE Futures Canada and ICE Clear Canada cooperate with respect to the development and maintenance of all ICE Futures Canada Contracts to ensure that all potential risks are evaluated and can be managed.

ICE Clear Canada sets margin requirements and makes margins calls, including intra-day margin calls from Clearing Participants. ICE Clear Canada undertakes Clearing Participant Surveillance to ensure the financial soundness of Clearing Participants. Risk and capital-based position limits are established for each Clearing Participant.

4. ACCESS

4.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure

(i) participants are appropriately registered as applicable under Ontario securities laws or Ontario commodity futures laws, or exempted from these requirements,

(ii) the competence, integrity and authority of systems users, and

(iii) systems users are adequately supervised.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

(c) The exchange does not

(i) permit unreasonable discrimination among participants, or

(ii) impose any burden on competition that is not reasonably necessary and appropriate.

Pursuant to Order No. 5718, the Exchange must comply with the following;

The requirements of the Exchange shall permit all registered dealers that satisfy the criteria of the Exchange, including a requirement for recognition by another organization, if applicable, to access the trading facilities;

The Exchange will maintain written rules and application forms for granting access to trading on its facilities;

The Exchange will not unreasonably prohibit or limit access by a person or company to the regulated services offered by it.

The Exchange will keep detailed records relating to all applications for access to the facilities of the Exchange that have been granted as well as requests for access that have been refused, including the reasons for denying or limiting access to any applicant.

Part 4D of Rule 4 sets out the application processes. There are standard forms of application/agreements for each category of participant status which are required to be completed by each potential participant. All forms are available on the Exchange website. The forms of application/agreements have been reviewed by the MSC.

ICE Futures Canada maintains criteria that is applied in an objective and non-discriminatory manner in determining who can register as a participant of the Exchange and access its facilities. Pursuant to Rule 4, entities are entitled to register with the Exchange in one of four categories, depending on their business operations and desired activities. The categories are; DATP, Trading Participant, Merchant Participant, and Ancillary Participant, and there are sub-categories within each category. A brief description of each of the categories follows;

DATP is the only category that is entitled to directly access the ICE Platform. Participants in this category are entitled to connect directly to the ICE Platform through their own conformance-tested front end systems, called Direct Access Interfaces ("DAI") or through an Independent Software Vendor ("ISV") which is a third party provider which licenses its conformance tested front-end system to DATPs.

DATPs can be either companies or individuals. They are classified as one of: FCM, Merchant, Liquidity Provider, or Market Maker. Only FCMs may trade for the accounts of others. Hedgers who register in the category of DATP are entitled to trade only for their own account.

All DATPs access the ICE Platform by being permissioned by a Clearing Participant. In order to access the ICE Platform, a DATP must a) be a Clearing Participant of ICE Clear Canada; or b) have a properly executed Clearing Authorization and Guaranty Form with a Clearing Participant of ICE Clear Canada; or c) be issued a Systems Managed Account ("SMA") by a Clearing Participant.

Trading Participants are companies or individuals who trade through DATP FCMs. This registration provides most sub-categories with reduced exchange and clearing transaction fees.

Merchant Participants are companies that participate in the physical delivery system. They are entitled to register delivery space (elevators) and may choose to make delivery by issuing warrants. There are strict requirements pertaining to elevator registration, and myriad financial and operational obligations that must be met, all as set out in the Rules. Merchant Participants can trade as a client of a FCM. The FCM must be a dealer properly registered in the jurisdiction of the Merchant Participant.

Ancillary Participants do not have any trading or delivery rights. This is a legacy category and includes companies and individuals with an interest in the Exchange. Ancillary Participants are entitled to sit on committees of the Exchange. Ancillary Participants can trade as a client of a FCM. The FCM must be a dealer properly registered in the jurisdiction of the Ancillary Participant.

The Exchange reviews financial filings from all Merchant Participants and all Clearing Participants both at the time they apply for Participant status (Rule 7A.03 and Clearing Rule A-305) and on a regular basis (quarterly and annual for Merchants, per Rule 7A.03 and Clearing Rule A-305).

Entities that wish to register as participants are required to complete a written application/agreement which is standardized for each category. The application/agreement forms are designed to ensure that applicants are appropriately identified, are qualified to trade in commodity futures in their jurisdiction, have adequate financial resources, have a client relationship with a registered Clearing Participant, and have exhibited proper conduct in other capital markets activities. The Exchange reviews constating documentation and financial statements (if applicable to the category of registration), and confirms legal and regulatory compliance in the home jurisdiction (including any registration or licensing requirements for trading in commodity futures for clients). Staff of the legal department review all written applications for participant status. In the event that an application was refused, or was granted under conditions, an applicant has a right of appeal to the SRC pursuant to ICE Futures Canada Rule 4D.04.

Any applicant that is denied participant status with ICE Futures Canada and/or any ICE Futures Canada registered participant whose participant status and/or access to the ICE Platform is suspended is entitled to the opportunity to make representations and be heard, an explanation/reasons for the decision, and the right to appeal the decision. The Exchange maintains records of its participant application reviews and any resulting hearings or appeals.

Only DATPs have direct access to the Trading Platform and only with the approval and permission of a registered Clearing Participant in the category of FCM. All direct access to the ICE Platform is provided by ICE Futures Canada; it cannot be provided by another participant. ICE Futures Canada requires the following documentation in order for it to approve an entity as a DATP and then connect that registered DATP to the ICE Platform:

a) An Application/Agreement – Form 1-C2010;

b) Proof that the entity will be set up to access the ICE Platform on a conformance tested and approved front end system. There are three options:

i) The DATP enters into a contract with an ISV (which has its own written agreement with ICE Futures Canada and ICE); or

ii) The entity itself has developed its own conformance tested front end system and has entered into a tri-party agreement DAI Agreement with ICE Futures Canada and ICE; or

iii) The DATP utilizes WebICE, which is the front end system owned and operated by ICE.

c) The DATP must be a registered Clearing Participant with ICE Clear Canada, Inc., or have a written Clearing Authorization and Guaranty with a registered Clearing Participant of ICE Clear Canada (in the category of FCM), or be issued a SMA by a Clearing Participant of ICE Clear Canada (in the category of FCM). By providing either a Guaranty or a SMA[1], the Clearing Participant is agreeing that it will guarantee all of the financial obligations of the DATP(and its employees and customers, as applicable). This is important because the Exchange looks to two categories of registered Participants to ensure all financial obligations are met; a) Clearing Participants (with respect to all transactions effected) and b) Merchant Participants (with respect to the physical delivery aspect of the contracts).

Only DATPs which are registered in the category of FCM are entitled to have customers. These customers, which may be registered as Trading Participants, Merchant Participants, or Ancillary Participants do not have direct trading access to the ICE Platform; they are "order-routed" through the FCMs. Customers trade through the registered FCM (DATP). The FCM (DATP) is responsible for setting up the risk management processes and procedures for each customer. All trading conducted by the customers of an FCM (DATP) must go through (order-routed), and be approved by, that FCM (DATP).

ICE Futures Canada Rules require registered participants to ensure that the users of the Trading System are competent and utilize the ICE Platform appropriately.

Rule 8B.01d (3) and (5) requires registered Participants to:

(3) implement suitable security measures such that only those individuals explicitly authorized to trade by the Direct Access Trading Participant may gain access to Trading System;

(5) ensure that any access to the Trading System granted to a User by the Direct Access Trading Participant is:

i) Adequately controlled and supervised, including that the Direct Access Trading Participant must have the ability to make appropriate risk management and other checks before any orders are submitted to the Trading System, and

ii) Uniquely identified in accordance with the Rules on User Identification, and the Procedure attached to Rule 8 as "C Procedure Requirements for Unique User Information."

ICE Futures Canada Rules require that DATPs register a minimum of two "Responsible Individuals" that are responsible for all business conducted through their systems and registered accounts. These individuals must have the authority to bind the company.

Rule 4 prescribes that FCMs must be properly registered with the regulatory authorities in their home jurisdiction and in any other jurisdictions required by law. (Rule 4B.02 (I) (i)).

[1] A Clearing Participant will determine whether to issue a Guaranty or a System Managed Account (SMA). An SMA provides more control to the Clearing Participant as the Clearing Participant is able to monitor trades on a real-time basis and is able to set trading restrictions and parameters. Clearing Participants also have the ability to shut off the trading rights of an SMA without the intervention of the Exchange and its markets operation department.

Rule 4C.02 prescribes that registered Participants must meet and maintain any qualifications required by the Rules or the self-regulatory organization(s) they are members of.

Rule 4C.04 requires all registered Participants to adopt written supervision policies and procedures to be followed by their directors, officers, partners and employees that are adequate, taking into account the nature, scope and complexity of the business, to ensure compliance with the Rules and the CFA MB.

Rule 4C.06 provides that all registered Participants entering orders must comply with all applicable regulatory standards with respect to the review and approval of orders.

Rule 11B.02 provides that companies are vicariously responsible for the actions of their employees, partners, directors and officers.

DATPs and Trading Participants as well as any other customer of a DATP, including Merchant Participants and Ancillary Participants, can have trading access terminated immediately if their Clearing Participant requests, or if they breach certain Rules of the Exchange. Termination could result inter alia, due to a breach of established capital or risk parameters, providing passwords or trading terminal access to persons not entitled to trade, failing to pay margin calls as and when required, and any other conduct that would be considered harmful to the Trading System.

All Participants are subject to disciplinary action in the event they fail to comply with ICE Futures Canada Rules or with any provision of the CFA MB. Disciplinary action may result in suspension, expulsion or fines. Participants are accountable and vicariously liable for the actions of their Responsible Individuals and employees. Information setting out the obligations of the Participants including information on the inspections, investigations and hearing procedures of ICE Futures Canada and the violations and penalties that may be imposed is included in Rules 10 and 11.

The ICE Platform maintains significant order data that must be populated by all entities submitting orders to the Trading System. This order information is populated via the traders' front-end trading systems, whether those systems are an ISV/DAI, or the proprietary WebICE system. Population of these data fields is a necessary requirement of each order, and furthermore is an element of the conformance testing that all ISVs and DAIs must pass before connecting to the ICE Platform. Order data, in turn, is used by the ICE Platform to automatically generate trade records for those orders that result in trade execution.

The order and trade information is retained within the trading systems, and is also loaded daily into ICE's proprietary compliance surveillance systems. Regulatory Division staff utilized this information in the daily review of exception reports and queries to flag potential trading violations.

Rule 8B.14 stipulates requirements for order recording and retention. The Rules of ICE Futures Canada, and in particular Rule 10, also provide for the jurisdiction of the Exchange to request, and the obligation of the participant to provide, any additional order or trade information that the Regulatory Division deems necessary.

Firms that cease to be ICE Futures Canada Participants, Responsible Individuals who are de-registered, and the employees of registrant firms remain subject to ICE Futures Canada's disciplinary jurisdiction for a period of one (1) year after the deregistration becomes effective or for as long as disciplinary proceedings continue.

Access for Ontario Persons

ICE Futures Canada is seeking Relief which would enable the following Ontario residents to trade ICE Futures Canada Contracts as DATPs;

1) Entities registered as FCMs under the provisions of the CFA;

2) Entities that meet the definition of a "Hedger" as defined in Section 1 (1) of the CFA.

All other Ontario residents would be required to become clients of an Ontario-registered FCM and trade ICE Futures Canada contracts through that FCM.

It is our expectation that most Ontario market participants interested in registering as DATP with ICE Futures Canada would be engaged in the business of trading commodity futures either as an FCM or as a Hedger. Hedgers are non-market intermediary commercial enterprises such as grain companies, producers, or processors that are exposed to the risks attendant upon fluctuations in the price of commodities.

5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation service provider including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

ICE Futures Canada Rule 9 provides for the establishment of the Regulatory Division and the SRC, and mandates the SRC with duties and jurisdiction. In fulfillment of the requirements of Recognition Order No. 5718, the Board, by resolution, ceded powers under ICE Futures Canada Rules to the SRC, which direct that the SRC shall:

1) Ensure that the Regulatory Division has the resources it needs to carry out is duties. In the event the Special Regulatory Committee determines that the Regulatory Division has insufficient resources it shall make a recommendation(s) to the Board to resolve the matter.

2) Ensure that the Regulatory Division carries out its duties and responsibilities and that it does so in a manner that is fair, objective and without conflict of interest.

3) Evaluate the performance of the Regulatory Division and report thereon to the Commission on or before May 31st of each year. A copy of the report will be provided to the Board.

4) Report to the Commission, as required, on all matters of regulatory importance.

5) Recommend rules, policies and rule amendments of a matter other than administrative or operational in nature, to the Board on matters relating to:

    i. Applications for Participant status.

    ii. The operations and standards of practice and business conduct applicable to Participants.

    iii. Investigations and disciplinary matter

    iv. Market surveillance matters

    v. Suspensions for failure to provide information pursuant to Rule 10D.06.

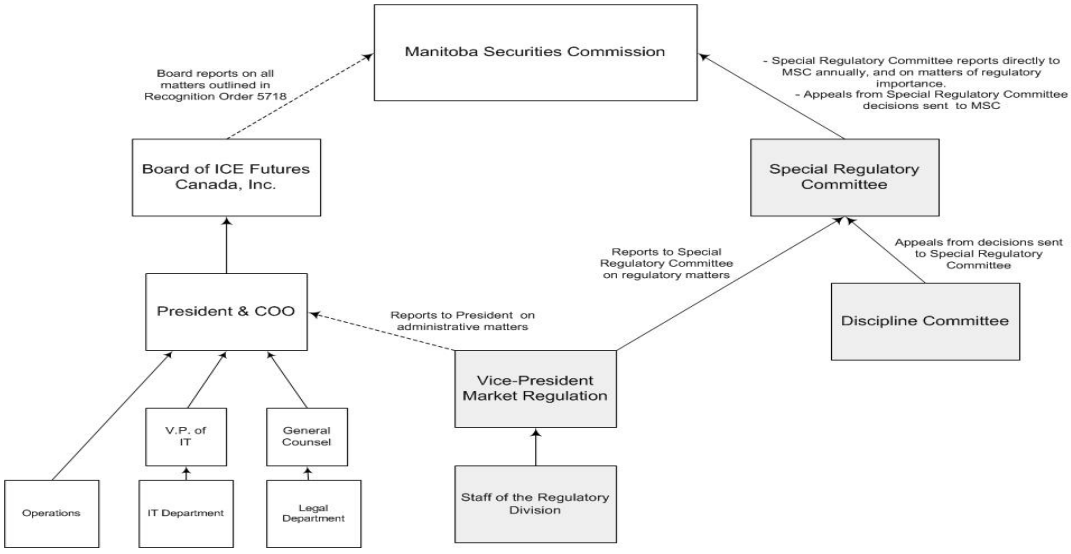
        a. To hear and decide on hearings at first instance where the Rules so require.

        b. To hear and decide appeals from decisions of the Discipline Committee.

The Rules further provide that the Regulatory Division has responsibility for investigation and market surveillance matters (Rule 9.08).

The Regulatory Division is responsible for monitoring and investigating trading in ICE Futures Canada Contracts to detect abusive and improper trading practices, and for prosecuting rule violators. The Regulatory Division includes investigators who monitor the market and conduct investigations and inspections relating to suspicious trades or suspicious patterns of trading. ICE utilizes proprietary software programmes that permit numerous sophisticated software queries to detect trade abusers. These programmes are able to generate reports which monitor for trading ahead, accommodation trading, large cross trades, direct and indirect cross trading opposite customer accounts, and wash trading among other improper trading practices.

The diagram below sets out the internal reporting structure and the position of the Regulatory Division and the SRC in the Exchange's organization, all of which the MSC has accepted as conforming to the requirements of Order No. 5718. What is important to fulfillment of the conditions of Order No. 5718 is the separation of jurisdiction between the regulatory and the business functions. Part of this was achieved by setting up the organization such that the staff of the Regulatory Division report directly to the SRC on all matters of a regulatory importance and to the President (and thereafter the Board of Directors) on administrative matters. The SRC, in turn, reports directly to the MSC.



As noted earlier, Order No. 5718 at section 24 to Appendix "A" states:

> **The Exchange shall, through the Regulatory Division and otherwise, establish such rules, regulations, policies, procedures, practices or other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and internal affairs and shall in so doing specifically govern and regulate so as to:**
>
> **a. Seek to ensure compliance with the Act;**
>
> **b. Seek compliance with the terms and conditions of this order as well as any regulations, rules, policies or orders issued by the Commission;**
>
> **c. Seek to prevent fraudulent and manipulative acts and practices;**
>
> **d. Seek to promote just and equitable principles of trade;**
>
> **e. Seek to foster cooperation and coordination with persons or companies engaged in regulating, clearing, settlement, processing information with respect to, and facilitating transactions in, trades in future and options contracts; and**
>
> **f. Seek to provide for appropriate discipline.**

Staffing of the Regulatory Division consists of a Vice-President, Market Regulation, a Manager of the Regulatory Division, a Senior Regulatory Officer, and an Investigator/Analyst. The Department has the ability to obtain administrative support assistance as required. Staff of the Regulatory Division is responsible for ensuring compliance with ICE Futures Canada Rules by all participants of the Exchange, conducting investigations and inspections into all matters, whether brought forward by a client or a participant complaint or whether on its own initiative and for ensuring that all matters of regulatory importance are brought forward to the SRC.

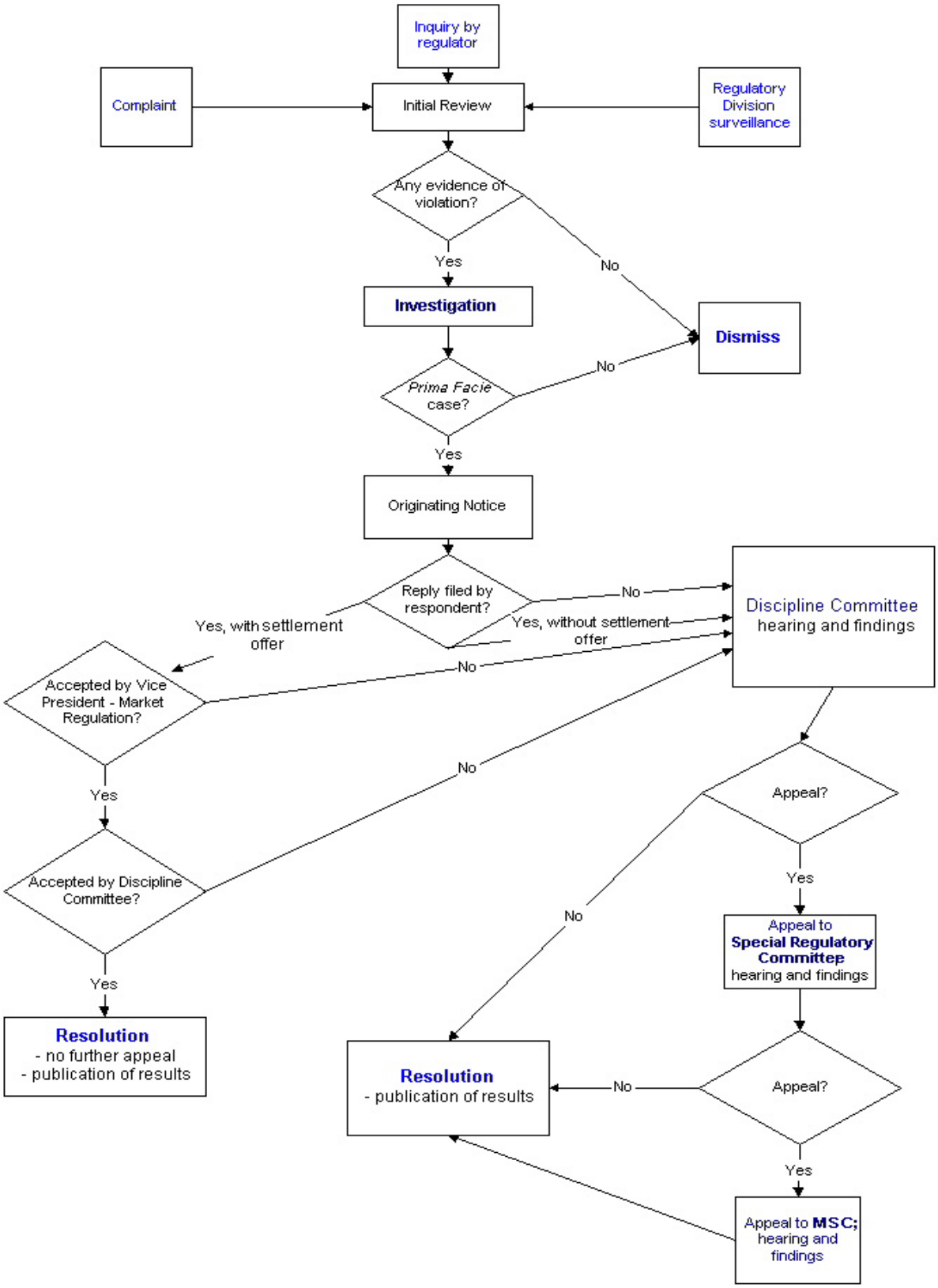
The Regulatory Division is also responsible for trade surveillance and market surveillance.

Trade Surveillance is conducted daily, and focuses on detecting abusive and improper trading practices, such as wash trading, front-running and pre-execution communications. The Exchange utilizes various reports which flag potential violative conduct. Trade surveillance also includes spot checks which are conducted on EFP and EFR transactions. In addition, investigators review error trades, trade adjustments, and trade cancellations.

Market Surveillance includes all processes and procedures aimed at preventing, detecting, and protecting against market manipulation and other threats to market integrity. Staff of the Regulatory Division focuses on activities that could influence the validity of market prices and the proper functioning of the Exchange's contracts as price discovery and risk management tools. At least weekly, a meeting of all staff of the Regulatory Division is held to review market information with a particular focus on the nearby (expiring) contract months. All market participants are required to report their positions to the Regulatory Division in accordance with the requirements of the Rules. In addition the physical stocks information along with details on outstanding warrants and delivery certificates, as well as volume and open interest ("VOI") reports are analyzed and reviewed.

For any decision made by the Exchange that affects a Participant, including a decision in relation to acceptance of participant registration status, access to the Trading System or discipline matters, Rule 10 requires that all due process requirements of Canadian administrative law are met, including that parties are given full particulars of the case against them, an opportunity to be heard and make representations. Rule 10 provides that an independent, non-biased panel of three members of the Discipline Committee will hear the matter. The Panel keeps a record of the hearing and provides written reasons for its decision. There are appeal rights to the SRC and the MSC.

Participants are subject, under certain circumstances, to suspension or termination with regard to their access to the ICE Platform. Information setting out the obligations of the participants including information on the inspections, investigation and hearing procedures of ICE Canada and the violations and penalties that may be imposed is fully transparent and set out in Rules 10 and 11. All inspections and investigations follow procedures that provide for written notification of the allegations against a participant (the Originating Notice), the opportunity for filing an answer (the Reply), and all due process required by Canadian administrative law under the hearing process, which includes a hearing at first instance before the Discipline Committee, an appeal to the SRC and an appeal to the MSC. An appeal, with leave, is further permitted to the Manitoba Court of Appeal. The chart on the following page outlines the process in diagram form.


Inquiry by regulator
Complaint
Initial Review
Regulatory Division surveillance
Any evidence of violation?
Yes
No
Investigation
Dismiss
Prima Facie case?
No
Yes
Originating Notice
Reply filed by respondent?
No
Yes, with settlement offer
Yes, without settlement offer
Discipline Committee hearing and findings
Accepted by Vice President - Market Regulation?
No
Yes
Accepted by Discipline Committee?
No
Yes
Appeal?
Yes
No
Appeal to Special Regulatory Committee hearing and findings
Resolution
- no further appeal
- publication of results
Resolution
- publication of results
No
Appeal?
Yes
Appeal to MSC; hearing and findings

6. RULEMAKING

6.1 Purpose of Rules

(a) The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants.

(b) The Rules are not contrary to the public interest and are designed to

(i) ensure compliance with securities legislation and derivatives legislation, as applicable;

(ii) prevent fraudulent and manipulative acts and practices;

(iii) promote just and equitable principles of trade;

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities or derivatives, as applicable;

(v) provide a framework for disciplinary and enforcement actions; and

(vi) ensure a fair and orderly market.

The Exchange and its Participants are required to comply with all provisions of the CFA MB. Each ICE Futures Canada Participant agrees to comply with the ICE Futures Canada Rules, which also provide for compliance with the CFA MB. ICE Futures Canada Rules require participants to keep and maintain records, file reports and comply with prescribed position limits and position accountability.

ICE Futures Canada and ICE Clear Canada maintain a set of written Rules and Annexes. ICE Clear Canada also publishes an Operations Manual. The ICE Futures Canada Rules and Annexures and ICE Clear Canada Rules and Operations Manual are designed to fulfill all of the requirements of Orders Nos. 5718 and 5719 and to provide for a fair and orderly market. Updated documents are available on the Exchange's website.

ICE Futures Canada works with companies and persons engaged in regulating, clearing, settling and processing information, and facilitating transactions in products by entering into information sharing agreements, holding meetings to share information and otherwise ensuring information is up to date and potential amendments to processes are discussed in advance.

All trading in ICE Futures Canada Contracts is conducted in accordance with ICE Futures Canada Rules (particularly Rule 8) and the related rules of ICE Clear Canada. ICE Futures Canada Rules are applicable to all ICE Futures Canada market participants without regard to jurisdictional boundaries as such obligations arise by virtue of the contractual relationship between ICE Futures Canada and all entities trading its markets. ICE Futures Canada Rules contain substantive provisions relating to participant requirements, risk management, trading procedures, speculative position limits, reporting and business conduct standards, contract specifications, procedural provisions relating to the discipline, arbitration, default rules and other provisions. Exchange participants are required to act in accordance with the spirit as well as the letter of ICE Futures Canada Rules.

The ICE Futures Canada Rules specifically reference the CFA MB at Rule 11B.01 d) and it is a violation of the Exchange Rules to contravene the CFA MB and the regulations and rules promulgated thereunder. Recent disciplinary proceedings have included violations of the CFA MB.

The ICE Futures Canada Rules prohibit a Participant from disseminating false or misleading or knowingly inaccurate information concerning contract, underlying commodity or market information or conditions; from manipulating or attempting to manipulate the market, from entering bids or offers not in good faith or for an improper purpose, from executing non-competitive transactions, from engaging in any conduct or practice that is inconsistent with just an equitable principles of trade, or otherwise from violating the Rules or procedures of ICE Futures Canada or ICE Clear Canada.

The Rules, including Rules 8, 11, and 12, are designed to promote fair processes and procedures and prevent fraudulent and manipulative acts and practices. Significant rules include;

> Rule 8A.07 Prohibition against making false or fictitious transactions. Conducting or Reporting false / fictitious trades is prohibited by Rules 11B.01(r)(1) and 11B.01(r)(2). Rule 8A.10 requires that only good faith bids and offers may be entered into the Trading System.

Cross Trades – Transactions in which the same trader is both buyer and seller are addressed in Rule 8A.08. With respect to two client orders, Rule 8A.08(b) requires a delay of five seconds for outright futures, or 15 seconds for strategies and options, between the entry of opposing buy and sell orders by the same trader. In situations where the opposing orders are independently initiated and immediately executable, no delay is required.

Cross trades in which a client order is opposite the trader's personal or proprietary account are separately addressed, in Rule 8A.08(a). If the trader is a Floor Broker, no such crossing is permitted. For traders other than Floor Brokers, crossing is permitted if the client order is entered first, and the personal/proprietary order is entered after a five second delay for outright futures, or a 15 second delay for strategies and options.

Crossing orders in the back-office and representing that they have been conducted on-exchange – commonly known as "bucketing" – is prohibited by Rule 11B.01(r)(6).

Wash Trading – Wash trading is addressed, and prohibited, under Rules 8A.07(b), 8A.07(c), 11B.05(r)(3), and 11B.01(r)(5). Opposing orders for the same beneficial owner may not be executed across each other, either directly or indirectly. The only exemptions are when the orders are generated from different arms-length business units of the same company, and can be proven to have been for legitimate business purposes and not pre-arranged.

Rule 8A.08 which provides details on how and when a broker can trade against or across a customer order. There are also requirements on FCMs in covering separate client orders and a requirement on the FCM to wait a specified period of time before placing the other wide of the order into the Trading System.

Rule 8A.11(b) for bids front running. It provides that a market participant may not *"…submit any order for a personal or proprietary account until all executable customers' orders in the same contract and at the same price or "at market" have been entered in their entirety."* Rule 11B.01(r)(12) defines the following as a violation: *"Failing to give priority to a customer order over an order for the trader's personal account or their employer's proprietary account."*

Rule 8A.09 forbids pre-execution communications, pre-negotiated trades and non-competitive trades. Pre-execution communications are defined as *"…communications between two market participants for the purpose of discerning interest in the execution of a transaction prior to the entry of an order on the Trading System."* All of these types of trades have been found to hinder the transparent and competitive process, which results in reduced liquidity and lack of true price discovery. Pre-execution communications leads to inefficient markets and harm to the market users in the form of inaccurate price discovery information that is not indicative of a price discovered in the open market. In certain circumstances, pre-arranged trading will also fall under Rule 11B.01(r)(4), which prohibits the disclosure of stop-loss or limit orders.

Rule 8A.11 provides that brokers must submit orders received from clients in the Trading System in the sequence they are received. If a trader is dual trading, they must ensure that all executable customer orders are completely filled before entering their personal orders.

Market manipulation and deceptive trading practices are forbidden in the Rules at Rule 11B.01;

11B.01 Violations

r. Trading Violations – The following are violations:

…..

(7) Directly or indirectly using or knowingly facilitating or participating in the use of any manipulative or deceptive method of trading in connection with any contract whereby the trade or trades could reasonably be expected to create a false or misleading appearance of trading activity or an artificial price for the contract, the underlying commodity , or any related contracts;

(8) (i) Manipulating or attempting to manipulate the price of a contract or commodity that is capable of being delivered pursuant to a contract traded under these Rules;

(ii) Effecting, alone or in concert with others, a series of transactions (including any bids, offers, or trades) in a contract to create an impression of actual or apparent active trading in the contract or to raise or lower the price of the contract for the purpose of inducing the purchase or sale of the contract by others;

(9) Cornering or attempting to corner the market in any commodity that is capable of being delivered pursuant to a contract traded under these Rules;

(10) Acting or attempting to act in any fashion which might bring about or permit a potential corner or squeeze or an opportunity for the manipulation of prices of any commodity that is capable of being delivered pursuant to a contract traded under these Rules;

(11) Disseminating any false, misleading or knowingly inaccurate information, including a report concerning crop or market information or conditions that affect or tend to affect the price of any commodity that is capable of being delivered pursuant to a contract traded under these Rule;

……

s. Purchasing or selling or offering to purchase or sell commodities, futures contracts or options for future delivery in a manner which may have the effect of upsetting the equilibrium of the market, or of demoralizing the market, so that prices will not properly reflect reasonable commercial values. Any Participant or Market Participant who makes or assists in making such purchases or sales, or offers to purchase or sell with the knowledge of an intent or who with such knowledge is a party to or assists in carrying out any plan or scheme is in violation of the Rules

Rule 12 – Speculative Trading Limits, is designed to protect the ICE Futures Canada marketplace from excessive speculation that can cause unreasonable or unwarranted price fluctuations. The rule with the attendant policies is based on the procedures established and enforced in other North American soft commodity markets utilizing the principles of spec position limits approved by the CFTC. ICE Futures Canada regularly reviews the position limits to ensure they continue to be set at levels which protects the markets.

The SRC is responsible for reviewing all ICE Futures Canada Rules to ensure they are compliant with the Exchange's legal and regulatory obligations. The Exchange has extensive disciplinary processes set out in Rules 10 and 11 with respect to disciplining or terminating ICE Futures Canada participants.

As per Rule 9.08 and 9.09, the Regulatory Division is responsible for ensuring compliance with ICE Futures Canada Rules by all entities trading on the Exchange. It performs this function by: monitoring trading to detect abusive and improper trading practices; conducting investigations and inspections, whether brought forward by an external complaint or on its own initiative; and ensuring that all matters of regulatory importance are brought forward to the SRC.

ICE Futures Canada utilizes proprietary and customized software programmes that permit numerous sophisticated software queries to detect trade abusers. These programmes are able to generate reports which monitor for trading ahead, accommodation trading, large cross trades, direct and indirect cross trading opposite customer accounts, and wash trading among other improper trading practices.

ICE Futures Canada Rules apply equally to all registered Participants and market participants and do not unreasonably discriminate against any category or class of registrant, and do not impose unnecessary or inappropriate burdens on competition.

ICE Futures Canada Rules apply equally to all participants; whether registered, or a customer of a registered participant. Each category is treated equally as to criteria and cost.

7. DUE PROCESS

7.1 For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

Decisions made by the Exchange that impact and affect participants, including decision in relation to access, exemption requests, or disciplinary matters provide for rights of due process and procedural fairness, in compliance with administrative law in Canada.

Access

With respect to access, the relevant provisions are set out in Part 4D of the Rules. Rule 4D.02 provides that applications will be reviewed at first instance by staff and that staff have the right to interview representatives of the prospective applicants, and seek additional records and documentation.

In the event that staff determine not to grant unconditional approval to a prospective applicant, and provide either conditional approval or refuse, an applicant has the right to appeal to the SRC. The rules detail the processes to be followed in the event of an appeal. The SRC will provide applicants with notice of the meeting to consider that appeal, and the right to be heard and make representations.

Disciplinary

Hearings (Non-Settlement)

Hearings are scheduled follow the accepted procedures of administrative tribunals in Canada. As such, the respondent(s) have rights at a hearing, including the right to appear and give evidence (Rule 10G.04), the right to legal representation (Rule 10G.05), and the right to bring forward witnesses (Rule 10G.06). Disclosure of information for a hearing, including witness statements and expert reports, has specific requirements as set out in Rule 10F.

The order of proceedings at a hearing is set out in Rule 10G.08, and the discipline panel may hear any evidence it deems relevant, whether within technical rules of evidence or not (Rule 10G.07). All oral evidence at a hearing is recorded, in writing or otherwise, and forms the official record of the hearing along with any items (documents, affidavits, etc) received into evidence (Rule 10G.12). The respondent has the right to review this record, including the transcript of oral evidence, at their cost (Rule 10G.20e).

After hearing all evidence and arguments at a hearing, the discipline panel deliberates in private (Rule 10G.17), and then returns its findings. If there is a finding of guilt on one or more of the alleged violations, the panel re-convenes to hear arguments on penalty (Rule 10G.17). Subsequent to this, the panel may impose any of the penalties set out in Rule 11C. In addition to any fines or other monetary sanctions assessed by the panel, the respondent may also be ordered to pay costs to the Exchange, in an amount determined by the panel (Rule 10G.18).

Whatever the decision of the discipline panel, within 90 days of the hearing they must provide a written decision, along with reasons for that decision (Rules 10G.20a and 10G.20d). These reasons are provided to all parties to the hearing, including the respondent(s) and the Regulatory Division (Rules 10G.20a and 10G.20b). Furthermore, the findings are published on the Exchange website, as described further below.

Settlements and Settlement Hearings

At any time prior to two (2) business days before a hearing, including an appeal hearing, the respondent or the Regulatory Division may submit an Offer of Settlement to the other party (Rule 10I.01). The Offer of Settlement must be in writing, and contain various information including violations admitted, facts admitted, and the proposed disposition (Rule 10I.02c). Offers of Settlement are non-binding unless accepted, and if accepted result in the waiver of all rights to a hearing or appeal should it be accepted (Rule 10I.02c).

Settlement agreements between the Regulatory Division and a respondent must be approved by a panel of the Discipline Committee (Rule 10I.05). A hearing must be held to present the Joint Settlement Proposal to the hearing panel. Both the Regulatory Division and the respondent may make submissions, with respect to the reasons the panel should approve the settlement. Upon deliberation, the panel may accept or reject the proposed settlement – they may not alter or amend any portion of it (Rule 10I.06). Rejected settlements do not preclude a new re-negotiated settlement at a future time, but no member of the Discipline Committee panel that heard the first settlement may sit on the panel hearing the subsequent settlement (Rule 10I.09).

Appeals

Appeals of contested (non-settlement) hearing results from the Discipline Committee may be appealed by either the respondent(s) or the Regulatory Division, to the SRC (Rule 10H.01). Appeals must be filed within ten (10) business days of the service of the written decision of the Discipline Committee (Rule 10H.02), and must contain a brief statement of the appellant's reasons for the appeal, as well as indicate any new evidence intended to be introduced (Rule 10H.03).

The decision of the Discipline Committee, and any associated penalties, remain in effect pending an appeal, unless specifically ordered to be stayed (Rule 10H.12).

At its discretion, the SRC may order security for costs, in an amount and at a time of its choosing. Failure to post or remit the security of costs precludes the proceedings of an appeal, unless otherwise ordered by the SRC. (Rule 10H.04)

The procedures prior to, and during, an appeal hearing are set out in Rules 10H.05 through 10H.11. As noted previously, the member of the SRC who reviewed the Investigation Memo may not sit on the panel reviewing an appeal of the same file.

Upon hearing an appeal, the SRC may: affirm, quash, or vary the finding of the Discipline Committee; make a new finding or order (including an assessment of costs) as it deems appropriate; refer the matter back to the same Discipline Committee panel for further consideration (Rule 10H.13).

Appeals from a decision of the SRC, by either the respondent or the Regulatory Division, may be further appealed to the MSC (Rule 10H.14). A final appeal, with leave, may be taken to the Manitoba Court of Appeal, which is the highest court in the province.

8. CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing agency.

8.2 Regulation of the Clearing Agency

The clearing agency is subject to acceptable regulation.

8.3 Access to the Clearing Agency

(a) The clearing agency has established appropriate written standards for access to its services.

(b) The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

8.4 Sophistication of Technology of Clearing Agency

The exchange has assured itself that the information technology used by the clearing agency has been adequately reviewed and tested and provides at least the same level of safeguards as required of the exchange.

8.5 Risk Management of Clearing Agency

The exchange has assured itself that the clearing agency has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

All trades in ICE Futures Canada Contracts are settled and cleared through ICE Clear Canada. ICE Clear Canada is the designated clearinghouse for ICE Futures Canada pursuant to Rule 1.15. ICE Clear Canada acts as counterparty and financial guarantor to each transaction executed on the Exchange.

ICE Clear Canada is recognized as a clearinghouse under Section 16 (1) of the CFA MB pursuant to Order No. 5719 which was issued by the MSC on June 16, 2008. ICE Clear Canada was established as the designated clearinghouse for ICE Futures Canada in 1998.

ICE Clear Canada observes the current *Recommendations for Central Counterparties* (RCCP) issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of IOSCO, as updated. The RCCPs provide for recommendations on participation requirements, measurement and management of credit exposure, financial resources, custody and investment risks, operational risks efficiency, money settlements and supervision and oversight. ICE Clear Canada is committed to meeting any successor standards to the RCCPs, including the *Principles for Financial Market Infrastructures* published by IOSCO on April 16, 2012.

The self-assessment performed by ICE Clear Canada against the RCCPs provides ICE Futures Canada with assurance as to the sophistication of the clearinghouse technology, risk management processes and procedures, contingency plans, default preparedness, procedures and controls and legal certainty.

Clearing Participant status in ICE Clear Canada is open to any company, partnership or cooperative which is registered as a DATP of ICE Futures Canada and which meets the required clearinghouse criteria. The standards for Clearing Participant status are set out in the ICE Clear Canada Rules, at Part A-202. Some of the factors reviewed include; entities with qualities of financial responsibility, operational capacity, experience, business integrity, and reputation and competence. The status of the entity at other self-regulatory organizations, and statutory regulatory authorities is also a factor with is considered by the clearinghouse.

ICE Clear Canada does not discriminate or restrict access. All rules and requirements, as well as copies of the participant application/agreements, are available on the website. The application criteria is designed to ensure that Clearing Participants are sophisticated, well financed companies that evidence their ability to meet and maintain the financial and operational requirements necessary to support the integrity of the Clearinghouse. ICE Clear Canada reviews the admission requirements for time to time and may, if appropriate, modify them or adopt additional or alternative requirements with board approval.

The application/agreement forms incorporate by reference the By-laws, Rules and Operations Manual of the Clearinghouse.

The admission procedures are set out in the ICE Clear Canada Rules at Part A-2. All applications for clearing participant status are reviewed by staff and ultimately determined by the Board of Directors of ICE Clear Canada. All applicants are entitled to a hearing, the opportunity to make representations and be heard, and the right to a decision. ICE Clear Canada maintains records of its participant application reviews and any resulting hearings or appeals.

Since ICE Clear Canada was incorporated and designated as the clearinghouse for ICE Futures Canada in 1998, no entity which has properly completed the application/agreement forms and submitted same has been denied Clearing Participant status.

The technology employed by ICE Clear Canada is scrutinized by the MSC, as well as by the CFTC. The back office clearing systems are provided by Kansas City Board of Trade Clearing Corporation (“KCBTCC”), a Designated Clearing Organization (DCO) registered with the CFTC. Accordingly, the KCBTCC back office system is subject to DCO Core Principles which requires a DCO to demonstrate that it; (i) has established and will maintain a program of oversight and risk analysis to ensure that its automated systems function properly and have adequate capacity and security; and (ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test its back-up facilities.

On an ongoing basis, each Clearing Participant’s regulatory capital reports are reviewed in order to ensure that each Clearing Participant remains financially sound. All Clearing Participants must meet financial and operational standards and must file annual audited financial statements and monthly unaudited financial statements with ICE Clear Canada (see ICE Clear Canada Rule A-305).

If ICE Clear Canada were to determine that the financial or operational condition of a Clearing Participant makes it necessary or advisable (for the protection of the ICE Clear Canada, other Clearing Participants, or the market) to impose restrictions on a Clearing Participant, ICE Clear Canada has the authority to take any of the following steps, at its discretion. First, the clearing of opening transactions by the Clearing Participant may be limited or prohibited. Secondly, the Clearing Participant may be required to reduce or eliminate existing long positions or short positions in the Clearing Participant’s accounts. Third, the Clearing Participant may be required to transfer any of its account to another Clearing Participant.

In addition, ICE Clear Canada has the authority, at its sole discretion, to suspend a Clearing Participant’s clearing privileges for such time and under such terms and conditions as the board determines are necessary. Alternatively, if ICE Clear Canada deems that it is in the public interest or in the interest of the Exchange to allow the Clearing Participant to continue to clear transactions it has the authority to require that ICE Clear Canada’s auditors regulate and generally supervise the Clearing Participant’s activities as they relate to its performance as a Clearing Participant.

The Rules and Operations Manual of ICE Clear Canada operate to ensure that the Clearinghouse has the ability to complete settlements on a timely basis, to fulfil its financial guarantee, to protect Clearing Participants’ funds, and to expeditiously resolve any Clearing Participant default. The risk management processes employed by ICE Clear Canada are comprehensive and specifically designed to prevent the accumulation of losses, ensure that sufficient resources are available to cover future obligations, promptly detect any financial or operational weakness of a Clearing Participant, allow for swift actions to rectify a problem and protect the clearinghouse’s guarantee. ICE Clear Canada has never incurred any losses as a result of adverse credit events experienced by its Clearing Participants. The Rules of ICE Clear Canada ensure that clearing and settlement obligations of Clearing Participants are met in a timely manner.

The Exchange has assured itself that the Clearinghouse has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls. ICE Clear Canada operates under established risk management processes and procedures are designed to conform to the international standards for derivatives clearinghouses.

ICE Clear Canada applies a multi-layered risk management approach;

- Obligation for Clearing Participants to maintain well-defined capital adequacy standards;
- Settlement of all trades and marking all futures positions to market on a daily basis;
- Processing of all cash settlements through an irrevocable electronic payment processing system;
- Requirement for Clearing Participants to deposit margin to cover the projected risks associated with their derivative positions. This margin is designed to provide the Corporation with sufficient resources, based on industry-accepted margin methodologies, to ensure an orderly liquidation of each member's positions in the event that a default should occur and a liquidation becomes necessary;
- Requirement that Clearing Participants post additional intra-day margin during periods of increased market volatility;
- Requirement that each Clearing Participant contribute to a Clearing Fund. The Clearing Fund is a shared obligation of all Clearing Participants, and provides coverage for residual risks. These risks, described in more detail below, include that in certain situations, market conditions may be prevent an orderly liquidation of a defaulting Clearing Participant's positions within the timeframe contemplated in the calculation of margin requirements;
- Established default procedures to ensure that a Clearing Participant's obligations are satisfied in the unlikely event of a Clearing Participant default;

9. SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

(a) order entry,

(b) order routing,

(c) execution,

(d) trade reporting,

(e) trade comparison,

(f) data feeds,

(g) market surveillance,

(h) trade clearing, and

(i) financial reporting.

9.2 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

All ICE Futures Canada Contracts are traded on the ICE Platform which is owned, maintained and operated by ICE. ICE developed the ICE Platform technology in compliance with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of IOSCO.

ICE subjects the ICE Platform's critical systems to regular stress tests based on reasonable current and future capacity estimates. The ICE Platform is also tested for a range of externalities which may damage or impair the operation of the system, including, but not limited to, vulnerability to internal and external threats, including physical hazards and natural disasters, safeguards against unauthorized access, internal failures, human errors, attacks and natural catastrophes that might cause

improper disclosures, destruction or denial of service. The ICE Platform is subject to independent and ongoing audit review by ICE's auditors and by an annual Statement of Auditing Standards 70 ("SAS 70") review by an independent auditing firm. These reviews cover the physical environment, system capacity, operating system testing, documentation, internal controls and contingency plans, and business contingency/disaster recovery arrangements.

The ICE Platform is utilized by ICE's other regulated exchanges; ICE Futures U.S., Inc. and ICE Futures Europe, Inc., and subject to extensive regulation by the CFTC and the U.K. Financial Services Authority. Details of all disaster recovery and internal controls are provided to these regulators.

ICE Futures Canada Rules prescribe the types of orders that may be entered into the ICE Platform. The ICE Platform also uses Reasonability Limits to determine if an order is executable. These limits are set by ICE Futures Canada. A Reasonability Limit is the amount by which the price of a commodity contract may increase or decrease in one trading sequence from the last traded price. A trade will be executed on the ICE Platform when all of the following conditions occur: (i) one order is a bid and the other order is an offer, (ii) the two orders are for the same commodity contract and delivery month and (iii) the price of the bid (offer) equals or is greater (less) than the price of the offer (bid).

Rule 8 describes the Exchange's procedures for invalidating trades and for cancelling trades as a result of a user's error. Those errors that occur within the "No Cancellation Range" may not be cancelled except in extraordinary circumstances as determined by ICE Market Supervision Department. The "No Cancellation Range" is defined as the price range above and below the Anchor Price for each commodity contract within which an error trade may not be cancelled. The "Anchor Price" is defined as the price set by the Exchange based on the front delivery month from which Reasonability Limits and No Cancellation Ranges are determined.

ICE provides various training materials and instruction manuals relating to the operation of the ICE Platform and operates an around-the-clock help desk to support customers.

10. FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

The MSC does not set minimum financial resource requirements for ICE Futures Canada. Appendix "A" to Order No. 5718 sets out, under Financial Viability, that the Exchange is required to *"….maintain sufficient financial resources for the proper performance of its functions",* and that there shall be regular financial reporting made to the MSC, including quarterly financial statements and annual audited statements. ICE Futures Canada must satisfy the MSC on an ongoing basis that it maintains sufficient financial resources for the proper performance of its functions as required by Order No. 5718. It provides the MSC with annual audited financial statements and monthly unaudited financial statements in accordance with the requirement of Order No. 5718.

Since the month ending May 2009 the Exchange has been providing the MSC with monthly unaudited financial statements and annual audited statements.

11. TRANSPARENCY

11.1 The exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

ICE Futures Canada provides access to extensive Market Data, including real-time quotes, the Daily Market Report, contract record data, and historical end-of-day and tick value. Depending on the data, it is available generally to the public on the website or via subscription services. Subscription services are available from quote vendor companies or from WebICE, an internet based application.

ICE Futures Canada also provides a number of data files which are accessible at no cost and which may be downloaded by the general public by using the Daily Download menu item from the Report Center. These files include futures VOI on a historical basis, options volume and open interest on a historical basis, futures daily settlement prices file, options daily settlement prices file, futures price and VOI file and options price and VOI file.

12. RECORD KEEPING

12.1 The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

ICE Futures Canada has extensive record keeping systems for books and records. All files are maintained in a central office filing system that is both paper based and electronically based.

All information regarding activity in the Trading System (the "Data") is captured and stored in a central database. This includes login/logout information for traders as well as company administrators; order entry, revisions, and cancellations; and trade information. The Data is accessible through a variety of applications. The Data is archived for a period of seven years, and a minimum of two years is available on a "readily accessible" basis. Market Surveillance and Trading Surveillance data is maintained within the secure ICE internal network.

ICE Futures Canada also maintains a record of all transactions which include, for each trade; the contract, date, time, quantity, price or premium, for options the strike price and put or call, delivery month, the trader I.D., account number, DATP and the Clearing Participant. This data is maintained for seven years.

ICE Futures Canada maintains paper records on site for a one to two year period with the balance housed off site in a secure location with a third party service provider.

Electronic records are maintained and backed up daily. Record keeping of electronic data for cleared trade's data is maintained on two Microsoft SQL Server databases. These databases contain cleared trades data, VOI, Settlement Prices, and Positions of each Clearing Participant.

The database maintains an electronic audit trail on critical data for that data which can be changed and provides read only access to that data which cannot be changed. The Microsoft SQL Server databases also use log shipping to a remote Microsoft SQL Server database server in Atlanta, Georgia. This provides an updated record of all data in the database to the remote database server every 20 minutes.

In addition to the Microsoft SQL Server Database, the raw data files from the Clearing System are stored on a file server. The file server is backed up daily to backup file servers in Winnipeg and in Atlanta. The original order and trade data from the Trading System is also stored in Atlanta in an Oracle database.

Record keeping of financial data up to March 2009 is stored in a separate database in Winnipeg.

13. OUTSOURCING

13.1 Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

ICE Futures Canada has outsourced two key functions: the provision of the Trading Systems and the market data dissemination system.

ICE Futures Canada utilizes the ICE Platform and related trading systems which are owned and operated by ICE, and utilized by all of the markets, both exchange traded and over-the-counter, that ICE operates. The ICE Platform complies with the *Principles for the Oversight of Screen-Based Trading Systems for Derivative Products d*eveloped by the Technical Committee of the IOSCO. The ICE Platform provides the matched trades data and settlement prices to the clearing system. ICE Futures Canada has entered into a License Agreement with ICE to secure the ongoing provision of the trading systems, which includes all help desk and maintenance services related to the trading systems.

ICE Futures Canada has entered into a License Agreement with ICE Data, LLP, a UK company, to provide data dissemination network. This is the same system as utilized by ICE Futures Europe, Inc., and ICE Futures U.S., Inc., to distribute market data. This agreement meets industry standards.

14. FEES

14.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) the process for setting fees is fair and appropriate, and the fee model is transparent.

All fees are established by the Board. There are essentially three types of fees; transactions fees which are charged on each transaction and which are ultimately borne by the beneficial owner of the contract, the annual Participant fee for all registered Participants, and delivery and shipment related fees, which are charged to those entities that participate in the physical delivery process of the futures contracts. Fees are applied equally by category and class of participant registration. The MSC is provided with notification of all fee changes as is required by Order No. 5718. A full list of all fees and charges is set out in Rule 25 and published on the website. Fees are fair, appropriate, and equitably allocated. It is submitted that the fees charged do not have the effect of creating unreasonable barriers to access and are competitive with other North American derivative exchanges.

15. INFORMATION SHARING AND REGULATORY COOPERATION

15.1 The exchange has mechanisms in place to enable it to share information and to otherwise cooperate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

Rule 1.13 provides that ICE Futures Canada can provide information and cooperate with the Commission and its staff, self-regulatory organizations and other regulatory bodies, and fully meet the requirements of this section. The relevant provisions of Rule 1.13 are excerpted as follows:

1.13 Confidential Information, Personal Information, and Disclosure

All information received by the Exchange ...

shall be held in confidence by the Exchange and accessed only by such employees of the exchange which are required to access same and then only for the purposes required, and shall not be made known to any other Person except as follows:

(ii) To the Manitoba Securities Commission, the U.S. Commodity Futures Trading Commission, or any other governmental authority as required by the statutes, rules, regulations and/or regulatory orders the Exchange is subject to;

(iv) to an exchange, clearinghouse, or self-regulatory organization that the Exchange has entered into a written Memorandum of Understanding or Information Sharing agreement with, for the purposes of compliance, market surveillance and/or regulation;

(ix) to any other person if, to the extent and pursuant to such terms and conditions as the Board, from time to time, may deem appropriate.

Part III – Submissions

It is submitted that ICE Futures Canada satisfies all required criteria. It is submitted that Ontario Participants that trade in commodity futures and commodity futures options would benefit from the ability to trade ICE Futures Canada Contracts, as they will have access to these exchange-traded commodity derivative products. The ICE Platform offers a transparent, efficient and liquid market for Ontario Participants to trade in ICE Futures Canada Contracts. Stringent oversight of the Exchange as well as the sophisticated information systems, regulation and compliance functions that have been adopted by the Exchange will ensure that Ontario users of the ICE Platform accessing ICE Futures Canada Contracts are adequately protected. ICE Futures Canada has been continuously operating since 1887, is robustly regulated, and has been responsive to the OSC since the issuance of the 1979 orders. It is submitted that it would not be prejudicial to the public interest to grant the requested relief.

The Exchange seeks the requested relief for the following reasons:

i. An order, pursuant to section 78 of the CFA, revoking the Recognition Order; an order revoking the Director's Exemption Order; and an order pursuant to section 60 of the CFA, revoking the Director's Acceptance Order (Previous Orders).

ICE Futures Canada seeks the revocation of the Recognition Order, the Director's Exemption Order and the Director's Acceptance Order, so that they can be replaced with the Exemption Order. The oversight by the OSC of ICE Futures Canada will follow the current regulatory process for the oversight of exchanges within Canada as set out in the *Memorandum of Understanding Respecting the Oversight of Exchanges and Quotation and Trading Reporting Systems* ("CSA MOU"), as amended, which has been entered into by the Commission, the MSC, and other Canadian Securities Commissions. The MSC will continue to act as the lead regulator and the Commission will be an exempting regulator of ICE Futures Canada pursuant to the CSA MOU.

ii. An order pursuant to section 147 of the OSA exempting ICE Futures Canada from the requirement to be recognized as an exchange under section 21 of the OSA;

The Exchange will no longer be registered with or recognized by the OSC as a commodity futures exchange under the CFA, and no ICE Futures Canada Contracts will be accepted by the Director (as defined in the OSA) under the CFA. Therefore, ICE Futures Canada Contracts will be considered to be "securities" under paragraph (p) of the definition of "security" set out in section 1(1) of the OSA and the Exchange will therefore be considered an "exchange" under the OSA and prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under section 21 of the OSA. The Exchange seeks to provide certain Ontario residents with direct, trading access to trading in ICE Futures Canada Contracts and may therefore be considered to be "carrying on business as an exchange" in Ontario.

The Exchange is regulated by the MSC as a commodity futures exchange under the provisions of the CFA MB. The MSC's oversight of ICE Futures Canada as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the Exchange will ensure that Ontario users of the ICE Platform accessing ICE Futures Canada are adequately protected in accordance with international standards. We therefore submit that it would be in the public interest to grant relief from the requirement to be recognized as an exchange under the OSA.

iii. An order pursuant to section 80 of the CFA exempting ICE Futures Canada from the requirement to be registered as a commodity futures exchange under section 15 of the CFA;

The contracts traded on ICE Futures Canada fall under the definitions of "commodity futures contract" or "commodity futures option" set out in section 1 of the CFA. ICE Futures Canada is therefore considered a "commodity futures exchange" as defined in section 1 of the CFA and is prohibited from carrying on business in Ontario unless it is registered or exempt from registration under section 15 of the CFA. ICE Futures Canada seeks to provide Ontario market participants with direct access to trading in ICE Futures Canada Contracts and may therefore be considered to be "carrying on business as a commodity futures exchange" in Ontario.

As noted above, the Exchange is regulated by the MSC as a commodity futures exchange under the provisions of the CFA MB. The MSC's oversight of ICE Futures Canada as well as the sophisticated information systems, regulations and compliance functions that have been adopted by the Exchange will ensure that Ontario users of the ICE Platform accessing ICE Futures Canada are adequately protected in accordance with international standards. We therefore submit that it would be in the public interest to grant relief from the requirement to be registered as a commodity futures exchange under the CFA.

iv. An order pursuant to section 38 of the CFA exempting trades in contracts on ICE Futures Canada by registered futures commissions merchants ("FCMs"), and any person or company who trades in a contract solely through an agent who is an FCM, from the requirements of section 33 of the CFA; and

Further to the relief request in subsection iii above, ICE Futures Canada is considered a "commodity futures exchange" under section 1 of the CFA and persons trading in contracts are subject to the requirements of section 33 of the CFA which prohibits persons or companies, except hedgers, from trading in contracts except under specified limited provisions. ICE Futures Canada seeks an exemption for registered futures commission merchants, to permit them to trade on behalf of clients in Ontario all in compliance with the terms of the order. It is submitted that the terms of the order, including the restrictions on access and the guidance that ICE Futures Canada will be required to provide are reasonable and appropriate and in the public interest.

v. An order pursuant to section 38 of the CFA exempting trades in contracts on ICE Futures Canada by "hedgers" from the registration requirement under section 22 of the CFA ("Hedger Relief").

The Exchange seeks to provide direct trading access in ICE Futures Canada Contracts to entities registered as FCMs under the provisions of the CFA and to entities that meet the definition of a "Hedger" as defined under section 1(1) of the CFA. The Exchange expects that most participants in Ontario will be engaged in the business of trading commodity futures or commodity futures options in Ontario and will, therefore, be registered with the OSC under section 22 of the CFA. However, the Exchange also seeks to provide access to "Hedgers" as defined in section 1 of the CFA. Hedgers will be non-market intermediary commercial enterprises such as grain companies, producers, or processors that are exposed to the risks attendant upon fluctuations in the price of commodities. Section 32(1) (a) of the CFA provides an exemption from registration for trades "by a hedger through a dealer". This exemption will be available for trades in ICE Futures Canada Contracts by Ontario resident

hedgers that route orders to ICE Futures Canada through ICE Futures Canada Clearing Participants that are dealers, however, this exemption will not be available for trades in ICE Futures Canada Contracts by Ontario resident hedgers that wish to become registered as DATPs since they will not send their orders through the trade desk of an ICE Futures Canada FCM. In order to be granted direct access to the trading systems of ICE Futures Canada, an Ontario resident hedger will be required to have a Clearing Authorization and Guaranty with an ICE Clear Canada Clearing Participant which is a dealer (FCM) in Ontario registered with the OSC and will be provided with either a Clearing Authorization and Guaranty or a SMA. That FCM would be obligated to settle all trades entered on ICE Futures Canada by the Hedger and is liable for all financial obligations of those trades.

We submit that the due diligence screening and account opening process that Clearing Participants are required to apply to prospective DATPs will ensure that all Ontario resident Hedgers that register as DATPs will have been subject to appropriate credit checks, suitability analyses, know-your-client, account supervision, anti-money laundering and other anti-fraud procedures in accordance with all of the ICE Clear Canada requirements. In addition, the potentially significant financial risk that Clearing Participants assume in respect of the trading activity of DATPs they guarantee can be expected to ensure that the Ontario participants they agree to guarantee will have the requisite sophistication and proficiency in the trading of commodity futures to satisfy all investor protection concerns associated with such entities having direct access to the ICE Platform.

As noted earlier in the application, ICE Futures Canada has a due diligence screening process for prospective exchange participants. The Exchange maintains detailed participant application requirements which include a review of the constating corporate documentation and information pertaining to organization and corporate structure, and regulatory information relating to the applicant. The Exchange's Rules permit it to seek additional information from that which is included on the participant application/agreements, including obtaining sworn testimony from the applicant or representatives of an applicant.

ICE Futures Canada will confirm that Ontario applicants that seek to rely on the Hedger Relief are "hedgers" as defined in section 1 of the CFA by obtaining a written representation to that effect from such applicants as a part of their application documentation. The documentation will specify that the representation is deemed to be repeated by the applicant each time it enters an order for an ICE Futures Canada Contract and that the applicant must be a Hedger for the purposes of each trade resulting from such an order.

The requested Hedger Relief is required to allow sophisticated Ontario participants who meet the definition of "hedger" under the CFA to become DATPs and gain the benefits of direct access. Given the sophistication of such Ontario participants and the fact that financial responsibility for their trading activity ultimately lies with the ICE Futures Canada Clearing Participant that guarantee their trades, it is not necessary for the protection of other investors or the integrity of the market to require such participants to send their orders through a dealer rather than accessing the ICE Platform directly. Ontario resident Hedgers that wish to become Clearing Participants with ICE Clear Canada will be entitled to register if they are able to meet the strenuous criteria provided for in the ICE Clear Canada Rules.

Other Matters

1. Enclosed is a certificate of an officer of ICE Futures Canada certifying the truth of the facts contained herein.

2. The Exchange consents to the publication of this Application for public comment in the OSC Bulletin.

Yours truly,

"Linda Vincent"

Linda Vincent
General Counsel

Enclosures

Appendix "A"

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

AND

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

AND

IN THE MATTER OF
ICE FUTURES CANADA, INC.

ORDER
(Section 147 of the OSA and Sections 38, 78, 60 and 80 of the CFA)

WHEREAS the Ontario Securities Commission (the "Commission") issued an order dated August 24, 1979 recognizing the Winnipeg Commodity Exchange Inc., the predecessor company to ICE Futures Canada, Inc. ("ICE Futures Canada"), as a commodity futures exchange pursuant to section 34 of the CFA ("Commission's Previous Order");

AND WHEREAS a Director of the Commission issued the following orders dated August 24, 1979 to Winnipeg Commodity Exchange Inc.:

(a) an order (the "Director's Exemption Order"), pursuant to clause 37(I)(b) and subsection 40(2) of the CFA, exempting

  (i) the Winnipeg Commodity Exchange Inc. from the requirement to make available copies of all current contract terms and conditions to registrants through an agent, and

  (ii) registered dealers and advisers from the requirement of furnishing a client with a copy of all current terms and conditions of any contract traded on the Winnipeg Commodity Exchange Inc.; and

(b) an order (the "Director's Acceptance Order"), pursuant to section 36 of the CFA, accepting the form of the commodity futures contracts and commodity futures options traded on the Winnipeg Commodity Exchange Inc.;

AND WHEREAS ICE Futures Canada has filed an application (the "Application") with the Commission and Director requesting:

(a) an order, pursuant to section 78 of the CFA, revoking the Commission's Previous Order;

(b) an order revoking the Director's Exemption Order**;**

(c) an order, pursuant to section 60 of the CFA, revoking the Director's Acceptance Order;

(d) an order, pursuant to section 147 of the OSA, exempting ICE Futures Canada from the requirement to be recognized as an exchange under section 21 of the OSA;

(e) an order, pursuant to section 80 of the CFA, exempting ICE Futures Canada from the requirement to be registered as a commodity futures exchange under section 15 of the CFA;

(f) an order, pursuant to section 38 of the CFA, exempting trades in contracts on ICE Futures Canada by registered futures commissions merchants ("FCMs"), and any person or company who trades in a contract solely through an agent who is an FCM, from the requirements of section 33 of the CFA; and

(g) an order, pursuant to section 38 of the CFA, exempting trades in contracts on ICE Futures Canada by "hedgers" from the registration requirement under section 22 of the CFA ("Hedger Relief");

(together, the "New Exemption Order")

AND WHEREAS the term "hedger" has the meaning ascribed to it in subsection 1(1) of the CFA ("Hedger");

AND WHEREAS Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* exempts trades of commodity futures contracts or commodity futures options made on commodity futures exchanges not registered with or recognized by the Commission under the CFA from sections 25 and 53 of the OSA;

AND WHEREAS ICE Futures Canada has represented to the Commission as follows:

1. ICE Futures Canada is a share capital corporation incorporated under the provisions of *The Corporations Act (Manitoba)* and situate in Winnipeg, Manitoba. Formerly known as Winnipeg Commodity Exchange Inc., it has been continuously operating since 1887.

2. ICE Futures Canada is an indirect and wholly-owned subsidiary of IntercontinentalExchange, Inc., ("ICE") a public company governed by the laws of the State of Delaware and listed on the New York Stock Exchange.

3. ICE Futures Canada facilitates trading in futures contracts and options on futures contracts in canola, western barley, milling wheat, durum wheat and barley (collectively, the "ICE Futures Canada Contracts") on an electronic trading platform (the "ICE Platform"), which is owned and operated by ICE.

4. ICE Futures Canada is recognized as a self-regulatory organization and a commodity futures exchange under sections 14(1) and 15(1) of *The Commodity Futures Act (Manitoba)* ("CFA Manitoba"), pursuant to Order No. 5718 of The Manitoba Securities Commission (MSC) ("MSC Order No. 5718" is set out in Schedule "C").

5. ICE Clear Canada, Inc. ("ICE Clear Canada") is a wholly-owned subsidiary of ICE Futures Canada and is designated as a recognized clearinghouse under section 16(1) of the CFA Manitoba pursuant to Order No. 5719 of the MSC ("MSC Order No. 5719"). ICE Clear Canada is exempted by the Commission from the requirement to be recognized as a clearing agency under subsection 21.2(0.l) of the OSA pursuant to an order issued February 1, 2011.

6. All ICE Futures Canada Contracts are cleared and settled by ICE Clear Canada which acts as the counterparty and financial guarantor to all cleared trades of ICE Futures Canada Contracts.

7. ICE Futures Canada seeks the revocation of the Commission's Previous Order, the Director's Exemption Order and the Director's Acceptance Order so that they can be replaced with the New Exemption Order.

8. As part of its regulatory oversight of ICE Futures Canada, the MSC reviews, assesses and enforces on-going compliance with the recognition requirements set out in MSC Order No. 5718 including financial resources, fitness and properness, systems and controls, maintenance of an orderly marketplace, rulemaking and other matters including ICE Futures Canada's rules, practices and procedures.

9. ICE Futures Canada is required to provide the MSC, on request, access to all records and to cooperate with any other regulatory authority, including making arrangements for information-sharing.

10. ICE Futures Canada maintains participant criteria that all applicants must satisfy before their applications are accepted, including fitness criteria, review of corporate constating documentation, operational standards and supervision policies and procedures, appropriate registration qualifications with applicable statutory regulatory authorities, and financial standards suitable for the category of registration and ICE Futures Canada applies a due diligence process to ensuring that all applicants meet the required criteria.

11. Participants resident in Ontario can register with ICE Futures Canada in one of four categories; Direct Access Trading Participant ("DATP"), Trading Participant, Merchant Participant or Ancillary Participant (collectively, "Ontario Participants").

12. ICE Futures Canada proposes to continue offering direct trading access on the ICE Platform for trading in ICE Futures Canada Contracts to Ontario Participants, by way of registration in the category of DATP. Only participants in the category of DATP are entitled to directly access the ICE Platform. DATPs will continue to be dealers in Ontario that are engaged in the business of trading commodity futures contracts and commodity futures options or will be non-market intermediary commercial enterprises such as grain companies, producers, and processors that are exposed to the risks attendant upon fluctuations in the price of commodities.

13. In order to directly access the ICE Platform, a DATP's application must be accepted by ICE Futures Canada and a DATP must be (i) a clearing participant of ICE Clear Canada; (ii) have a properly executed Clearing Authorization and Guaranty ("Guaranty") with a clearing participant of ICE Clear Canada who is a dealer engaged in the business of trading commodity futures contracts and commodity futures options ("Clearing Participant"); or (iii) be issued a systems managed account by a Clearing Participant. By providing either a Guaranty or a Systems Managed Account, the Clearing Participant is agreeing that it will guarantee all of the financial obligations of the DATP.

14. Participants in the categories of Trading Participant, Merchant Participant and Ancillary Participant who are the clients of a DATP who is a dealer engaged in the business of trading commodity futures contracts and commodity futures options are primarily (i) dealers that are engaged in the business of trading commodity futures contracts and commodity futures options in Ontario; (ii) grain companies, producers, and processors that are exposed to risks attendant upon fluctuations in the price of the commodities, and to the extent applicable (iii) institutional investors and proprietary trading firms.

15. With respect to order-routing access, ICE Futures Canada will provide a guidance that indicates that a DATP who is a dealer engaged in the business of trading commodity futures and commodity options is permitted to grant access to ICE Futures Canada to a client in Ontario provided that (i) the client is a registered FCM under the CFA; (ii) the DATP is a registered FCM under the CFA or (iii) the DATP is regulated as a dealer (or equivalent) in its home jurisdiction and the client is a Hedger or is able to rely on another exemption from registration under the CFA.

16. ICE Futures Canada Contracts fall under the definitions of "commodity futures contract" or "commodity futures option" as set out in section 1 of the CFA. ICE Futures Canada is therefore considered a "commodity futures exchange" as defined in section 1 of the CFA and is prohibited from carrying on business in Ontario unless it is registered or exempt from registration as an exchange under section 15 of the CFA.

17. ICE Futures Canada will not be recognized or registered with the Commission as a commodity futures exchange under the CFA and ICE Futures Canada Contracts will not be filed for acceptance by the Director (as defined in the OSA) under the CFA, therefore, ICE Futures Canada Contracts will be considered to be "securities" under clause(p) of the definition of "security" in subsection 1(1) of the OSA and ICE Futures Canada will be considered an "exchange" under the OSA requiring an exemption from recognition under section 21 of the OSA.

18. ICE Futures Canada seeks to continue to provide Ontario resident participants with direct access to trade in ICE Futures Canada Contracts and, as a result, is considered by the Commission to be "carrying on business as an exchange" and as a "commodity futures exchange".

19. The exemption from registration in clause 32(1)(a) of the CFA applies to trades "by hedger through a dealer". This exemption is available for trades in ICE Futures Canada Contracts by Hedgers resident in Ontario that route orders to ICE Futures Canada through DATPs that are dealers engaged in the business of trading commodity futures contracts and commodity futures options. However, this exemption will not be available for trades in ICE Futures Canada Contracts by Hedgers in Ontario that become DATPs since they will have direct trading access to ICE Futures Canada and will not execute trades through dealers.

WHEREAS, based on the Application and the representations ICE Futures Canada has made to the Commission**,** the Commission has determined that ICE Futures Canada satisfies the criteria set out in Schedule "A" and that the granting of exemptions from recognition and registration to ICE Futures Canada would not be prejudicial to the public interest;

AND WHEREAS the oversight of ICE Futures Canada will continue to follow the current regulatory process for the oversight of exchanges within Canada as set out in the *Memorandum of Understanding Respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems* entered into by the Commission, MSC, *Autorité des marches financiers*, the Alberta Securities Commission, the British Columbia Securities Commission, and the Saskatchewan Financial Services Commission with the MSC acting as the lead regulator for ICE Futures Canada.

AND WHEREAS the Commission's Previous Order, the Director's Exemption Order and the Director's Acceptance Order will be replaced by the New Exemption Order;

AND WHEREAS it is not prejudicial to the public interest to revoke the Commission's Previous Order;

AND WHEREAS it is in the public interest to revoke the Director's Acceptance Order;

AND WHEREAS, based on the Application and the representations ICE Futures Canada has made to the Director, the Director has agreed to revoke the Director's Exemption Order;

IT IS ORDERED by the Commission, that pursuant to section 147 of the OSA, ICE Futures Canada is exempt from recognition as an exchange under section 21 of the OSA, and pursuant to section 80 of the CFA, ICE Futures Canada is exempt from registration as a commodity futures exchange under section 15 of the CFA;

AND IT IS ORDERED by the Commission that, pursuant to section 38 of the CFA, trades in contracts on ICE Futures Canada by FCMs, and any person or company who trades in a contract solely through an agent who is an FCM, are exempt from the requirements of section 33 of the CFA; and

AND IT IS ORDERED by the Commission that, pursuant to section 38 of the CFA, trades in ICE Futures Canada Contracts by Hedgers who are DATPs are exempt from the registration requirement under section 22 of the CFA;

PROVIDED THAT ICE Futures Canada complies with the terms and conditions attached hereto as Schedule "B":

AND IT IS ORDERED by the Commission that, pursuant to section 78 of the CFA, the Commission's Previous Order is revoked;

AND IT IS ORDERED by the Commission that, pursuant to section 60 of the CFA, the Director's Acceptance Order is revoked; and

AND IT IS ORDERED by the Director that the Director's Exemption Order is revoked.

DATED at Toronto this ____ day of _____, 2012.

_____ _____

SCHEDULE "A"

CRITERIA FOR EXEMPTION FROM RECOGNITION OF A DERIVATIVES EXCHANGE RECOGNIZED IN ANOTHER JURISDICTION OF THE CANADIAN SECURITIES ADMINISTRATORS

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The exchange is recognized or authorized by another securities commission or similar regulatory authority in Canada and, where applicable, is in compliance with National Instrument 21-101 – *Marketplace Operation* and National Instrument 23-101 – *Trading Rules*, each as amended from time to time.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange,

(b) that business and regulatory decisions are in keeping with its public interest mandate,

(c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:

(i) appropriate representation of independent directors, and

(ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest, and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

PART 3 REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are reviewed by the appropriate securities commission or similar regulatory authority, and are either approved by the appropriate authority or are subject to requirements established by the authority that must be met before implementation of a product or of changes to a product.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

PART 4 ACCESS

4.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure

(i) participants are appropriately registered as applicable under Ontario securities laws or Ontario commodity futures laws, or exempted from these requirements,

(ii) the competence, integrity and authority of systems users, and

(iii) systems users are adequately supervised.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

(c) The exchange does not

(i) permit unreasonable discrimination among participants, or

(ii) impose any burden on competition that is not reasonably necessary and appropriate.

PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation service provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 6 RULEMAKING

6.1 Purpose of Rules

(a) The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants.

(b) The Rules are not contrary to the public interest and are designed to

(i) ensure compliance with securities legislation and derivatives legislation, as applicable,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade,

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities or derivatives, as applicable,

(v) provide a framework for disciplinary and enforcement actions, and

(vi) ensure a fair and orderly market.

PART 7 DUE PROCESS

7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 8 CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing agency[1].

8.2 Regulation of the Clearing Agency

The clearing agency is subject to acceptable regulation.

8.3 Access to the Clearing Agency

(a) The clearing agency has established appropriate written standards for access to its services.

(b) The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

8.4 Sophistication of Technology of Clearing Agency

The exchange has assured itself that the information technology used by the clearing agency has been adequately reviewed and tested and provides at least the same level of safeguards as required of the exchange.

8.5 Risk Management of Clearing Agency

The exchange has assured itself that the clearing agency has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

(a) order entry,

(b) order routing,

(c) execution,

(d) trade reporting,

(e) trade comparison,

(f) data feeds,

(g) market surveillance,

(h) trade clearing, and

(i) financial reporting.

9.2 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

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[1] For the purposes of these criteria, "clearing agency" also means a "clearing house".

PART 10 FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 11 TRANSPARENCY

11.1 Transparency

The exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

PART 12 RECORD KEEPING

12.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of Exchange requirements.

PART 13 OUTSOURCING

13.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 14 FEES

14.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 15 INFORMATION SHARING AND REGULATORY COOPERATION

15.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE "B"

TERMS AND CONDITIONS

REGULATION OF ICE FUTURES CANADA

1. ICE Futures Canada will maintain its recognition as a self-regulatory organization and a commodity futures exchange with the MSC and will continue to be subject to the regulatory oversight of the MSC.

2. ICE Futures Canada will continue to comply with its ongoing requirements set out in MSC Order No. 5718, as amended from time to time, or any successor to such order.

3. ICE Futures Canada will continue to meet the *Criteria for Exemption from Recognition of a Derivatives Exchange Recognized in Another Jurisdictio*n of the Canadian Securities Administrators as set out in Schedule "A".

ACCESS

4. ICE Futures Canada will not allow Ontario resident participants to become DATPs unless they are appropriately registered to trade in ICE Futures Canada Contracts or are Hedgers.

5. ICE Futures Canada will require each Ontario resident applicant for DATP status that intends to rely on the Hedger Relief as part of the application documentation, to:

   (a) represent that it is a Hedger;

   (b) acknowledge that ICE Futures Canada deems the Hedger representation to be repeated by the applicant each time it enters an order for an ICE Futures Canada Contract and that the applicant must be a Hedger for the purposes of each trade resulting from such an order;

   (c) agree to notify ICE Futures Canada if the applicant ceases to be a Hedger;

   (d) represent that it will only enter orders for its own account; and

   (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements.

6. ICE Futures Canada may reasonably rely on a written representation from each Ontario Participant in making the determination in paragraph 5 above.

7. ICE Futures Canada will require Ontario Participants to notify ICE Futures Canada if their registration or exemption from registration has been revoked, suspended or amended by the Commission and, following notice from the Ontario Participant or the Commission and subject to applicable laws, ICE Futures Canada will promptly restrict access to ICE Futures Canada if the Ontario Participant is no longer appropriately registered with or exempted by the Commission.

8. With respect to order-routing access, ICE Futures Canada will ensure that the guidance it provides indicates that a DATP who is a dealer engaged in the business of trading commodity futures and commodity options is permitted to grant access to ICE Futures Canada to a client in Ontario provided that (i) the client is a registered FCM under the CFA; (ii) the DATP is a registered FCM under the CFA or (iii) the DATP is regulated as a dealer (or equivalent) in its home jurisdiction and the client is a Hedger or is able to rely on another exemption from registration under the CFA.

FILING REQUIREMENTS

9. ICE Futures Canada will promptly notify staff of the Commission of any of the following:

   (a) any material change to the business or operations of ICE Futures Canada or the information provided in the Application;

   (b) any change or proposed change to the MSC Order No. 5718 or MSC Order No. 5719; and

   (c) any change to the regulatory oversight by the MSC.

10. ICE Futures Canada will maintain the following updated information and submit such information to the Commission on at least a quarterly basis, and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Participants;

(b) a list of all Ontario Participants against whom disciplinary action has been taken in the last quarter by ICE Futures Canada or the MSC with respect to activities on ICE Futures Canada;

(c) a list of all investigations commenced in the previous quarter by ICE Futures Canada relating to Ontario Participants;

(d) a list of all Ontario applicants who have been denied participant status in ICE Futures Canada; and

(e) for each ICE Futures Canada Contract, the total trading volume originating from Ontario Participants.

RULE AND PRODUCT REVIEW

11. ICE Futures Canada will concurrently provide the Commission with copies of all rules, policies, contract specifications and amended contract specifications (together, "Rules") that it files for review and receipt of non-disapproval with the MSC. Once the MSC has provided non-disapproval of the Rules, ICE Futures Canada will provide copies of all final Rules to the Commission within two weeks of receipt of non-disapproval by the MSC.

FINANCIAL VIABILITY

12. ICE Futures Canada will file with the Commission all annual financial statements required to be filed with the MSC, within the same timeframes as required by the MSC.

INFORMATION SHARING

13. ICE Futures Canada must promptly provide the Commission, upon request directly or through the MSC, as the case may be, any and all data, information, analyses in the custody and control of the ICE Futures Canada, including without limiting the generality of the following:

(a) data, information and analyses relating to all of its businesses; and

(b) data, information and analyses of third parties in its custody or control that relates to the operation of ICE Futures Canada.

SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE

14. For greater certainty, ICE Futures Canada submits to the non-exclusive jurisdiction of; (i) the courts and administrative tribunals of Ontario, and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of ICE Futures Canada in Ontario.

15. For greater certainty, ICE Futures Canada will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of ICE Futures Canada in Ontario.

SCHEDULE "C"

The Manitoba Securities Commission

THE COMMODITY FUTURES ACT	)	**Order No. 5718**
	)	
Sections 14(1), 15(1)	)	**June 16, 2008**

ICE FUTURES CANADA, INC.

WHEREAS:

(A) ICE Futures Canada, Inc. (the "Exchange") through its predecessor corporate organization, Winnipeg Commodity Exchange Inc. and WCE Holdings Inc. made application to the Manitoba Securities Commission (the **"Commission"**) for the following orders:

(i) Recognizing the Exchange as a self-regulatory organization pursuant to subsection 14(1) of the Act; and

(ii) Registering the Exchange as a commodity futures exchange in Manitoba pursuant to subsection 15(1) of the Act;

(B) Order No. 3784 was issued by the Commission to Winnipeg Commodity Exchange Inc. and WCE Holdings Inc. on June 11, 2002;

(C) It has been represented to the Commission by ICE Futures Canada, Inc. that:

1. The Exchange is a Manitoba corporation incorporated on November 1, 2001 carrying on business as a commodity futures exchange;

2. All of the shares of the then-parent company of the Exchange; WCE Holdings Inc., were purchased by 5509794 Manitoba Inc. on August 27, 2007;

3. The ultimate parent company of 5509794 Manitoba Inc. is IntercontinentalExchange, Inc. a corporation subsisting under the laws of the State of Delaware whose common stock is listed on the New York Stock Exchange and are widely held;

4. The Exchange and Holdings were part of a corporate reorganization and name change which became effective on January 1, 2008 whereby the Exchange was renamed ICE Futures Canada, Inc. and its direct parent became 5509794 Manitoba Inc.

5. The Exchange established, and maintains a separate division, the Regulatory Division, headed by a Special Regulatory Committee (SRC) with clearly defined market regulation and compliance responsibilities and a distinct governance structure, all in accordance with the purpose and objectives of the Act.

(D) The Commission is of the opinion that, pursuant to the criteria set out in the Act, that it is in the public interest to grant this order.

IT IS ORDERED:

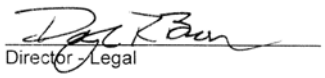
1. **THAT,** subject to the terms and conditions set out in Appendix "A" to this order:

(a) The Exchange is recognized as a self-regulatory organization pursuant to subsection 14(1) of the Act; and

(b) The Exchange is registered as a commodity futures exchange pursuant to subsection 15(1) of the Act.

2. **THAT** effective January 1, 2008 this Order replaces Commission Order number 3784 dated June 11, 2002.

BY ORDER OF THE COMMISSION



Appendix "A" to Order Number 5718 effective January 1, 2008.

Terms and conditions

Notice of Share Ownership

1. In the event that the Exchange intends to amend its Articles of Incorporation, the Commission will be given notice prior to any amendments being approved by the shareholders.

2. The Exchange shall submit to the Commission a list of its shareholders and their respective shareholdings on an annual basis.

Corporate Governance

3. The governance structure of the Exchange shall provide for:

   a. fair and meaningful representation on its governing body, in the context of the nature and structure of the Exchange, and any committee established by the Exchange;

   b. the appointment of no less than two of its directors shall consist of individuals who are not associated with a participant, and in the event that at any time it fails to meet such requirement, it shall promptly remedy such;

   c. appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of the Exchange.

4. The Exchange shall establish and maintain conflict of interest rules and/or policies for the Board, all committees, including the SRC, and Exchange staff. Such rules and/or policies shall extend to anyone in a position to affect the outcome of a decision and shall provide for all such persons to be required to declare their interests and to foresee the possibility that a person may withdraw from a matter.

Access

5. The requirements of the Exchange shall permit all registered dealers that satisfy the criteria of the Exchange, including a requirement for recognition by another organization, if applicable, to access the trading facilities.

6. The Exchange will maintain written rules and application forms for granting access to trading on its facilities.

7. The Exchange will not unreasonably prohibit or limit access by a person or company to the regulated services offered by it.

8. The Exchange will keep detailed records relating to all applications for access to the facilities of the Exchange that have been granted as well as requests for access that have been refused, including the reasons for denying or limiting access to any applicant.

Fees

9. Any and all fees imposed by the Exchange on its participants shall be reasonably allocated. Fees shall not have the effect of creating barriers to access; however they must take into consideration that the Exchange must have sufficient revenues to perform its duties and obligations as a commodity futures exchange and a self regulatory organization.

10. The process used by the Exchange to set fees shall be fair and appropriate.

Financial Viability

11. The Exchange shall maintain sufficient financial resources for the proper performance of its functions.

12. The Exchange shall provide to the Commission quarterly financial statements within 60 days of each quarter end and audited financial statements within 90 days of year-end. In addition, the Exchange will immediately provide the Commission with a written report advising of any circumstances that compromise or may potentially compromise the financial viability of the Exchange.

Regulatory Division and Special Regulatory Committee

13. The Exchange shall maintain a Regulatory Division which shall be responsible for all matters relating to compliance and market surveillance as set out in the Act or as further required by the Commission from time to time. As part of the Regulatory Division, the Exchange shall constitute and maintain a Special Regulatory Committee (SRC), which shall be a special committee appointed by the board of directors of the Exchange responsible for the Regulatory Division.

14. The operations of the Regulatory Division, including the investigation and compliance functions of the Exchange, shall be independent of the for-profit operations of the Exchange.

15. The Exchange shall ensure that the Regulatory Division has the necessary resources to fulfill its market and regulation functions.

16. Each SRC member shall be appointed by the board of directors of the Exchange for a term not less than two years. Appointments to SRC can be renewed.

17. The Exchange shall advise the Commission in writing of the names and background of each person proposed for appointment to the SRC.

18. In recognition that the SRC has been established to promote the protection of the public interest and protection of the integrity of markets, a reasonable number and proportion of members of the SRC shall not be associated with a participant registered with the Exchange.

19. SRC shall be autonomous in accomplishing its functions and in its decision-making process. The independence of the SRC shall be ensured and strict partition measures shall be established in order to prevent conflicts of interest with other activities of the Exchange.

20. Disciplinary decisions of the SRC, arising out of hearings, shall be subject to appeal to the Commission in accordance with the Act.

21. The SRC shall provide the Commission with a written report on the operations of the Regulatory Division on an annual basis. The report shall be in a form specified by the Commission and shall include:

    a. description of the activities of the Regulatory Division,

    b. financial information relating to all of the operations of the Regulatory Division, including all compliance and enforcement functions; and

    c. such information as may be requested by the Commission from time to time.

22. The SRC shall promptly provide a written report to the Commission detailing any misconduct or fraud on the part of a participant or its representatives, or such other circumstance that may result in material loss or damage to the Exchange or its operations.

Systems

23. For each of its systems that support the operations of the Exchange, the Exchange shall, or in the case of systems that are owned by third parties the Exchange shall ensure that the third parties shall:

    a. Make reasonable current and future capacity estimates;

    b. Conduct necessary stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

    c. Develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;

    d. Review the vulnerability of those systems and computer operations to internal and external threats including physical hazards and natural disasters;

    e. Establish reasonable contingency and business continuity plans; and

    f. Notify the Commission, in writing, of any material systems failures or changes that impact market operations.

Purpose of Rules

24. The Exchange shall, through the Regulatory Division and otherwise, establish such rules, regulations, policies, procedures, practices or other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and internal affairs and shall in so doing specifically govern and regulate so as to:

    a. seek to ensure compliance with the Act

    b. seek compliance with the terms and conditions of this order as well as any regulations, rules, policies or orders issued by the Commission;

    c. seek to prevent fraudulent and manipulative acts and practices;

    d. seek to promote just and equitable principles of trade;

    e. seek to foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, trades in futures and options contracts and

    f. seek to provide for appropriate discipline.

Due Process

25. The Exchange, including the Regulatory Division, shall ensure that the requirements of the Exchange relating to access to its facilities, the imposition of limitations or conditions on access and denial of access are fair and reasonable, including, but not limited to, proper notice, an opportunity to be heard and make representations, the keeping of records, the giving of written reasons for decision and the provisions for appeals.

Information Sharing

26. The Exchange shall cooperate by the sharing of necessary and reasonably relevant information, with the Canadian Investor Protection Fund and other Canadian exchanges, recognized self-regulatory organizations and regulatory authorities responsible for the supervision or regulation of contracts (as defined in the Act)fch, subject to the applicable laws concerning the sharing of information and the protection of personal information.

Additional Requirements

27. The Exchange shall notify the Commission prior to providing any regulatory duties or regulatory operations to other exchanges, self-regulatory organization, or other persons.

28. The Exchange shall obtain prior written approval from the Commission before subcontracting a portion of its regulatory duties or regulatory operations to other self-regulatory organizations.

29. The Exchange shall use all reasonable efforts to ensure that confidential information concerning its regulatory operations is maintained in confidence and not shared inappropriately with any for-profit operations of the Exchange.

30. The Exchange shall provide the Commission and its staff with such information as it may, from time to time, request.

ALL OF WHICH ARE INCORPORATED AS TERMS AND CONDITIONS OF THE ORDER ISSUED BY THE COMMISSION

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