

The Ontario Securities Commission

# OSC Bulletin

August 30, 2012

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

**The Ontario Securities Commission**

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# Chapter 1

## Notices / News Releases

### 1.1 Notices

#### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**August 30, 2012**

#### CURRENT PROCEEDINGS

#### BEFORE

#### ONTARIO SECURITIES COMMISSION

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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  
Suite 1700, Box 55  
20 Queen Street West  
Toronto, Ontario  
M5H 3S8

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#### CDS

#### TDX 76

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M. -----

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Paulette L. Kennedy	—	PLK
Edward P. Kerwin	—	EPK
Vern Krishna	—	VK
Christopher Portner	—	CP
Judith N. Robertson	—	JNR
Charles Wesley Moore (Wes) Scott	—	CWMS

### SCHEDULED OSC HEARINGS

September 4-10, September 12-14, September 19-24, and September 26 – October 5, 2012	<b>Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg</b>
--	---

s. 127

H Craig in attendance for Staff

Panel: EPK

September 4, 2012	<b>Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodriguez)</b>
----------------------	--

11:00 a.m.

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: VK/MCH

September 5, 2012	<b>Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)</b>
----------------------	--

10:00 a.m.

s. 127

M. Vaillancourt in attendance for Staff

Panel: VK

September 5-7, September 12-14 and September 19-21, 2012	<b>Vincent Ciccone and Medra Corp.</b>
--	--

10:00 a.m.

s. 127

M. Vaillancourt in attendance for Staff

Panel: VK

September 11, 2012	<b>Systematech Solutions Inc., April Vuong and Hao Quach</b>	September 20, 2012	<b>Morgan Dragon Development Corp., John Cheong (aka Kim Meng Cheong), Herman Tse, Devon Ricketts and Mark Griffiths</b>
3:00 p.m.	s. 127	10:00 a.m.	s. 127
	J. Feasby in attendance for Staff		J. Feasby in attendance for Staff
	Panel: EPK		Panel: EPK
September 12, 2012	<b>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</b>	September 21, 2012	<b>Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang</b>
9:00 a.m.	s. 127	10:00 a.m.	s. 127 and 127.1
	C. Watson in attendance for Staff		H. Craig in attendance for Staff
	Panel: EPK		Panel: TBA
September 13, 2012	<b>Paul Donald</b>	September 21, 2012	<b>Shaun Gerard McErlean and Securus Capital Inc.</b>
10:00 a.m.	s. 127	10:00 a.m.	s. 127
	C. Price in attendance for Staff		M. Britton in attendance for Staff
	Panel: CP/PLK		Panel: VK/JDC
September 18, 2012	<b>Roger Carl Schoer</b>	September 24, September 26 – October 5 and October 10-19, 2012	<b>New Found Freedom Financial, Ron Deonarine Singh, Wayne Gerard Martinez, Pauline Levy, David Whidden, Paul Swaby and Zompas Consulting</b>
10:00 a.m.	s. 21.7	10:00 a.m.	s. 127
	C. Johnson in attendance for Staff		A. Heydon in attendance for Staff
	Panel: JDC		Panel: JDC
September 18-19, 2012	<b>Crown Hill Capital Corporation and Wayne Lawrence Pushka</b>	October 2, 2012	<b>Energy Syndications Inc., Green Syndications Inc., Syndications Canada Inc., Land Syndications Inc. and Douglas Chaddock</b>
10:00 a.m.	s. 127	10:30	s. 127
	A. Perschy/A. Pelletier in attendance for Staff		C. Johnson in attendance for Staff
	Panel: JEAT/CP/JNR		Panel: MGC

October 10, 2012  
**Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung**

10:00 a.m.

s. 127

H. Craig in attendance for Staff

Panel: MGC

October 10, 2012  
**Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho, Simon Yeung and David Horsley**

10:00 a.m.

s. 127

H. Craig in attendance for Staff

Panel: MGC

October 10, 2012  
**Empire Consulting Inc. and Desmond Chambers**

10:00 a.m.

s. 127

D. Ferris in attendance for Staff

Panel: EPK

October 11, 2012  
**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**

9:00 a.m.

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 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: EPK

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 8, 2012

**Global RESP Corporation and Global Growth Assets Inc.**

10:00 a.m.

s. 127

D. Ferris in attendance for Staff

Panel: JEAT

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 13, 2012

**Knowledge First Financial Inc.**

10:00 a.m.

s. 127

M. Vaillancourt/D. Ferris in attendance for Staff

Panel: JEAT

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

November 22, 2012

11:30 a.m.

**Heritage Education Funds Inc.**

s. 127

M. Vaillancourt/D. Ferris in attendance for Staff

Panel: JEAT

November 27-28, 2012

10:00 a.m.

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

s. 127 and 127.1

C. Johnson in attendance for Staff

Panel: JDC

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 5, 2012  
10:00 a.m.

**Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjaiaants Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group**

s. 127 and 127.1

D. Campbell in attendance for Staff

Panel: VK

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

February 1, 2013  
10:00 a.m.

**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

February 4-11 and February 13, 2013  
10:00 a.m.

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

s. 127

J. Feasby in attendance for Staff

Panel: TBA

March 18-25, March 27-28, April 1-5 and April 24-25, 2013  
10:00 a.m.

**Peter Sbaraglia**

s. 127

J. Lynch in attendance for Staff

Panel: CP

April 29 – May 6 and May 8-10, 2013  
10:00 a.m.

**North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti**

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA	<p><b>Yama Abdullah Yaqeen</b></p> <p>s. 8(2)</p> <p>J. Superina in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Gold-Quest International, Health and Harmony, Iain Buchanan and Lisa Buchanan</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell</b></p> <p>s. 127</p> <p>J. Waechter in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Brilliant Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Frank Dunn, Douglas Beatty, Michael Gollogly</b></p> <p>s. 127</p> <p>K. Daniels in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)</b></p> <p>s. 127</p> <p>T. Center/D. Campbell in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric</b></p> <p>s. 127 and 127(1)</p> <p>D. Ferris in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan</b></p> <p>s. 127</p> <p>H. Craig/C.Rossi in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmony, Harmony Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>		

TBA	<p><b>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</b></p> <p>s. 127</p> <p>Y. Chisholm in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Innovative Gifting Inc., Terence Lushington, Z2A Corp., and Christine Hewitt</b></p> <p>s. 127</p> <p>M. Vaillancourt in attendance for Staff</p> <p>Panel: TBA</p>
		TBA	<p><b>Firestar Capital Management Corp., Kamposse Financial Corp., Firestar Investment Management Group, Michael Ciavarella and Michael Mitton</b></p> <p>s. 127</p> <p>H. Craig in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun</b></p> <p>s. 127</p> <p>C. Price in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>David M. O'Brien</b></p> <p>s. 37, 127 and 127.1</p> <p>B. Shulman in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>2196768 Ontario Ltd carrying on business as Rare Investments, Ramadhar Dookhie, Adil Sunderji and Evgueni Todorov</b></p> <p>s. 127</p> <p>D. Campbell in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>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</b></p> <p>s. 127</p> <p>J, Waechter/U. Sheikh in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>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</b></p> <p>s. 127</p> <p>H. Craig/C. Watson in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>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</b></p> <p>s. 127</p> <p>J. Feasby in attendance for Staff</p> <p>Panel: TBA</p>

TBA	<p><b>Energy Syndications Inc. Green Syndications Inc. , Syndications Canada Inc., Daniel Strumos, Michael Baum and Douglas William Chaddock</b></p> <p>s. 127</p> <p>C. Johnson in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Beryl Henderson</b></p> <p>s. 127</p> <p>S. Schumacher in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Bunting &amp; Waddington Inc., Arvind Sanmugam, Julie Winget and Jenifer Brekelmans</b></p> <p>s. 127</p> <p>S. Schumacher in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Cicccone Group, Cabo Catoche Corp. (a.k.a Medra Corp. and Medra Corporation), 990509 Ontario Inc., Tadd Financial Inc., Cachet Wealth Management Inc., Vincent Cicccone (a.k.a. Vince Cicccone), Darryl Brubacher, Andrew J Martin, Steve Haney, Klaudiusz Malinowski and Ben Giangrosso</b></p> <p>s. 127</p> <p>M. Vaillancourt in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>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</b></p> <p>s. 37, 127 and 127.1</p> <p>C. Watson in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>International Strategic Investments, International Strategic Investments Inc., Somin Holdings Inc., Nazim Gillani and Ryan J. Driscoll.</b></p> <p>s. 127</p> <p>C. Watson in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Colby Cooper Capital Inc., Colby Cooper Inc., Pac West Minerals Limited John Douglas Lee Mason</b></p> <p>s. 127</p> <p>B. Shulman in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>Majestic Supply Co. Inc., Suncastle Developments Corporation, Herbert Adams, Steve Bishop, Mary Kricfalusi, Kevin Loman and CBK Enterprises Inc.</b></p> <p>s. 37, 127 and 127.1</p> <p>D. Ferris in attendance for Staff</p> <p>Panel: TBA</p>
TBA	<p><b>Normand Gauthier, Gentree Asset Management Inc., R.E.A.L. Group Fund III (Canada) LP, and CanPro Income Fund I, LP</b></p> <p>s. 127</p> <p>B. Shulman in attendance for Staff</p> <p>Panel: TBA</p>	TBA	<p><b>David Charles Phillips</b></p> <p>s. 127</p> <p>Y. Chisholm in attendance for Staff</p> <p>Panel: TBA</p>

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

s. 37, 127 and 127.1

C. Price in attendance for Staff

Panel: TBA

  

TBA                    **David Charles Phillips and John  
Russell Wilson**

s. 127

Y. Chisholm in attendance for Staff

Panel: JDC

**ADJOURNED SINE DIE**

**Global Privacy Management Trust and Robert  
Cranston**

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

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

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

## 1.1.2 CSA Multilateral Staff Notice 46-306 – Third Update on Principal Protected Notes



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

### CSA Multilateral Staff Notice 46-306 *Third Update on Principal Protected Notes*

August 30, 2012

This CSA Multilateral Staff Notice is being published by staff of all members of the Canadian Securities Administrators, except the securities regulator in Québec (the **CSA** or **we**).

#### Substance and Purpose

This notice provides an update on the CSA's consideration of Principal Protected Notes (**PPNs**), and serves as a supplement to the following previous CSA Notices:

- CSA Notice 46-303 *Principal Protected Notes* dated July 7, 2006 (**Notice 46-303**)
- CSA Notice 46-304 *Update on Principal Protected Notes* dated July 27, 2007 (**Notice 46-304**)
- CSA Notice 46-305 *Second Update on Principal Protected Notes* dated August 29, 2008 (**Notice 46-305**).

In Notice 46-305, the CSA communicated that the one remaining initiative to address our concerns about PPNs was to work with the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada (the **SROs**) to ensure that know-your-client (**KYC**) and suitability obligations apply to all dealings in PPNs by individual registered representatives of their member firms (**SRO representatives**). This notice reports on the course being taken by the SROs to pursue that objective.

This Notice also sets out our expectation that banks and other federal and provincial deposit-taking institutions will use registered dealers (and registered individuals acting on behalf of those dealers) to distribute PPNs that do not fall within a limited class.

#### What is a PPN?

A PPN is an investment product that offers an investor potential returns based on the performance of an underlying investment and a guarantee that the investor will receive, on maturity of the PPN, not less than the principal amount invested. For the purposes of this notice, PPNs include, but are not limited to, instruments commonly described as market-linked or index-linked GICs and linked notes.

#### KYC and Suitability Obligations for SRO Members

In Notice 46-304, we stated that compliance with KYC and suitability obligations is a critical aspect of investor protection and should apply to sales of all PPNs by registrants (except where a specific exemption from these obligations exist). The SROs have confirmed that their KYC and suitability rules apply to all dealings in PPNs by SRO representatives that are transacted through their member firms.

However, if SRO representatives deal in PPNs outside of their member firms (and not in their capacity as an employee or agent of the member firm), the SRO's rules may not apply.

#### Application of KYC and Suitability Obligations to all Dealings in PPNs by SRO Representatives

The CSA want to ensure that SRO representatives who sell PPNs only do so in their capacity as an employee or agent of their member firm, so that the usual KYC and suitability obligations in the SRO rules apply to these sales.<sup>1</sup>

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<sup>1</sup> Except where the PPN is itself a contract of insurance that is required by applicable insurance legislation to be distributed through a licensed insurance agent.

To achieve this objective, the recognizing regulators asked the SROs to take appropriate actions to clarify the applicability of these obligations to all dealings in PPNs by SRO representatives. To this end, each of the SROs will soon be issuing a notice to their members setting out their expectation that all dealings in PPNs by SRO representatives must be transacted by these individuals in their capacity as an employee or agent of their member firm.

## **PPN Distribution Channels and CSA Expectations**

### ***CSA Consultations and Market Analysis***

Following publication of Notice 46-303, the CSA undertook extensive consultations with industry stakeholders about the distribution and regulation of PPNs, and analyzed the issuers and distribution channels for the PPN market. As a result of our consultations and market analysis, we determined that the majority of PPNs are issued by federally-regulated financial institutions, primarily Schedule I and Schedule II banks.

We understand that

- Schedule I and Schedule II banks are still the major issuers of PPNs
- a substantial portion of the PPNs issued by provincially-regulated financial institutions are issued by financial services cooperatives based in the province of Québec.

We also understand that while some PPNs are distributed directly by banks or other federal or provincial deposit-taking institutions, those PPNs that are not distributed through registered dealers are generally limited to circumstances where the PPN (a Specified PPN) has the following features:

- a term to maturity of five years or less, and
- eligibility for coverage by the Canada Deposit Insurance Corporation (or a provincial equivalent).

### **CSA Expectations for Distribution of PPNs by Banks and other Federal and Provincial Deposit-Taking Institutions**

The CSA expect that these institutions will distribute PPNs that are not Specified PPNs only through registered dealers in order to ensure the application of the usual KYC and suitability obligations.

### ***Compliance with CSA Expectations***

We will continue to monitor the distribution of PPNs. If we become aware that the sales practices of any deposit-taking institution do not accord with our above-noted expectation, we will take appropriate action.

### **Questions**

If you have questions regarding this Notice, please direct them to any of the following:

Robert F. Kohl  
Senior Legal Counsel, Compliance and Registrant Regulation  
Ontario Securities Commission  
Tel: (416) 593-8233  
E-mail: [rkohl@osc.gov.on.ca](mailto:rkohl@osc.gov.on.ca)

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British Columbia Securities Commission  
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Alberta Securities Commission  
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Bill Slattery  
Executive Director of Securities  
Nova Scotia Securities Commission  
Tel: (902) 424-7355  
E-mail: [slattejw@gov.ns.ca](mailto:slattejw@gov.ns.ca)



**1.2 Notices of Hearing**

**1.2.1 Portus Alternative Asset Management Inc. 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  
PORTUS ALTERNATIVE ASSET MANAGEMENT  
INC., PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
MICHAEL LABANOWICH**

**NOTICE OF HEARING  
(Sections 127 and 127.1)**

**TAKE NOTICE** that the Ontario Securities Commission (the “Commission”) will hold a hearing pursuant to sections 127 and 127.1 of the Securities Act, R.S.O. 1990, c. S.5, as amended (the “Act”), at the offices of the Commission located at 20 Queen Street West, Toronto, 17th Floor, on August 27, 2012 at 3:00 p.m. or as soon thereafter as the hearing can be held;

**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 dated August 22, 2012 entered into between Staff of the Commission and Michael Labanowich;

**BY REASON OF** the allegations set out in the Statement of Allegations of Staff of the Commission dated October 5, 2005 and such additional allegations as counsel may advise and the Commission may permit;

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

**AND TAKE FURTHER NOTICE** that upon the 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 proceeding.

**DATED** at Toronto this 23rd day of August, 2012.

“John Stevenson”  
Secretary to the Commission

**1.2.2 Portus Alternative Asset Management Inc. 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  
PORTUS ALTERNATIVE ASSET MANAGEMENT  
INC., PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
JOHN OGG**

**NOTICE OF HEARING  
(Sections 127 and 127.1)**

**TAKE NOTICE** that the Ontario Securities Commission (the “Commission”) will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), at the offices of the Commission located at 20 Queen Street West, Toronto, 17th Floor, on August 27, 2012 at 3:15 p.m. or as soon thereafter as the hearing can be held;

**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 dated August 23, 2012 entered into between Staff of the Commission and John Ogg;

**BY REASON OF** the allegations set out in the Statement of Allegations of Staff of the Commission dated October 5, 2005 and such additional allegations as counsel may advise and the Commission may permit;

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

**AND TAKE FURTHER NOTICE** that upon the 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 proceeding.

**DATED** at Toronto this 23rd day of August, 2012.

“John Stevenson”  
Secretary to the Commission

**1.2.3 Portus Alternative Asset Management Inc. 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  
PORTUS ALTERNATIVE ASSET MANAGEMENT  
INC., PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
BOAZ MANOR**

**NOTICE OF HEARING  
(Sections 127 and 127.1)**

**TAKE NOTICE** that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), at the offices of the Commission located at 20 Queen Street West, Toronto, 17th Floor, on August 27, 2012 at 2:30 p.m. or as soon thereafter as the hearing can be held;

**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 dated August 23, 2012 entered into between Staff of the Commission and Boaz Manor;

**BY REASON OF** the allegations set out in the Statement of Allegations of Staff of the Commission dated October 5, 2005 and such additional allegations as counsel may advise and the Commission may permit;

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

**AND TAKE FURTHER NOTICE** that upon the 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 proceeding.

**DATED** at Toronto this 24th day of August, 2012.

"John Stevenson"  
Secretary to the Commission

**1.3 News Releases**

**1.3.1 OSC Panel Issues Sanctions Against Shane Suman and Monie Rahman for a Breach of the Securities Act and Conduct Contrary to the Public Interest**

**FOR IMMEDIATE RELEASE  
August 23, 2012**

**OSC PANEL ISSUES SANCTIONS AGAINST  
SHANE SUMAN AND MONIE RAHMAN FOR  
A BREACH OF THE SECURITIES ACT AND  
CONDUCT CONTRARY TO THE PUBLIC INTEREST**

**TORONTO** – In a decision released today, an Ontario Securities Commission (OSC) panel released its Reasons and Decision on Sanctions and Costs against Shane Suman (Suman) and his wife, Monie Rahman (Rahman).

In its earlier decision on the merits, the OSC panel found that Suman, who was a senior information technology professional at an Ontario reporting issuer, had tipped Rahman about a proposed acquisition by Suman's employer of a U.S.-listed issuer, thereby breaching s. 76(2) of the *Securities Act*. The OSC panel also found that both acted contrary to the public interest by trading securities of the U.S.-listed issuer with knowledge of the proposed acquisition, making nearly \$1.0 million (USD) in illegal profits.

In its decision on sanctions and costs, the OSC panel found that the conduct of Suman and Rahman "constitutes serious misconduct ... that deserves severe sanctions". The OSC panel held that the "role of a senior information technology professional within a reporting issuer is a role which places the individual in a position of trust. We must deter others in similar positions from abusing that trust."

In deciding the appropriate sanctions, the OSC panel took into account a judgment against Suman and Rahman obtained by the U.S. Securities and Exchange Commission with respect to the same trading, which ordered that Suman and Rahman disgorge their illegal profits and pay civil penalties of \$2.0 million and \$1.0 million, respectively.

The OSC panel ordered that:

- Suman disgorge the amount of \$954,938.07;
- Suman pay an administrative penalty of \$250,000;
- Suman is prohibited from acquiring or trading securities permanently;
- Rahman is prohibited from acquiring or trading securities for a period of five years, after which she may trade in or acquire securities only if the costs awarded against her jointly and severally

with Suman have been paid in full to the Commission;

- Suman and Rahman are permanently prohibited from acting as directors or officers of a reporting issuer; and
- Suman and Rahman pay costs of \$250,000 on a joint and several basis.

A copy of the Reasons and Decision on Sanctions in this matter is available on the OSC website at [www.osc.gov.on.ca](http://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](http://www.osc.gov.on.ca).

**For media inquiries:**

[media\\_inquiries@osc.gov.on.ca](mailto:media_inquiries@osc.gov.on.ca)

Carolyn Shaw-Rimington  
Manager, Public Affairs  
416-593-2361

Alison Ford  
Media Relations Specialist  
416-593-8307

Follow us on Twitter: [OSC\\_News](#)

**For investor inquiries:**

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

### 1.3.2 OSC Seeks Comment on Amendments to Fee Model

**FOR IMMEDIATE RELEASE**  
**August 23, 2012**

#### **OSC SEEKS COMMENT ON AMENDMENTS TO FEE MODEL**

**TORONTO** – The Ontario Securities Commission (OSC) today published for comment draft OSC rules 13-502 and 13-503, which propose amendments to the OSC's funding model for the next three years.

The changes proposed in the draft rules will better align the fees paid by market participants with the resources employed by the OSC in regulating their activities. While the OSC recognizes the difficult economic circumstances for many market participants, the challenges facing all major securities regulators in overseeing the increasingly complex and interconnected capital markets requires new approaches for managing and employing limited regulatory resources. In addition, the OSC faces increasing enforcement demands that require specialized expertise in conducting multi-jurisdictional investigations and which present challenges related to geography, access to records and inter-agency co-operation.

"Aligning our revenues and costs in a manner that is fair to all market participants and reflective of the new regulatory reality is a key objective of this funding model," said Maureen Jensen, the OSC's Executive Director and Chief Administrative Officer. "The proposed fee structure is intended to provide the Commission with the resources required to meet our increasing regulatory commitments, while continuing to deliver strong investor protection."

The OSC must raise its fees to fund additional resources and ensure it has the appropriate institutional capacity, expertise and skills to meet evolving regulatory priorities, such as enhanced oversight of emerging market issuers, derivatives and credit rating organizations. While the proposed changes may result in increased fees for large and transnational participants, the model introduces additional fee tiers that will minimize increases for small and medium sized participants.

In developing the proposed fee model, OSC staff surveyed the practices of select Canadian and international regulatory agencies. If approved, the new model will be in effect for a three-year period, starting April 1, 2013. Copies of the proposed amendments are available on the OSC's website: [www.osc.gov.on.ca](http://www.osc.gov.on.ca). The comment period is open until November 21, 2012.

**For media inquiries:**

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Media Relations Specialist  
416-593-8307

**For investor inquiries:**

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

**1.4 Notices from the Office of the Secretary**

**1.4.1 Irwin Boock et al.**

**FOR IMMEDIATE RELEASE  
August 22, 2012**

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

**AND**

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

**TORONTO** – The Commission issued an Order in the above named matter which provides that:

1. Staff shall serve and file their written closing submissions on or by September 17, 2012;
2. Khodjaiants shall file his written closing submissions on or by October 29, 2012;
3. Staff shall file any written reply on or by November 12, 2012;
4. Parties are to attend before the Commission on December 5, 2012 to make their oral closing submissions; and
5. The hearing dates of August 15, 16, and 21, 2012 be vacated;

A copy of the Order dated August 13, 2012 is available at **[www.osc.gov.on.ca](http://www.osc.gov.on.ca)**.

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

For media inquiries:  
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416-593-8314  
1-877-785-1555 (Toll Free)

**1.4.2 Shane Suman and Monie Rahman**

**FOR IMMEDIATE RELEASE  
August 23, 2012**

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

**AND**

**IN THE MATTER OF  
SHANE SUMAN AND MONIE RAHMAN**

**TORONTO** – The Commission issued its Reasons and Decision on Sanctions and Costs and an Order in the above named matter.

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated August 22, 2012 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

For media inquiries:  
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1-877-785-1555 (Toll Free)

**1.4.3 Energy Syndications Inc. et al.**

For investor inquiries:

**FOR IMMEDIATE RELEASE  
August 23, 2012**

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

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

**AND**

**IN THE MATTER OF  
ENERGY SYNDICATIONS INC.,  
GREEN SYNDICATIONS INC.,  
SYNDICATIONS CANADA INC.,  
LAND SYNDICATIONS INC. AND  
DOUGLAS CHADDOCK**

**TORONTO** – The Commission issued an Order in the above named matter which provides that:

1. The Temporary Order is extended until October 3, 2012 or until further order of the Commission;
2. The extension of the Temporary Order does not prohibit Green from engaging in the sale of goods provided that any sales agreement does not constitute an investment contract, as defined by Ontario securities law; and
3. The extension of the Temporary Order shall not affect the right of any respondent to apply to the Commission under section 144 of the Act to revoke or vary this order upon five days written notice to Staff of the Commission;

The hearing of this matter is adjourned to October 2, 2012 at 10:30 a.m. or on such other date or time as provided by the Secretary's Office and agreed to by the parties.

A copy of the Order dated August 21, 2012 is available at **[www.osc.gov.on.ca](http://www.osc.gov.on.ca)**.

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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416-593-2361

Alison Ford  
Media Relations Specialist  
416-593-8307

**1.4.4 Energy Syndications Inc. et al.**

**FOR IMMEDIATE RELEASE  
August 23, 2012**

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

**AND**

**IN THE MATTER OF  
ENERGY SYNDICATIONS INC.,  
GREEN SYNDICATIONS INC.,  
SYNDICATIONS CANADA INC.,  
DANIEL STRUMOS, MICHAEL BAUM  
AND DOUGLAS WILLIAM CHADDOCK**

**TORONTO** – The Commission issued an Order in the above named matter which provides that this matter is adjourned to a confidential pre-hearing conference to be held on October 2, 2012 at 10:00 a.m. for the purpose of scheduling the hearing on the merits in this matter.

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

A copy of the Order dated August 21, 2012 is available at **[www.osc.gov.on.ca](http://www.osc.gov.on.ca)**.

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

For media inquiries:  
[media\\_inquiries@osc.gov.on.ca](mailto:media_inquiries@osc.gov.on.ca)

Carolyn Shaw-Rimmington  
Manager, Public Affairs  
416-593-2361

Alison Ford  
Media Relations Specialist  
416-593-8307

For investor inquiries:

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

**1.4.5 Heritage Education Funds Inc.**

**FOR IMMEDIATE RELEASE  
August 23, 2012**

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

**AND**

**IN THE MATTER OF  
HERITAGE EDUCATION FUNDS INC.**

**TORONTO** – The Commission issued an Order in the above named matter pursuant to section 127 of the Act and on consent of the parties which provides that:

1. the Temporary Order is extended until November 23, 2012 or until further order of the Commission; and
2. the hearing in this matter is adjourned to November 22, 2012 at 11:30 a.m. for the purpose of providing the Commission with an update on the work completed by the monitor and the consultant as required under the terms and conditions imposed on HEFI.

A copy of the Order dated August 21, 2012 is available at **[www.osc.gov.on.ca](http://www.osc.gov.on.ca)**.

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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**1.4.6 Knowledge First Financial Inc.**

**FOR IMMEDIATE RELEASE  
August 23, 2012**

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

**AND**

**IN THE MATTER OF  
KNOWLEDGE FIRST FINANCIAL INC.**

**TORONTO** – The Commission issued an Order in the above named matter pursuant to section 127 of the Act and on consent of the parties which provides that:

1. the Temporary Order is extended until November 14, 2012 or until further order of the Commission; and
2. the hearing in this matter is adjourned to November 13, 2012 at 10:00 a.m. for the purpose of providing the Commission with an update on the work completed by the monitor and the consultant as required under the terms and conditions imposed on KFFI.

A copy of the Order dated August 21, 2012 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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**1.4.7 Portus Alternative Asset Management Inc. et al.**

**FOR IMMEDIATE RELEASE  
August 23, 2012**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT  
INC., PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
MICHAEL LABANOWICH**

**TORONTO** – The Office of the Secretary issued a 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 Michael Labanowich. The hearing will be held on August 27, 2012 at 3:00 p.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 Notice of Hearing dated August 23, 2012 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
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**1.4.8 Portus Alternative Asset Management Inc. et al.**

**FOR IMMEDIATE RELEASE  
August 23, 2012**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT  
INC., PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND  
JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
JOHN OGG**

**TORONTO** – The Office of the Secretary issued a 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 John Ogg. The hearing will be held on August 27, 2012 at 3:15 p.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 Notice of Hearing dated August 23, 2012 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
JOHN P. STEVENSON  
SECRETARY

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**1.4.9 Portus Alternative Asset Management Inc. et al.**

**FOR IMMEDIATE RELEASE  
August 24, 2012**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT  
INC., PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
BOAZ MANOR**

**TORONTO** – The Office of the Secretary issued a 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 Boaz Manor. The hearing will be held on August 27, 2012 at 2:30 p.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 Notice of Hearing dated August 24, 2012 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
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SECRETARY

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**1.4.10 Moncasa Capital Corporation and John Frederick Collins**

**FOR IMMEDIATE RELEASE  
August 24, 2012**

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

**AND**

**IN THE MATTER OF  
MONCASA CAPITAL CORPORATION AND  
JOHN FREDERICK COLLINS**

**TORONTO** – The Commission issued an Order in the above named matter which provides that the Withdrawal Motion is heard in writing; and Wardle Daley Bernstein LLP is granted leave to withdraw as counsel for the Respondents.

A copy of the Order dated August 22, 2012 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
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**1.4.11 Portus Alternative Asset Management Inc. et al.**

**FOR IMMEDIATE RELEASE  
August 27, 2012**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
MICHAEL LABANOWICH**

**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 Ontario Securities Commission and Michael Labanowich.

A copy of the Order dated August 27, 2012 and Settlement Agreement dated August 27, 2012 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
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**1.4.12 Portus Alternative Asset Management Inc. et al.**

**FOR IMMEDIATE RELEASE  
August 27, 2012**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
BOAZ MANOR**

**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 Ontario Securities Commission and Boaz Manor.

A copy of the Order dated August 27, 2012 and Settlement Agreement dated August 27, 2012 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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**1.4.13 Portus Alternative Asset Management Inc. et al.**

**FOR IMMEDIATE RELEASE  
August 27, 2012**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
JOHN OGG**

**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 Ontario Securities Commission and John Ogg.

A copy of the Order dated August 27, 2012 and Settlement Agreement dated August 27, 2012 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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## Chapter 2

# Decisions, Orders and Rulings

### 2.1 Decisions

#### 2.1.1 CI Investments Inc.

##### Headnote

National Policy 11-203 Process for Exemptive Relief in Multiple Jurisdictions – Relief granted to manager/portfolio manager to engage the public mutual funds and pooled funds it advises and manages in purchases of long-term, non-exchange traded debt securities of related entities in the primary market – Future-oriented relief – Relief conditional on conditions including IRC approval, pricing requirements, and limits on the amount of the primary offering the funds can purchase.

##### Applicable Legislative Provisions

Securities Act (Ontario), ss. 111(2)(a), 111(2)(c)(ii), 111(3).  
National Instrument 31-103 Registration Requirements, ss. 13.5(2)(a), 15.1.

National Instrument 81-107 Independent Review Committee for Investment Funds, s. 6.2.

August 16, 2012

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

AND

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

AND

IN THE MATTER OF  
CI INVESTMENTS INC.  
(the Filer)

AND

IN THE MATTER OF  
THE MUTUAL FUNDS MANAGED BY THE FILER  
AND ANY MUTUAL FUNDS THAT MAY BE  
ESTABLISHED IN THE FUTURE FOR WHICH THE  
FILER ACTS AS MANAGER AND/OR ADVISER  
(the Funds, as further defined below)

##### DECISION

### Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of existing mutual funds and future mutual funds of which the Filer is the manager (**Manager**) and/or portfolio manager and to which National Instrument 81-102 *Mutual Funds* (**NI 81-102**) applies (each, a **Public Fund** and collectively, the **Public Funds**) and on behalf of existing mutual funds and future mutual funds of which the Filer is the manager and/or portfolio manager and to which NI 81-102 does not apply (each, a **Pooled Fund** and collectively, the **Pooled Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (**Legislation**) exempting the Public Funds and Pooled Funds from the prohibitions in the Legislation that prohibit a mutual fund from making or holding an investment:

- (a) pursuant to section 113 of the *Securities Act* (Ontario) (the **Act**) for relief (the **Act Relief**) from the following provisions:
  - (i) section 111(2)(a) of the Act which prohibits a mutual fund in Ontario from knowingly making an investment in any person or company who is a substantial security holder of the mutual fund, its management company or distribution company (**Related Shareholder**);
  - (ii) section 111(2)(c)(ii) of the Act which prohibits a mutual fund in Ontario from knowingly making an investment in an issuer in which a Related Shareholder has a significant interest (**Related Person**);
  - (iii) section 111(3) of the Act which prohibits a mutual fund in Ontario from knowingly holding an investment that is prohibited by sections 111(2)(a) and section 111(2)(c)(ii) of the Act; and
- (b) pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements and Exemptions* (**NI 31-103**) (the **NI 31-103 Relief**), exempting the Filer from the prohibition in section 13.5(2)(a) of NI 31-103 which prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to purchase a security in any issuer in which a responsible person or an associate of a responsible person is a partner, officer or director (**Related Issuer**) unless the fact is disclosed to the client and the written consent of the client is obtained before the investment is made.

The Act Relief and the NI 31-103 Relief are collectively, the **Exemption Sought**.

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

- (i) the Ontario Securities Commission (**OSC**) is the principal regulator for this application; and
- (ii) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is also intended to be relied upon in British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the **Passport Jurisdictions**) in respect of the Exemption Sought.

### Interpretation

Terms defined in MI 11-102 and National Instrument 14-101 *Definitions*, National Instrument 81-102 *Mutual Funds* (**NI 81-102**), National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) and National Instrument 31-103 *Registration Requirements, Exemptions, and Ongoing Registrant Obligations* (**NI 31-103**) have the same meaning if used in this decision, unless otherwise defined.

In this Decision, the term “**Related Party**” means a Related Shareholder, a Related Person or a Related Issuer depending on the provision that is being considered.

### Representations

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

#### **The Filer**

1. The head office of the Filer is located in Toronto, Ontario.
2. The Filer is the investment fund manager and/or portfolio manager of one or more mutual funds and may, in the future, become the investment fund manager and/or portfolio manager of additional mutual funds (all such present and future mutual funds being hereinafter referred to as the **Funds**). Some Funds are or will be reporting issuers under the securities legislation of some or all of the jurisdictions of Canada (the **Public Funds**) while other Funds do not or will not have such status (the **Pooled Funds**, collectively the **Funds**).
3. The Filer is currently directly and wholly-owned by CI Financial Corp. (**CI Financial**).

#### **The Funds**

4. Each of the Funds is or will be a mutual fund established under the laws of Ontario or one of the other Passport Jurisdictions.
5. The Filer and the Funds are not in default of securities legislation in any jurisdiction of Canada.
6. The securities of each of the Public Funds are, or will be, qualified for distribution pursuant to simplified prospectuses and annual information forms that have been, or will be, prepared and filed in accordance with the securities legislation of each of the Jurisdiction and the Passport Jurisdictions.
7. Each of the Public Funds is, or will be, a reporting issuer in one or more of the Jurisdiction and the Passport Jurisdictions.
8. The securities of the Pooled Funds are or will be offered for sale only on an exempt basis pursuant to available prospectus and registration exemptions from the prospectus requirements in one or more of the Passport Jurisdictions. Accordingly, none of the Pooled Funds is or will be a reporting issuer.
9. The investment objectives or strategies of each Fund that relies on the Exemption Sought permit, or will permit, it to invest in the securities purchased.
10. As Manager of the Public Funds, the Filer has established, or will establish, an independent review committee (**IRC**) in respect of each Public Fund in accordance with the requirements of NI 81-107. The IRC shall comply with the standard of care set out in section 3.9 of NI 81-107.
11. The purchase of securities of a Related Party by a Public Fund will be referred to the IRC of such Fund under subsection 5.1(1)(b) of NI 81-107.
12. As Manager of the Pooled Funds, the Filer has established, or will establish, an IRC that will be composed in accordance with the requirements of section 3.7 of NI 81-107. The IRC of each Pooled Fund will be expected to comply with the standard of care set out in section 3.9 of NI 81-107 as if each Pooled Fund were subject to that rule.
13. The only conflict of interest matter that will be referred in respect of a Pooled Fund to its IRC will be investments made by the Pooled Fund in securities of Related Parties.
14. The IRC of each Fund will comply with section 4.5 of NI 81-107 in connection with any instance that it becomes aware that the Fund did not comply with any of the conditions of this decision.

15. The Filer is seeking the Exemption Sought to permit the Funds to purchase and hold non-exchange traded debt securities of Related Parties issued pursuant to a primary distribution or treasury offering (**Primary Offering**).
16. Section 6.2 of NI 81-107 provides an exemption from the prohibitions comprising the Act Relief and the NI 31-103 Relief for exchange-traded securities, such as common shares. It does not permit a Fund, or the Filer on behalf of a Fund, however, to purchase non-exchange-traded debt securities issued by Related Parties. Some securities of Related Parties, such as debt securities, are not listed or traded on an exchange. Accordingly, without the Exemption Sought, the Funds would be prohibited from purchasing and holding non-exchange traded debt securities of Related Parties.
17. The Filer has determined that it would be in the best interests of the Funds to receive the Exemption Sought.
18. The Filer submits that the granting of the Exemption Sought would not be prejudicial to the public interest.
19. Certain Related Parties of the Filer are significant issuers of securities and they are issuers of highly rated commercial paper and other debt instruments. The Filer considers that the Funds should have access to such securities for the following reasons:
  - a) there is limited supply of highly rated corporate debt;
  - b) diversification is reduced to the extent that a Fund is limited with respect to investment opportunities; and
  - c) to the extent that a Fund seeks to track or outperform a benchmark it is important for the Fund to be able to purchase any securities included in the benchmark. Debt securities of Related Parties of the Filer are included in most of the Canadian debt indices.
20. Where the debt security is purchased by a Fund in Primary Offering pursuant to the Exemption Sought,
  - a) the security will be a non-exchange traded debt security, other than an asset backed commercial paper security, with a term to maturity of 365 days or more, issued by a Related Party that has been given and continues to have, at the time of purchase, an "approved credit rating" by an approved credit rating organization; and
  - b) the terms of the Primary Offering, such as the size and the pricing, will be a matter of public record as evidenced in a prospectus, offering memorandum, press release or other public document.
21. If a Fund's purchase of debt securities involves an inter-fund trade with another Fund, the provisions of the relief received by the Filer on behalf of the Funds dated March 16, 2010, as may be amended, will apply to such transaction.

#### 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 to permit the Public Funds and the Pooled Funds to purchase and hold non-exchange traded debt securities of Related Parties issued pursuant to a Primary Offering on condition that:

- (a) the purchase or holding is consistent with, or is necessary to meet, the investment objective of the Fund;
- (b) at the time of the purchase the IRC of the Fund has approved the transaction in accordance with Section 5.2(2) of NI 81-107;
- (c) the manager of the Fund complies with section 5.1 of NI 81-107 and the manager and the IRC of the Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (d) the size of the Primary Offering is at least \$100 million;
- (e) at least 2 purchasers who are independent, arm's length purchasers, which may include "independent underwriters" within the meaning of National Instrument 33-105 – *Underwriting Conflicts*, collectively purchase at least 20% of the Primary Offering;
- (f) no Fund shall participate in the Primary Offering if following its purchase the Fund together with related Funds will hold more than 20% of the securities issued in the Primary Offering;
- (g) no Fund shall participate in the Primary Offering if following its purchase the Fund would have more than 5% of its net assets invested in non-exchange traded debt securities of a Related Party;

- (h) the price paid for the securities by a Fund in the Primary Offering shall be no higher than the lowest price paid by any of the arm's length purchasers who participate in the Primary Offering;
- (i) no later than the time a Public Fund files its annual financial statements, or on or before the 90th day after the end of each financial year of a Pooled Fund, the Filer files with the securities regulatory authority or regulator the particulars of any investments made in reliance on this relief; and
- (j) this Decision will expire on the coming into force of any securities legislation relating to fund purchases of Related Party debt securities in a Primary Offering.

**NI 31-103 Relief**

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

**The Act Relief**

"Christopher Portner"  
Commissioner  
Ontario Securities Commission

"James Turner"  
Vice-Chair  
Ontario Securities Commission

**2.1.2 Hecla Acquisition ULC and Hecla Mining Company**

**Headnote**

Process for Exemptive Relief Application in Multiple Jurisdictions (passport application) – relief from take-over bid requirements to send bid and bid circular to security holders in connection with bid commenced by advertisement – condition to bid not satisfied prior to deadline for sending bid and bid circular to security holders – relief granted subject to conditions.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 94.2(2)(c), 104(2)(c).

**August 10, 2012**

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

**AND**

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

**AND**

**IN THE MATTER OF  
HECLA ACQUISITION ULC AND  
HECLA MINING COMPANY  
(the Filers)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction (the Decision Maker) has received an application from the Filers for a decision under under section 104(2) of the *Securities Act* (Ontario) (the Act) and the corresponding provisions of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (MI 62-104) exempting the Filers from the requirement to send their take-over bid and take-over bid circular to those security holders named in the list of U.S. Silver Corporation's security holders within two business days of receipt of such list from U.S. Silver Corporation pursuant to subsection s. 94.2(2)(c) of the Act (and the corresponding provisions of MI 62-104) (the Exemption Sought).

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

- (a) The Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System*



(MI 11-102) is intended to be relied upon in the provinces of British Columbia and Alberta (together with Ontario, the Jurisdictions).

### Interpretation

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

### Representations

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

1. Hecla Mining Company (Hecla Mining) is a silver producer in the United States. It has two operating mines and exploration properties in United States and Mexico. The shares of Hecla are listed on the New York Stock Exchange under the symbol "HL".
2. Hecla Acquisition ULC (Hecla ULC) is an indirect wholly-owned subsidiary of Hecla Mining, and was created specifically for the purpose of making the take-over bid described in detail below (referred to herein collectively with Hecla Mining as Hecla).
3. Neither Hecla Mining nor Hecla ULC is a reporting issuer or the equivalent in any jurisdiction of Canada.
4. Neither Hecla nor Hecla ULC is in default of securities legislation in any Jurisdiction.
5. U.S. Silver Corporation (US Silver) is a corporation existing under the *Canada Business Corporations Act*, with a registered office in Toronto, Ontario. US Silver, through its wholly owned subsidiaries, owns silver-lead-copper mines in the United States.
6. The principal regulator of US Silver is the Ontario Securities Commission.
7. US Silver is a reporting issuer in the Provinces of British Columbia, Alberta, and Ontario. The common shares (Common Shares) and common share purchase warrants (Warrants) of US Silver are listed on the Toronto Stock Exchange under the symbols "USA" and "USA.WT", respectively. The Common Shares are also posted for trading on the OTCQX in the United States under the symbol "USSIF" and in Germany on the Frankfurt Stock Exchange under the symbol "QE2".
8. On June 7, 2012, US Silver and RX Gold & Silver Inc. issued a press release (the RX Gold Press Release) announcing the signing of a definitive agreement to combine the two companies by way of a plan of arrangement (the RX Gold Arrangement). The RX Gold Press Release is filed on Sedar.
9. Early on Monday, July 23, 2012, Hecla delivered an expression of interest letter to the board of directors of US Silver wherein Hecla proposed a business combination (the Hecla Proposal) of Hecla and US Silver.
10. On July 25, 2012, Hecla requested the US Silver shareholder and warrant holder lists (the Securityholder Lists) from US Silver.
11. On July 25, 2012, Hecla issued a news release (the Hecla News Release), announcing its intention to acquire all of the outstanding Common Shares and Warrants of US Silver (the Hecla Proposal). The Hecla News Release is filed on Sedar.
12. The Hecla News Release provided that the Hecla Proposal would commence by way of a newspaper advertisement, with a formal offer and take-over bid circular being mailed to holders of Common Shares and Warrants as soon as possible after US Silver made its shareholder and warrant holder lists available to Hecla, which lists Hecla requested be delivered by US Silver on July 25, 2012.
13. On July 26, 2012, Hecla published a newspaper advertisement in the National Post, National Edition, giving notice of the Hecla Proposal and encouraging holders of Common Shares and Warrants to accept the Hecla Proposal.
14. The Hecla Proposal is subject to a number of conditions, including the condition (the RX Condition) that the shareholders of US Silver shall not have approved the US Silver Special Resolution (defined below) at the US Silver Special Meeting (defined below) or the RX Gold Arrangement shall have otherwise terminated.
15. Management of US Silver called a special meeting (the US Silver Special Meeting) of shareholders of US Silver to be held on August 7, 2012, at which time the shareholders of US Silver would be asked to consider and vote on a special resolution authorizing the RX Gold Arrangement (the US Silver Special Resolution). The notice of special meeting and related management proxy circular related to the US Silver Special Meeting is filed on Sedar.
16. On August 2, 2012, Hecla received the Securityholder Lists, and as a consequence, pursuant to 94.2(2)(c) of the Act (and the corresponding provisions of MI 62-104), Hecla is required to send its take-over bid and take-over bid circular (the Hecla Circular) to shareholders of US Silver not later than two business days after receipt of the Securityholder Lists. Hecla is required to send the Hecla Circular to shareholders of US Silver not later than August 7, 2012.

17. On August 7, 2012, US Silver issued a press release announcing shareholders of US Silver had voted in favour of the US Silver Special Resolution at the US Silver Special Meeting.
18. On August 7, 2012, Hecla issued a press release responding to the US Silver press release and indicating that it will not proceed with the Hecla Proposal as a result of the shareholder vote.
19. Hecla has confirmed that it will not waive the RX Condition.
20. As a result, there is no need for Shareholders of US Silver to receive the Hecla Circular.

### Decision

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

The decision of the Decision Maker under the Legislation is that the Exemption Sought is granted.

“James Turner”  
Vice-Chair

“Edward P. Kerwin”  
Commissioner

### 2.1.3 Cantor Fitzgerald Canada Corporation and Versant Partners Inc.

#### Headnote

Under paragraph 4.1(1)(a) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual acts as an officer, partner or director of another registered firm that is not an affiliate of the first-mentioned firm. The firms require relief for a limited period of time. The individual will have sufficient time to adequately serve both firms. As one firm is inactive, conflicts of interest are unlikely to arise. The firms have policies in place to handle potential conflicts of interest. The firms are exempted from the prohibition.

#### Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.  
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 15.1.

August 24, 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  
CANTOR FITZGERALD CANADA CORPORATION  
(CANTOR CANADA)**

**AND**

**VERSANT PARTNERS INC.  
(VERSANT) (CANTOR CANADA and VERSANT are,  
collectively, THE FILERS)**

**DECISION**

#### Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the requirement in paragraph 4.1(1)(a) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), pursuant to section 15.1 of NI 31-103, to permit Michael Jams, a director and

the President and Chief Executive Officer of Versant, to be registered as both a dealing representative of Cantor Canada and as the ultimate designated person, officer and a director of Versant for a limited period of time to maintain the registration of Versant for purposes of reorganizing its affairs and soliciting prospective purchasers of Versant (the **Exemption Sought**). As per IIROC's requirement, Michael Jams is to remain the ultimate designated person of Versant in order for Versant to be granted inactive status until March 29, 2013 or such earlier time as Versant is either de-registered or sold.

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

- (a) the Ontario Securities Commission is the principal regulator for this application; and
- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filers in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Quebec and Saskatchewan (with Ontario, the **Jurisdictions**).

### Interpretation

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

### Representations

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

1. Cantor Canada is registered as (i): an investment dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Québec, Saskatchewan, Yukon, Northwest Territories and Nunavut; (ii) a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**); and (iii) a participating organization of the Toronto Stock Exchange (**TSX**).
2. Cantor Canada engages primarily in institutional trading activities
3. Versant is registered as (i) an investment dealer in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec, Saskatchewan; (ii) a dealer member of IIROC; and (iii) a participating organization/member or subscriber of the TSX (including Select), CDNX, Pure, Alpha and Omega.
4. Versant is primarily engaged in the business of providing financial services (including investment banking, institutional sales and trading and research) in Canada.
5. The Filers are not, to the best of their knowledge, in default of any requirement of securities legislation in any of the Jurisdictions.
6. Cantor Canada has provided notice pursuant to Section 11.9 of NI 31-103 of the proposed transfer (the **Proposed Transaction**) of certain assets of Versant to Cantor Canada, including but not limited to certain of its clients, certain fixed assets of Versant, the name Versant (post IIROC de-registration of Versant) and related intellectual property and the rights and benefits under Versant's office lease in Montreal, Quebec. In addition to the Proposed Transaction, Cantor Canada will be offering employment to certain employees of Versant.
7. The Proposed Transaction is designed to permit Cantor Canada to expand its operations in the functional areas of institutional equities sales and trading, investment banking, and equity research in a timely and efficient manner. It is intended that key management and production staff of Versant will become employed by Cantor Canada. Subsequent to the close of the transaction and integration of the expanded business lines, Cantor Canada intends to leverage its expanded Canadian platform with additional market hires of production staff to complement the experienced Versant professionals who will have joined Cantor Canada.
8. Michael Jams is a director, the President and Chief Executive Officer, and a dealing representative of Versant and acts as Versant's ultimate designated person. Following the closing of the Proposed Transaction, it is intended that Michael Jams will be an officer of Cantor Canada and will be registered with Cantor Canada as a dealing representative, and will continue to be a director and officer of Versant and act as the ultimate designated person of Versant (the **Dual Registration**).
9. Versant has undertaken to IIROC that it will not conduct any registrable securities activities following the closing of the Proposed Transaction without prior IIROC approval, and is being granted "inactive status" by IIROC effective as of the closing date of the Proposed Transaction for a fixed period ending March 29, 2013, for the purpose of reorganizing its affairs and soliciting potential purchasers of Versant. Prior to the closing date of the Proposed Transaction, clients of Versant will be provided with notice of the Proposed Transaction that includes information about the transfer of client accounts to Cantor Canada as well as information that Versant will no longer offer brokerage services to its clients.
10. There is a valid business reason for the Dual Registration in that it will permit Versant to retain its IIROC membership with "inactive status" and its

investment dealer registration while it reorganizes its affairs and solicits potential purchasers.

11. Michael Jams will have sufficient time to adequately meet his obligations to each firm.
12. The Filers have in place policies and procedures to address conflicts of interest and the inactive status of Versant will facilitate this, by largely or entirely avoiding any conflicts of interest.
13. Furthermore, Cantor Canada has compliance and supervisory policies and procedures in place to monitor the conduct of its representatives.
14. Cantor Canada will supervise Michael Jams' activities on behalf of Versant, including by holding meetings regularly with him and by obtaining regular status reports from him.
15. In the absence of the Exemption Sought, Michael Jams would be prohibited under paragraph 4.1(1)(a) of NI 31-103 from acting as a dealing representative of Cantor Canada while also acting as an officer, director and the Ultimate Designated Person of Versant.

#### 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 Exemption Sought expires on March 29, 2013.

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

#### 2.1.4 Invesco Canada Ltd. et al.

##### Headnote

NP 11-203 – Process for Exemptive Relief Application in Multiple Jurisdictions

Relief granted to commodity pools from concentration, control and fund-on-fund restrictions in sections 2.1(1), 2.2(1), 2.5(2)(a) and (c) of National Instrument 81-102 Mutual Funds to permit certain commodity pools to gain exposure to US commodity ETFs tracking the performance of physical commodities, subject to certain conditions.

Relief granted to commodity pools from fund-on-fund restrictions in section 2.5(2)(e) and (f) of National Instrument 81-102 Mutual Funds to permit commodity pools to pay brokerage commissions incurred for the purchase or sale of securities of US commodity ETFs.

Relief granted from section 3.2(2)(a) of National Instrument 81-104 Commodity Pool to permit manager to redeem seed investment in commodity pools provided pools have received subscriptions from investors totalling at least \$5 million and provided the manager maintains working capital as required for investment fund managers under National Instrument 31-103 Registration Requirements and Exemptions.

##### Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.1(1), 2.2(1), 2.5(2)(a), 2.5(2)(c), 2.5(2)(e), 2.5(2)(f), 19.1.

National Instrument 81-104 Commodity Pools, ss. 3.2(2)(a), 10.1.

August 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  
INVESCO CANADA LTD.  
(the Filer)**

**AND**

**IN THE MATTER OF  
POWERSHARES DB COMMODITY  
(CAD HEDGED) INDEX ETF and  
POWERSHARES DB AGRICULTURE  
(CAD HEDGED) INDEX ETF  
(the Proposed Commodity Pools)**

**DECISION**

## Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Proposed Commodity Pools and any similar exchange-traded commodity pools that the Filer or an affiliate of the Filer may create and manage in the future (the **Future Commodity Pools** and, together with the Proposed Commodity Pools, the **Commodity Pools**) for exemptive relief from the following provisions of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) for the following purposes, which relief is referred to below as the **Exemption Sought**:

- (a) subsections 2.1(1) and 2.2(1) and paragraphs 2.5(2)(a) and 2.5(2)(c) to permit the Commodity Pools to invest directly, or indirectly through one or more derivative instruments which will not be prepaid forward agreements, and in excess of the concentration and control restrictions in subsections 2.1(1) and 2.2(1) respectively, in Commodity Participation Units (**CPUs**), as defined below, traded on a stock exchange in the United States (the **US**) and issued by mutual funds (the **US Commodity ETFs**); and
- (b) paragraphs 2.5(2)(e) and 2.5(2)(f) to permit the Commodity Pools to pay brokerage commissions incurred for the purchase or sale of securities of the US Commodity ETFs.

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 Subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon (with Ontario, the **Jurisdictions**).

## Interpretation

Terms defined in MI 11-102, National Instrument 14-101 *Definitions* and NI 81-102 have the same meanings if used in this decision unless otherwise defined.

## Representations

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

### *The Filer and the Commodity Pools*

- 1. The Filer is a corporation amalgamated under the laws of Ontario and its head office is located in Toronto, Ontario.

- 2. The Filer will be the trustee, manager and portfolio manager of the Proposed Commodity Pools. The Filer or an affiliate of the Filer will be the trustee, manager and portfolio manager of the Future Commodity Pools. The Filer is registered as a portfolio manager and mutual fund dealer in certain of the provinces and territories of Canada and is registered in Ontario as an investment fund manager and under the *Commodity Futures Act* (Ontario) in the category of commodity trading manager.
- 3. The Filer is not in default of securities legislation in any province or territory of Canada.
- 4. Each Commodity Pool will be: (a) an open-end mutual fund trust established under the laws of Ontario; (b) governed by the provisions of NI 81-102 as modified by any exemptions as may be granted by the securities regulatory authorities and those exceptions relating to commodity pools outlined in National Instrument 81-104 *Commodity Pools* (**NI 81-104**); (c) qualified for distribution in some or all of the provinces and territories of Canada under a prospectus prepared in accordance with National Instrument 41-101 *General Prospectus Requirements* that will be filed with and receipted by the securities regulators in the applicable Jurisdiction(s); and (d) once receipted, a reporting issuer under the securities laws of some or all of the provinces and territories of Canada.
- 5. Each Commodity Pool will be a “commodity pool”, as such term is defined in subsection 1.1(1) of NI 81-104, in that each Commodity Pool will adopt investment objectives that permit that Commodity Pool to invest directly, or indirectly through one or more derivative instruments, in physical commodities in a manner that is not permitted under NI 81-102.
- 6. Each Commodity Pool and its units (the **Units**) will be listed on the Toronto Stock Exchange (the **TSX**). The Filer will not file a final prospectus for a Commodity Pool unless the TSX has conditionally approved the listing of Units of the Commodity Pool.
- 7. The investment objective of each Commodity Pool will be to seek to replicate, to the extent reasonably possible and before fees and expenses, the performance of a specified commodity index, which index will track the price of one or more physical commodities. In the case of PowerShares DB Commodity (CAD Hedged) Index ETF and as at the date of this decision, the index will be the DBIQ Optimum Yield Diversified Commodity Index Excess Return Hedged CAD. In the case of PowerShares DB Agriculture Fund and as at the date of this decision, the index will be the DBIQ Diversified Agriculture Index Excess Return Hedged CAD.

8. Each Commodity Pool will be subject to the restrictions concerning illiquid assets in section 2.4 of NI 81-102, and will be subject to the Filer's internal policies governing liquidity requirements.

**Fund on Fund Strategy**

9. In accordance with its investment strategies, as stated in its prospectus, to seek to achieve its investment objective, each Commodity Pool may invest directly, or indirectly through one or more derivative instruments, in securities issued by a specified US Commodity ETF.
10. PowerShares DB Commodity (CAD Hedged) Index ETF will invest directly, or indirectly through one or more derivative instruments, in the PowerShares DB Commodity Index Tracking Fund, a US Commodity ETF which tracks the performance of the DBIQ Optimum Yield Diversified Commodity Index Excess Return. PowerShares DB Agriculture (CAD Hedged) Index ETF will invest directly, or indirectly through one or more derivative instruments, in the PowerShares DB Agriculture Fund, a US Commodity ETF which tracks the performance of the DBIQ Diversified Agriculture Index Excess Return.
11. The US Commodity ETFs that the Proposed Commodity Pools will invest in, namely, PowerShares DB Commodity Index Tracking Fund and PowerShares DB Agriculture Fund, are managed by DB Commodity Services LLC, an affiliate of Deutsche Bank AG. US Commodity ETFs that the Future Commodity Pools may invest in could include US Commodity ETFs managed by an affiliate of the Filer or by a third party.
12. As at the date of this decision, the Filer expects that each Commodity Pool will typically invest almost 100% of its non-cash assets in the US Commodity ETF specified in its prospectus.
13. In this Decision, a Commodity Participation Unit (**CPU**), is defined as a security that is issued by an issuer, the only purpose of which is to:
- (a) hold a physical commodity as defined in NI 81-102 (a **Physical Commodity**) or more than one Physical Commodity;
  - (b) hold commodity futures that are widely quoted or used as the benchmark for pricing the future price of a Physical Commodity or more than one Physical Commodity; or
  - (c) invest in a manner that causes the issuer to replicate the performance of a Physical Commodity or more than one Physical Commodity, or commodity futures, referred to in subparagraphs 13(a) and 13(b).

14. The securities of the US Commodity ETFs are CPUs.
15. Each US Commodity ETF and its securities will be listed on a stock exchange in the United States.
16. Each US Commodity ETF has signed agreements with parties referred to as "authorized participants". Each authorized participant is a registered broker-dealer in the United States or a financial institution authorized to engage in securities transactions. Only authorized participants are permitted to subscribe for and buy newly-created shares of that US Commodity ETF directly from the US Commodity ETF, which shares are then sold into the marketplace, and to redeem shares of that US Commodity ETF. Through their ability to subscribe for and redeem shares of the US Commodity ETF, authorized participants provide additional liquidity for the US Commodity ETF.
17. As each US Commodity ETF tracks a commodity index, which is not considered to be a market index, the securities of the US Commodity ETFs do not meet the definition of "index participation unit" (**IPU**) in NI 81-102.
18. An investment by each Commodity Pool, either directly or indirectly through one or more derivative instruments, in securities of a US Commodity ETF, will represent the business judgment of responsible persons uninfluenced by considerations other than the best interest of the Commodity Pool.
19. A US Commodity ETF that refers to more than one category of Physical Commodity or commodity future will state in its current public offering document that it seeks to replicate the performance of an index of widely quoted or used benchmarks for physical commodities or categories of physical commodities. The index that the US Commodity ETF will seek to replicate will employ an empirical, rules based allocation methodology.
20. The Commodity Pools will invest directly, or indirectly through one or more derivative instruments, in securities of US Commodity ETFs that provide indirect exposure to physical commodities that, in accordance with NI 81-104, a Commodity Pool could acquire directly and in concentrations that it could accumulate directly.
21. In the absence of the Exemption Sought, an investment by the Commodity Pools, whether directly or indirectly through one or more derivative instruments, in the securities of the US Commodity ETFs would be contrary to paragraphs 2.5(2)(a) and 2.5(2)(c) of NI 81-102, as the securities of the US Commodity ETFs will not be subject to NI 81-102, will not offer or ever have

offered securities under a simplified prospectus in accordance with NI 81-101 *Mutual Fund Distributions* and will not be reporting issuers in any Jurisdiction.

22. The Filer is of the view that each US Commodity ETF will not be an "illiquid asset" as defined in NI 81-102, provided that (i) the particular US Commodity ETF is listed for trading on an exchange, (ii) the US Commodity ETF has an agreement in place with one or more authorized participants, and (iii) normal trading has not been suspended on the stock exchange on which the US Commodity ETF is listed and traded or, if applicable, on the futures exchange where the futures purchased and sold by the US Commodity ETF are traded.
23. In the absence of the Exemption Sought, an investment by a Commodity Pool, whether directly or indirectly through one or more derivative instruments, in the securities of a US Commodity ETF would be contrary to subsection 2.1(1) and may be contrary to subsection 2.1(2) of NI 81-102 as, immediately after the transaction, more than 10 percent of the net asset value of the Commodity Pool will be invested in securities of the US Commodity ETF and the Commodity Pool may hold more than 10 percent of the outstanding securities of the US Commodity ETF.
24. All investments by the Commodity Pools in securities of the US Commodity ETFs will be made in compliance with the requirements set forth in section 2.5 of NI 81-102, with the exception of sections 2.5(2)(a), 2.5(2)(c), 2.5(2)(e) and 2.5(2)(f) of NI 81-102 pursuant to the grant of the Exemption Sought.
25. The Filer believes that it is in the best interests of the Commodity Pools for investments to be made, either directly or indirectly through the use of derivative instruments, in the US Commodity ETFs. Investing directly or indirectly in the US Commodity ETFs is expected to be a lower cost investment alternative for the Commodity Pools than investing directly in the physical commodities held in the applicable commodity index or in separate derivative instruments the underlying interests of which are the physical commodities held in such commodity index.

#### Brokerage Fees

26. The majority of trading in securities of the US Commodity ETFs occurs in the secondary market.
27. As is the case with the purchase or sale of any other equity security made on an exchange, brokers are typically paid a commission in connection with trading in securities of exchange-traded funds, such as the US Commodity ETFs.

28. Securities may only be directly purchased or redeemed from a US Commodity ETF in large blocks. It is anticipated that many of the trades conducted by the Commodity Pools would not be the size necessary for a Commodity Pool to be eligible to purchase securities directly from the US Commodity ETFs. Furthermore, the Commodity Pools are not authorized participants and have not entered into any agreement that would permit them to purchase and redeem securities directly from the US Commodity ETFs.
29. It is proposed that the Commodity Pools will purchase and sell securities of the US Commodity ETFs on the applicable US exchange and pay commissions to brokers in connection with the purchase and sale of such securities.
30. Subsection 2.5(5) of NI 81-102 provides that the prohibition against the duplication of sales and redemption fees in paragraphs 2.5(2)(e) and (f) does not apply to brokerage fees incurred by a mutual fund for the purchase or sale of an IPU issued by a mutual fund. However, as securities of the US Commodity ETFs are not IPUs, the Commodity Pools cannot rely on subsection 2.5(5) of NI 81-102.
31. In the absence of the Exemption Sought, when a Future Commodity Pool trades securities of a US Commodity ETF managed by an affiliate of the Filer, paragraph 2.5(2)(e) would not permit the Commodity Pool to pay any brokerage fees incurred in connection with the trade. In addition, in the absence of the Exemption Sought, when a Commodity Pool trades securities of a US Commodity ETF, paragraph 2.5(2)(f) of NI 81-102 would not permit the Commodity Pool 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) the Commodity Pool's investment, either directly or indirectly through one or more derivative instruments, in securities of a US Commodity ETF, is in accordance with the investment objective of the Commodity Pool, which investment objective, as set out in its prospectus, specifies the name of the commodity index that the Commodity Pool seeks to replicate and describes the nature of that index;

- (b) the Commodity Pool's investment strategies, as set out in its prospectus, specify that the Commodity Pool is exposed to physical commodities and commodity futures through investment, directly or indirectly through derivative instruments, in securities of a US Commodity ETF that invests in physical commodities and commodity futures;
- (c) the prospectus for each Commodity Pool will state that the Commodity Pool has obtained the Exemption Sought and provide disclosure regarding the risks associated with investing in the US Commodity ETFs;
- (d) the securities of the US Commodity ETFs are listed on a US stock exchange;
- (e) the Commodity Pool will only invest in securities of a US Commodity ETF pursuant to internal policies and procedures governing liquidity that have been established or will be established by the Filer or an affiliate of the Filer for the Commodity Pool as its manager; and
- (f) the relief from paragraphs 2.5(2)(e) and 2.5(2)(f) will only apply to brokerage fees incurred for the purchase or sale of securities of the US Commodity ETFs by the Commodity Pools.

"Raymond Chan"  
Manager, Investment Funds  
Ontario Securities Commission

## 2.2 Orders

### 2.2.1 Irwin Boock et al. – ss. 127, 127.1

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

**AND**

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

**ORDER  
(Section 127 and 127.1)**

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

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

**AND WHEREAS** after a series of preliminary matters in this proceeding, on May 24, 2011, the Commission ordered that the hearing on the merits shall commence on February 1, 2012, and shall continue as scheduled thereafter;

**AND WHEREAS** on February 1, 2012, counsel for Alex Khodjaoints brought a motion to adjourn the hearing on the merits until May 2012 to permit Khodjaoints to retain him for representation at the hearing on the merits;

**AND WHEREAS** on the same date the respondent, Alex Khodjaoints, advised the panel of the proper spelling of his name (hereinafter, "Khodjaoints") and the Commission ordered that the title of proceeding be amended to change "Alex Khodjaoints" to "Alex Khodjaints";

**AND WHEREAS** the Commission granted an adjournment in part and ordered that the hearing on the merits be adjourned to commence on February 8, 2012;

**AND WHEREAS** on February 7, 2012, Khodjaoints filed an Application for Judicial Review with the



Divisional Court wherein he spelled his name "Khodjiaints" and sought to set aside the Commission's order dated February 1, 2012 (the "JR Application");

**AND WHEREAS** the Commission has noted that the names "Khodjiaints" and "Khodjaiaints" are one and the same for the purpose of this proceeding;

**AND WHEREAS** Staff requested and was granted a brief adjournment of the hearing on the merits in order for Staff to bring a motion to quash the JR Application;

**AND WHEREAS** on April 3, 2012 Khodjaiaints withdrew the JR Application;

**AND WHEREAS** on April 16, 2012 Khodjaiaints brought a motion to adjourn the hearing on the merits to enable him to retain counsel to represent him;

**AND WHEREAS** on that day Khodjaiaints advised the Commission that he lives with Dubinsky and that she does not intend on attending the hearing on the merits;

**AND WHEREAS** on April 16, 2012 the Commission ordered that the hearing on the merits be adjourned on a peremptory basis and commence on August 7, 2012 and continue on August 8, 9, 10, 13, 15, 16 and 21, 2012, with or without counsel;

**AND WHEREAS** the hearing on the merits commenced on August 7, 2012 and continued on August 8, 9, 10 and 13, 2012;

**AND WHEREAS** the Commission is of the opinion that it is in the public interest to make this order and the parties have consented to the following dates;

**IT IS HEREBY ORDERED** that,

1. Staff shall serve and file their written closing submissions on or by September 17, 2012;
2. Khodjaiaints shall file his written closing submissions on or by October 29, 2012;
3. Staff shall file any written reply on or by November 12, 2012;
4. Parties are to attend before the Commission on December 5, 2012 to make their oral closing submissions; and
5. The hearing dates of August 15, 16, and 21, 2012 be vacated;

**DATED** at Toronto, this 13th day of August, 2012.

"Vern Krishna"

## 2.2.2 University of Toronto Asset Management Corporation et al.

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions– relief granted from the mutual fund conflict of interest restrictions in the Securities Act (Ontario) to allow pooled funds to make and hold an investment from time to time in more than 20% of the outstanding voting securities of an underlying fund – relief subject to certain conditions.

### Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990. c. S.5, as am., ss. 111(2)(b), 111(3), 113.

August 21, 2012

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

AND

IN THE MATTER OF  
UNIVERSITY OF TORONTO ASSET MANAGEMENT CORPORATION  
(UTAM or the Filer)

AND

IN THE MATTER OF  
UTAM CANADIAN EQUITY FUND, UTAM US EQUITY FUND,  
UTAM INTERNATIONAL EQUITY FUND, UTAM CANADIAN CREDIT FUND, AND  
UTAM CANADIAN FIXED INCOME FUND  
(the Initial Top Funds) and any other similar investment fund that is not a reporting issuer  
under the *Securities Act* (Ontario) (the Act), which will be established,  
advised and managed by the Filer (the Future Top Funds,  
together with the Initial Top Funds, the Top Funds and individually a Top Fund)

ORDER

### Background

The principal regulator in the Jurisdiction has received an application from the Filer, on its behalf and on behalf of the Top Funds, for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Top Funds from the following provisions of the Act to permit a Top Fund, alone or together with one or more other Top Funds, to make and hold an investment from time to time that is more than 20% of the outstanding voting securities of an Underlying Fund, as defined below (the **Exemption Sought**):

- (a) paragraph 111(2)(b) which prohibits a mutual fund from knowingly making an investment in a person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial security holder; and
- (b) subsection 111(3) which prohibits a mutual fund, its management company or its distribution company from knowingly holding an investment described in paragraph (a) above.

### Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined.

### Representations

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

*The Filer*

1. The Filer is a corporation that was incorporated by letters patent on April 25, 2000 by The Governing Council of the University of Toronto (the **UofT**) under the *Corporations Act* (Ontario), and operates out of its head office in Toronto, Ontario.
2. The principal objectives of the Filer, pursuant to discretionary investment management agreements with the pension and endowment funds of the UofT, are to create added value by providing both current and future financial resources for the pension and endowment funds of UofT that will contribute to globally recognized education and research. In the future, UTAM may consider acting as an adviser for other similar entities (with the pension and endowment funds of the UofT, the **Clients**).
3. The Filer is the investment fund manager and portfolio manager of the Initial Top Funds and will be the investment fund manager and portfolio manager of any Future Top Funds.
4. State Street Trust Company Canada is the trustee of the Initial Top Funds and will be the trustee of any Future Top Funds.
5. The Filer is currently registered with the Commission as an investment fund manager and as a portfolio manager.
6. The Filer is not, and does not intend to become, a reporting issuer in any jurisdiction of Canada.
7. Neither the Filer nor any of the Initial Top Funds is in default of securities legislation in any jurisdiction of Canada.

*Top Funds*

8. Each Top Fund is, or will be, an open-ended unincorporated trust formed under the laws of Ontario by a master trust agreement and a supplemental trust agreement.
9. Each Top Fund is, or will be, a "mutual fund in Ontario" for purposes of the Act.
10. No Top Fund is, or will be, a reporting issuer in any jurisdiction of Canada.
11. Each Top Fund may invest all, or a portion, of its assets in securities of an Underlying Fund (the **Fund-on-Fund Structure**). Subject to obtaining the Exemption Sought, each Top Fund may, alone or together with one or more other Top Funds, make and hold an investment from time to time that is more than 20% of the outstanding voting securities of an Underlying Fund.
12. Securities of each Top Fund are, and will be, sold pursuant to available prospectus exemptions in accordance with National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**).
13. Units of the Top Funds are, or will be, redeemable on a monthly basis.

*Underlying Funds*

14. Each Underlying Fund is, or will be, an investment fund managed by a third party manager that is arm's length to the Filer and UofT and the securities of which are, or will be, sold to a Top Fund pursuant to a prospectus, or available prospectus exemptions in accordance with NI 45-106 (each an **Underlying Fund**).
15. Each Underlying Fund has, or will have, its own investment objectives, strategies and investment restrictions.
16. To the best of the knowledge of the Filer, none of the Underlying Funds is in default of securities legislation in any jurisdiction of Canada.

*Fund-on-Fund Investing*

17. The Filer believes that the Fund-on-Fund Structure provides an efficient and cost-effective manner of pursuing portfolio diversification on behalf of the Top Funds, rather than through the direct purchase of the portfolio securities of the Underlying Funds or the use of managed accounts with various fund managers/portfolio managers of the Underlying Funds (which should yield the same results, but with greater administrative cost to both the Top Funds and the fund managers/portfolio managers of the Underlying Funds). In addition, in certain situations, the Filer may only be able to gain access to certain investment strategies by investing in the securities of an Underlying Fund.

18. The Fund-on-Fund Structure will also allow Top Funds to have access to a larger variety of investments than would otherwise be available.
19. An investment by a Top Fund in the securities of an Underlying Fund will increase the asset base of the Underlying Fund, enabling the Underlying Fund to further diversify its investment portfolio to the benefit of all of its investors. The larger asset base will also benefit investors in the Underlying Fund by allowing more favourable pricing and transaction costs on portfolio trades, increasing access to investments where there is a minimum subscription or purchase amount, and economies of scale through greater administrative efficiency.
20. The Top Funds are, or will be, "related mutual funds" for purposes of the Act. The amounts invested from time to time in an Underlying Fund by a Top Fund, either alone or together with other Top Funds, may exceed 20% of the outstanding voting securities of the Underlying Fund. As a result each Top Fund, either alone or together with other Top Funds, will be a "substantial securityholder" of such Underlying Fund for the purposes of the Act.
21. In the absence of the Exemption Sought, the Top Funds would be constrained by paragraph 111(2)(b) and subsection 111(3) of the Act in terms of the degree to which they could implement the Fund-on-Fund Structure.
22. Any investment by a Top Fund in an Underlying Fund will be aligned with the investment objectives, investment strategy, risk profile and other principal terms of the Top Fund. The weighting of the investment by a Top Fund in an Underlying Fund will be reviewed and adjusted by the Filer as necessary to ensure that the weighting continues to be appropriate for the Top Fund's investment objectives.
23. The Top Funds currently do not use an offering memorandum or similar document as the pension and endowment funds of the UoFT do not require such documentation. UTAM manages the assets of the pension and endowment funds of the UoFT pursuant to an investment management agreement. The pension and endowment funds of the UoFT, as the only existing investors in the Top Funds, will be advised in writing about the disclosure contemplated in paragraph (f) of the decision set forth below before the Top Funds begin to rely on the decision. UTAM may also manage the assets of other Clients in the future pursuant to an investment management agreement which will contain the disclosure contemplated in paragraph (f) of the decision set forth below.
24. Each of the Top Funds will prepare annual financial statements and interim unaudited financial statements in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) and will otherwise comply with the requirements of NI 81-106 applicable to them. The holdings by a Top Fund of securities of an Underlying Fund will be disclosed in the financial statements.
25. Unitholders of a Top Fund will receive, on request and free of charge, a copy of any prospectus, offering memorandum or other similar document prepared and used and the audited financial statements and interim financial statements of any Underlying Fund in which the Top Fund invests.
26. The Underlying Funds will typically invest in equity securities, fixed income securities and other types of permitted investments, which will generally be liquid. It is not expected that any of the Underlying Funds will typically hold illiquid investments as part of their investment strategy. However, certain Underlying Funds may have restrictions or delays with respect to redemptions in order to allow adequate time to dispose of portfolio holdings needed to fund redemptions.
27. Securities of the Underlying Funds are typically redeemable on a daily or monthly basis, and are occasionally redeemable on a quarterly basis. As the Top Funds are managed using a long-term investment horizon, the Top Funds are able in accordance with their investment objectives to adequately plan when they want to sell a particular investment such that the Top Funds do not anticipate any problems redeeming the securities of an Underlying Fund, regardless of whether or not the securities of the Underlying Fund can be redeemed on a daily, monthly or quarterly basis.
28. A Top Fund's investments in the Underlying Funds will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of 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) units of a Top Fund are only distributed in Canada pursuant to exemptions from the prospectus requirement in accordance with NI 45-106;
- (b) the investment by a Top Fund in securities of an Underlying Fund is compatible with the fundamental investment objectives of the Top Fund;
- (c) no management fees or incentive fees are payable by a Top Fund that, to a reasonable person, will duplicate a fee payable by the Underlying Fund for the same service;
- (d) no sales or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of securities of an Underlying Fund that, to a reasonable person, would duplicate a fee payable by an investor in the Top Fund;
- (e) a Top Fund will not purchase or hold securities of an Underlying Fund unless:
  - (i) at the time of the purchase of securities of the Underlying Fund, the Underlying Fund holds no more than 10% of the market value of its net assets in securities of other mutual funds, or
  - (ii) the Underlying Fund:
    - (A) links its performance to the performance of one other mutual fund (i.e., a clone fund),
    - (B) purchases or holds securities of a "money market fund" as defined by National Instrument 81-102 Mutual Funds (NI 81-102), or
  - (C) purchases or holds securities that are "index participation units" as defined by NI 81-102 and issued by a mutual fund.
- (f) Each investor who is not currently an investor in a Top Fund will be provided, in the offering memorandum or similar document of a Top Fund, or, if no offering memorandum or similar document is used, in another document, with the following disclosure:
  - (i) that the Top Fund may purchase securities of an Underlying Fund;
  - (ii) the approximate or maximum percentage of net assets of the Top Fund that may be invested in securities of the Underlying Funds; and
  - (iii) the process or criteria used to select Underlying Funds.
- (g) Each investor who is currently an investor in a Top Fund will be advised in writing about the disclosure contemplated in paragraph (f) of the decision set forth above before the Top Funds begin to rely on the decision.

"James Turner"  
Vice-Chair  
Ontario Securities Commission

"Vern Krishna"  
Commissioner  
Ontario Securities Commission

**2.2.3 Shane Suman and Monie Rahman – 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  
SHANE SUMAN AND MONIE RAHMAN**

**ORDER  
(Sections 127 and 127.1 of the Securities Act)**

**WHEREAS** on July 24, 2007, a Statement of Allegations and a Notice of Hearing were issued pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “**Act**”) in the matter of Shane Suman (“**Suman**”) and Monie Rahman (“**Rahman**”) (collectively, the “**Respondents**”);

**AND WHEREAS** the Commission conducted a hearing on the merits in this matter; and issued its Reasons and Decision on the merits on March 19, 2012 (the “**Merits Decision**”);

**AND WHEREAS** the Commission concluded in the Merits Decision that Suman contravened Ontario securities law and that Suman and Rahman acted contrary to the public interest;

**AND WHEREAS** the Commission conducted a hearing with respect to the sanctions and costs to be imposed in this matter on July 16, 2012;

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

**IT IS HEREBY ORDERED THAT:**

- (a) pursuant to clause 2 of subsection 127(1) of the Act, Suman shall cease trading in any securities permanently;
- (b) pursuant to clause 2 of subsection 127(1) of the Act, Rahman shall cease trading in any securities for a period of five years from the date of this order, after which she may trade in securities only if the costs awarded against her jointly and severally with Suman have been paid in full to the Commission;
- (c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Suman is prohibited permanently;
- (d) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Rahman is prohibited for a period of five years from the date of this

order, after which she may acquire securities only if the costs awarded against her jointly and severally with Suman have been paid in full to the Commission;

- (e) pursuant to clause 8 of subsection 127(1) of the Act, each of the Respondents shall be prohibited permanently from becoming or acting as a director or officer of any reporting issuer;
- (f) pursuant to clause 9 of subsection 127(1) of the Act, Suman shall pay an administrative penalty of \$250,000 to the Commission, such amount to be allocated to or for the benefit of third parties;
- (g) pursuant to clause 10 of subsection 127(1) of the Act, Suman shall disgorge \$954,938.07 to the Commission, such amount to be allocated to or for the benefit of third parties; and
- (h) pursuant to section 127.1 of the Act, Suman and Rahman shall jointly and severally pay costs of \$250,000 to the Commission.

Dated at Toronto, Ontario this 22nd day of August, 2012.

“James E. A. Turner”

“Paulette L. Kennedy”

**2.2.4 Energy Syndications Inc. 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  
ENERGY SYNDICATIONS INC.,  
GREEN SYNDICATIONS INC.,  
SYNDICATIONS CANADA INC.,  
LAND SYNDICATIONS INC. AND  
DOUGLAS CHADDOCK**

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

**WHEREAS** on April 1, 2011, the Ontario Securities Commission (the “Commission”) issued a temporary cease trade order (the “Temporary Order”) pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”) ordering the following:

1. pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the Act that all trading in any securities of Energy Syndications Inc. (“Energy”), Syndications Canada Inc. (“Syndications”), Green Syndications Inc. (“Green”) and Land Syndications Inc. (“Land”) shall cease;
2. pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the Act that all trading in any securities by Energy, Syndications, Green and Land or their agents or employees shall cease;
3. pursuant to clause 2 of subsection 127(1) and subsection 127(5) of the Act that all trading in any securities by Douglas Chaddock (“Chaddock”) shall cease;
4. pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that the exemptions contained in Ontario securities law do not apply to Energy, Syndications, Green and Land or their agents or employees; and
5. pursuant to clause 3 of subsection 127(1) and subsection 127(5) of the Act that the exemptions contained in Ontario securities law do not apply to Chaddock;

**AND WHEREAS** the Commission ordered that pursuant to subsection 127(6) of the Act, the Temporary Order shall expire on the fifteenth day after its making unless extended by order of the Commission;

**AND WHEREAS** on April 7, 2011, the Commission issued a Notice of Hearing (the “Notice of Hearing”) to consider the extension of the Temporary Order, to be held on April 14, 2011 at 11:00 a.m.;

**AND WHEREAS** Staff of the Commission (“Staff”) served the respondents with copies of the Temporary Order, the Notice of Hearing and Staff’s supporting materials as evidenced by Affidavits of Service filed with the Commission;

**AND WHEREAS** the Commission held a hearing on April 14, 2011 and counsel for Energy, Green, Syndications and Chaddock attended the hearing;

**AND WHEREAS** Staff advised the Panel that it was not seeking to continue the Temporary Order as against Land;

**AND WHEREAS** counsel for Energy, Green, Syndications and Chaddock advised the Panel that they did not oppose the extension of the Temporary Order;

**AND WHEREAS** on April 14, 2011 the Commission ordered that:

1. The Temporary Order is extended until June 24, 2011, or until further order of the Commission;
2. The Temporary Order is not extended against Land; and
3. The extension of the Temporary Order shall not affect the right of any respondent to apply to the Commission under section 144 of the Act to revoke or vary this order upon five days written notice to Staff of the Commission;

**AND WHEREAS** on April 14, 2011 the Commission further ordered that the hearing be adjourned to June 22, 2011 at 10:00 a.m.;

**AND WHEREAS** the Commission held a hearing on June 22, 2011 to consider an extension of the Temporary Order;

**AND WHEREAS** counsel for Energy, Green, Syndications and Chaddock attended the hearing and advised the Panel that they did not oppose the extension of the Temporary Order;

**AND WHEREAS** on June 22, 2011 the Commission ordered that:

1. The Temporary Order is extended until September 9, 2011, or until further order of the Commission;
2. The extension of the Temporary Order does not prohibit Green from engaging in the sale of goods provided that any sales

agreement does not constitute an investment contract, as defined by Ontario securities law; and

3. The extension of the Temporary Order shall not affect the right of any respondent to apply to the Commission under section 144 of the Act to revoke or vary this order upon five days written notice to Staff of the Commission;

**AND WHEREAS** on June 22, 2011 the Commission further ordered that the hearing be adjourned to September 8, 2011 at 11:00 a.m.;

**AND WHEREAS** the Commission held a hearing on September 8, 2011 to consider the extension of the Temporary Order;

**AND WHEREAS** counsel for Energy, Green, Syndications and Chaddock attended the hearing and advised that they did not oppose the extension of the Temporary Order;

**AND WHEREAS** on September 8, 2011 the Commission extended the Temporary Order on the same terms until March 9, 2012 and further ordered that the hearing be adjourned to March 8, 2012 at 10:00 a.m.;

**AND WHEREAS** the Commission held a hearing on March 8, 2012 to consider the extension of the Temporary Order, at which Chaddock attended on behalf of himself and on behalf of Energy, Green, and Syndications;

**AND WHEREAS** on March 8, 2012 the Commission extended the Temporary Order on the same terms until April 12, 2012, and further ordered that the hearing be adjourned to April 11, 2012 at 11:00 a.m.;

**AND WHEREAS** the Commission held a hearing on April 11, 2012 to consider the extension of the Temporary Order, at which Chaddock attended on behalf of himself and on behalf of Energy, Green, and Syndications;

**AND WHEREAS** on April 11, 2012 the Commission extended the Temporary Order on the same terms until July 19, 2012, and further ordered that the hearing be adjourned to July 18, 2012 at 10:30 a.m.;

**AND WHEREAS** the Commission held a hearing on July 18, 2012 to consider the extension of the Temporary Order, at which Chaddock attended on behalf of himself and on behalf of Energy, Green, and Syndications;

**AND WHEREAS** on July 18, 2012 the Commission extended the Temporary Order on the same terms until August 22, 2012, and further ordered that the hearing be adjourned to August 21, 2012 at 10:30 a.m.;

**AND WHEREAS** the Commission held a hearing on August 21, 2012 to consider the extension of the Temporary Order;

**AND WHEREAS** Chaddock attended the hearing on behalf of himself and on behalf of Energy, Green, and Syndications;

**AND WHEREAS** Staff confirmed that the Temporary Order is not in place against Land Syndications Inc. (defined previously in this order as "Land") and that "Land Syndications" is an unincorporated division of Syndications;

**AND WHEREAS** the Panel considered the submissions from Staff and Chaddock and the Commission is of the opinion that it is in the public interest to make this order;

**IT IS HEREBY ORDERED** that:

1. The Temporary Order is extended until October 3, 2012 or until further order of the Commission;
2. The extension of the Temporary Order does not prohibit Green from engaging in the sale of goods provided that any sales agreement does not constitute an investment contract, as defined by Ontario securities law; and
3. The extension of the Temporary Order shall not affect the right of any respondent to apply to the Commission under section 144 of the Act to revoke or vary this order upon five days written notice to Staff of the Commission;

**IT IS FURTHER ORDERED** that the hearing of this matter is adjourned to October 2, 2012 at 10:30 a.m. or on such other date or time as provided by the Secretary's Office and agreed to by the parties.

**DATED** at Toronto this 21st day of August, 2012.

"Mary G. Condon"



**2.2.5 Energy Syndications Inc. et al. – s. 127**

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

**AND**

**IN THE MATTER OF  
ENERGY SYNDICATIONS INC.,  
GREEN SYNDICATIONS INC.,  
SYNDICATIONS CANADA INC.,  
DANIEL STRUMOS, MICHAEL BAUM  
AND DOUGLAS WILLIAM CHADDOCK**

**ORDER  
(Section 127)**

**WHEREAS** on March 30, 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”), in relation to a Statement of Allegations filed by Staff of the Commission (“Staff”) on March 30, 2012 in respect of Energy Syndications Inc. (“Energy”), Green Syndications Inc. (“Green”), Syndications Canada Inc. (“Syndications”) (collectively, the “Corporate Respondents”), Daniel Strumos, (“Strumos”), Michael Baum (“Baum”), and Douglas William Chaddock (“Chaddock”) (collectively, the “Respondents”);

**AND WHEREAS** the Notice of Hearing set a hearing in this matter for April 11, 2012 at 11:30 a.m.;

**AND WHEREAS** on April 11, 2012, Strumos, Baum, and Chaddock, on his own behalf and on behalf of the Corporate Respondents, attended the hearing;

**AND WHEREAS** on April 11, 2012, the Commission ordered that the matter was adjourned to a confidential pre-hearing conference to be held on July 18, 2012 at 10:00 a.m.;

**AND WHEREAS** on July 18, 2012, a confidential pre-hearing conference was held, at which Strumos, Baum and Chaddock, on his own behalf and on behalf of the Corporate Respondents, attended;

**AND WHEREAS** on July 18, 2012, the Commission ordered that the matter was adjourned to a confidential pre-hearing conference to be held on August 21, 2012 at 10:00 a.m.;

**AND WHEREAS** on August 21, 2012, a confidential pre-hearing conference was held, at which Baum, Chaddock, on his own behalf and on behalf of the Corporate Respondents, and Strumos and his counsel attended;

**AND WHEREAS** the Panel considered the submissions from Staff and the Respondents and the Commission is of the opinion that it is in the public interest to make this order;

**IT IS ORDERED** that this matter is adjourned to a confidential pre-hearing conference to be held on October 2, 2012 at 10:00 a.m. for the purpose of scheduling the hearing on the merits in this matter.

**DATED** at Toronto this 21st day of August, 2012.

“Mary G. Condon”

**2.2.6 Heritage Education Funds Inc. – 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  
HERITAGE EDUCATION FUNDS INC.**

**ORDER  
(Subsections 127(1) and (8))**

**WHEREAS** on August 13, 2012, the Ontario Securities Commission (the “Commission”) ordered pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the “Act”) that the terms and conditions set out in Schedule “A” to the Commission order be imposed on Heritage Education Funds Inc. (“HEFI”) (the “Temporary Order”);

**AND WHEREAS** the Temporary Order was obtained on notice to Respondents who consented to the terms of the Temporary Order;

**AND WHEREAS** on August 13, 2012, the Commission ordered that the Temporary Order shall take force immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission and ordered that the matter be brought back before the Commission on August 21, 2012 at 3:30 p.m.;

**AND WHEREAS** on August 15, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act in respect of a hearing to be held at 3:30 p.m. on August 21, 2012 to consider 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 (the “Notice of Hearing”);

**AND WHEREAS** on August 15, 2012, Staff served the Respondent’s counsel with the Notice of Hearing;

**AND WHEREAS** on August 3, 2012, Staff served Markus Koehnen, counsel for the Respondent with the Affidavit of Carlin Fung sworn August 3, 2012 and filed the same affidavit with the Commission on August 21, 2012 in support of the extension of the Temporary Order;

**AND WHEREAS** the Respondent, through its counsel, has advised that it consents to the terms of this Order;

**AND WHEREAS** the Respondent’s counsel has advised that the Respondent’s consultant and monitor have been approved and work by the monitor and consultant has started;

**AND WHEREAS** the Commission considers that it is in the public interest to make this Order;

**IT IS HEREBY ORDERED** pursuant to section 127 of the Act and on consent of the parties that:

1. the Temporary Order is extended until November 23, 2012 or until further order of the Commission; and
2. the hearing in this matter is adjourned to November 22, 2012 at 11:30 a.m. for the purpose of providing the Commission with an update on the work completed by the monitor and the consultant as required under the terms and conditions imposed on HEFI.

**DATED** at Toronto this 21st day of August, 2012.

“James E. A. Turner”

**2.2.7 Knowledge First Financial Inc. – 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  
KNOWLEDGE FIRST FINANCIAL INC.**

**ORDER  
(Subsections 127(1) and (8))**

**WHEREAS** on August 10, 2012, the Ontario Securities Commission (the “Commission”) ordered pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the “Act”) that the terms and conditions set out in Schedule “A” to the Commission order be imposed on Knowledge First Financial Inc. (“KFFI”) (the “Temporary Order”);

**AND WHEREAS** the Temporary Order was obtained on notice to the Respondent who consented to the terms of the Temporary Order;

**AND WHEREAS** on August 10, 2012, the Commission ordered that the Temporary Order shall take force immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission and ordered that the matter be brought back before the Commission on August 21, 2012 at 3:30 p.m.;

**AND WHEREAS** on August 15, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act in respect of a hearing to be held at 3:30 p.m. on August 21, 2012 to consider 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 (the “Notice of Hearing”);

**AND WHEREAS** on August 15, 2012, Staff served Respondent’s counsel with the Notice of Hearing;

**AND WHEREAS** on August 16, 2012, Staff served Sean D. Sadler, counsel for the Respondent with the Affidavit of Maria Carelli sworn August 16, 2012 and filed the same affidavit with the Commission on August 21, 2012 in support of the extension of the Temporary Order;

**AND WHEREAS** the Respondent, through its counsel, has advised that it consents to the terms of this Order;

**AND WHEREAS** the Respondent’s counsel has advised that the Respondent’s consultant and monitor have been approved and work by the monitor and consultant has started;

**AND WHEREAS** the Respondent has responded in writing to Staff’s compliance report dated June 14, 2012 and is continuing to address the matters outlined therein;

**AND WHEREAS** the Commission considers that it is in the public interest to make this Order;

**IT IS HEREBY ORDERED** pursuant to section 127 of the Act and on consent of the parties that:

1. the Temporary Order is extended until November 14, 2012 or until further order of the Commission; and
2. the hearing in this matter is adjourned to November 13, 2012 at 10:00 a.m. for the purpose of providing the Commission with an update on the work completed by the monitor and the consultant as required under the terms and conditions imposed on KFFI.

**DATED** at Toronto this 21st day of August, 2012.

“James E.A. Turner”

**2.2.8 Trelawney Augen Acquisition Corp. – 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  
TRELAWNEY AUGEN ACQUISITION CORP.  
(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 (i) common shares (**Common Shares**) and (ii) redeemable preferred shares (**Preferred Shares**).
2. The head office of Applicant is located at 130 King Street West, Suite 2810, Toronto, Ontario, M5X 1A6.
3. The Applicant is a wholly-owned subsidiary of Trelawney Mining and Exploration Inc. ("**Trelawney**").
4. On June 21, 2012, IAMGOLD Corporation (**IAMGOLD**) completed the acquisition of all of the issued and outstanding common shares of Trelawney through a court-approved plan of arrangement under the OBCA (the Arrangement).
5. As of the date of this decision, all of the outstanding securities of the Applicant which are beneficially owned, directly or indirectly, are held by a sole securityholder, Trelawney.
6. The Common Shares and Preferred Shares are not listed on any stock exchange or traded over the counter in Canada or elsewhere.
7. No securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
8. The Applicant is a reporting issuer, or the equivalent, in all of the jurisdictions in Canada in which it is currently a reporting issuer and to its knowledge is currently not in default of any of the applicable requirements under the legislation. The Applicant has applied for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer (the Relief Requested).
9. The Applicant has no intention to seek public financing by way of an offering of securities.
10. Upon the grant of the Relief Requested, the Applicant will not be a reporting issuer or equivalent in any jurisdiction of 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 this 17th day of August, 2012.

"Sarah B. Kavanagh"  
Commissioner

"Edward P. Kerwin"  
Commissioner

**2.2.9 Trelawney Mining And Exploration Inc. – 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  
TRELAWNEY MINING AND EXPLORATION INC.  
(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 Applicant is located at 130 King Street West, Suite 2810, Toronto, Ontario, M5X 1A6.
3. On June 21, 2012, IAMGOLD Corporation (**IAMGOLD**) completed the acquisition of all of the issued and outstanding Common Shares of the Applicant through a court approved plan of arrangement under the OBCA (the **Arrangement**).
4. As of the date of this decision, all of the outstanding securities of the Applicant which are beneficially owned, directly or indirectly, are held by two securityholders, IAMGOLD and 2324010 Ontario Inc., a wholly-owned subsidiary of IAMGOLD.

5. The Common Shares were de-listed from the TSX Venture Exchange before the start of trading on June 25, 2012 and were delisted from the Frankfurt Stock Exchange on June 25, 2012 and are not listed on any other stock exchange or traded over the counter in Canada or elsewhere.
6. No securities of the Applicant are traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
7. The Applicant is a reporting issuer, or the equivalent, in all of the jurisdictions in Canada in which it is currently a reporting issuer and to its knowledge is currently not in default of any of the applicable requirements under the legislation. The Applicant has applied for relief to cease to be a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer (the **Relief Requested**).
8. The Applicant has no intention to seek public financing by way of an offering of securities.
9. Upon the grant of the Relief Requested, the Applicant will not be a reporting issuer or equivalent in any jurisdiction of 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 this 17th day of August, 2012.

"Sarah B. Kavanagh"  
Commissioner  
"Edward P. Kerwin"  
Commissioner

**2.2.10 Moncasa Capital Corporation and John Frederick Collins – Rule 1.7.4 of the OSC Rules of Procedure**

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

**AND**

**IN THE MATTER OF  
MONCASA CAPITAL CORPORATION AND  
JOHN FREDERICK COLLINS**

**ORDER**

**(Rule 1.7.4 of the Ontario Securities Commission  
Rules of Procedure (2010), 33 O.S.C.B. 8017)**

**WHEREAS** on March 6, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in relation to a Statement of Allegations issued pursuant to sections 37, 127 and 127.1 of the Securities Act, R.S.O. 1990 c. S.5, as amended, in respect of Moncasa Capital Corporation and John Frederick Collins (collectively, the "Respondents");

**AND WHEREAS** on August 20, 2012, counsel for the Respondents, Wardle Daley Bernstein LLP, filed a Motion Record and Notice of Motion, pursuant to rule 1.7.4 of the Commission's Rules of Procedure (2010), 33 O.S.C.B. 8017, for leave to withdraw as counsel for the Respondents (the "Withdrawal Motion");

**AND WHEREAS** Wardle Daley Bernstein LLP has confirmed that the Respondents have been served with the Withdrawal Motion;

**IT IS ORDERED** that the Withdrawal Motion is heard in writing;

**IT IS FURTHER ORDERED** that Wardle Daley Bernstein LLP is granted leave to withdraw as counsel for the Respondents.

**DATED** at Toronto, this 22nd day of August, 2012.

"Edward P. Kerwin"

**2.2.11 Portus Alternative Asset Management Inc. et al. – s. 127(1)**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
MICHAEL LABANOWICH**

**ORDER  
(Sections 127(1))**

**WHEREAS** on August 23, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") in respect of Michael Labanowich ("Labanowich");

**AND WHEREAS** Labanowich entered into a Settlement Agreement with Staff of the Commission dated August 27, 2012 (the "Settlement Agreement") in which Labanowich agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and upon hearing submissions from counsel for Labanowich and from Staff of the Commission;

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

**IT IS HEREBY ORDERED THAT:**

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 7 of subsection 127(1) of the Act, Labanowich resign all positions he holds as a director or officer of an issuer;
- (c) pursuant to clause 8 of subsection 127(1) of the Act, Labanowich is prohibited for a period of six years from the date of this Order from becoming or acting as a director or officer of any reporting issuer;
- (d) pursuant to clause 8.2 of subsection 127(1) of the Act, Labanowich is

prohibited from becoming or acting as a compliance officer of a registrant; and,

- (e) pursuant to section 127.1 of the Act, Labanowich shall pay costs to the Commission in the amount of \$25,000.

**DATED AT TORONTO** this 27th day of August, 2012.

"James E. A. Turner"

**2.2.12 Portus Alternative Asset Management Inc. et al. – s. 127(1)**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
BOAZ MANOR**

**ORDER  
(Sections 127(1))**

**WHEREAS** on August 24, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Boaz Manor ("Manor");

**AND WHEREAS** Manor entered into a Settlement Agreement with Staff of the Commission dated August 27, 2012 (the "Settlement Agreement") in which Manor agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement, and upon hearing submissions from counsel for Manor and from Staff of the Commission;

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

**IT IS HEREBY ORDERED THAT:**

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Manor cease permanently;
- (c) pursuant to clause 2.1 of subsection 127(1) of the Act, Manor is prohibited permanently from the acquisition of any securities with the exception that Manor is permitted to acquire securities in mutual funds and exchange traded funds through a registered dealer for the account of his Registered Retirement Savings Plan (as defined in the *Income Tax Act* (Canada));

- (d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Manor permanently;
- (e) pursuant to clause 6 of subsection 127(1) of the Act, Manor is reprimanded;
- (f) pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Manor is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- (g) pursuant to clause 8.5 of subsection 127(1) of the Act, Manor is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and
- (h) pursuant to clause 10 of subsection 127(1) of the Act, Manor disgorge to the Commission \$8,800,000 obtained as a result of his non-compliance with securities law, for allocation in accordance with subsection 3.4(2)(b)(i) of the Act to or for the benefit of third parties. Such amounts are to be distributed to security holders of Portus through the Receiver/Trustee KPMG Inc., if appropriate, or as otherwise directed by the Commission.

**DATED AT TORONTO** this 27th day of August, 2012.

“James E. A. Turner”

**2.2.13 Portus Alternative Asset Management Inc. et al. – s. 127(1)**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**AND**

**IN THE MATTER OF  
A SETTLEMENT AGREEMENT BETWEEN STAFF OF  
THE ONTARIO SECURITIES COMMISSION AND  
JOHN OGG**

**ORDER  
(Sections 127(1))**

**WHEREAS** on August 23, 2012, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing pursuant to sections 127 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the “Act”) in respect of John Ogg (“Ogg”);

**AND WHEREAS** Ogg entered into a Settlement Agreement with Staff of the Commission dated August 27, 2012 (the “Settlement Agreement”) in which Ogg agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement, and upon hearing submissions from counsel for Ogg and from Staff of the Commission;

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

**IT IS HEREBY ORDERED THAT:**

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 7 of subsection 127(1) of the Act, Ogg resign all positions he holds as a director or officer of an issuer;
- (c) pursuant to clause 8 of subsection 127(1) of the Act, Ogg is prohibited for a period of six years from the date of this Order from becoming or acting as a director or officer of any reporting issuer;
- (d) pursuant to clause 8.2 of subsection 127(1) of the Act, Ogg is prohibited from becoming or acting as a compliance officer of a registrant; and,



- (e) pursuant to section 127.1 of the Act, Ogg shall pay costs to the Commission in the amount of \$25,000.

**DATED AT TORONTO** this 27th day of August, 2012.

“James E. A. Turner”

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## Chapter 3

# Reasons: Decisions, Orders and Rulings

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### 3.1 OSC Decisions, Orders and Rulings

#### 3.1.1 Douglas Allan Lawson – s. 27(3)

#### IN THE MATTER OF THE REGISTRATION OF DOUGLAS ALLAN LAWSON

#### STAFF'S RECOMMENDATION REGARDING IMPOSITION OF TERMS AND CONDITIONS ON REGISTRATION Subsection 27(3) of the Securities Act, R.S.O. 1990, c. S.5

**Date of decision:** August 16, 2012

**Director:** Marianne Bridge  
Deputy Director,  
Compliance and Registrant Regulation  
Ontario Securities Commission

**Written Submissions by:** Michael Denyszyn, Senior Legal Counsel  
For staff of the Ontario Securities Commission

And

Michael Meredith, Crawley Meredith Brush LLP  
Counsel for Mr. Lawson

#### Introduction

On October 7, 2010, Douglas Allan Lawson advised Staff (**Staff**) of the Ontario Securities Commission (the **OSC**) in writing that he intended to surrender the registration of Wealth Advisory Services Ltd. (**WAS**), where he acted as chief compliance officer and sole dealing representative in the categories of mutual fund dealer and exempt market dealer, and to seek registration as a dealing representative in the category of mutual fund dealer, sponsored by IPC Investment Corporation (**IPC**). Mr. Lawson formally applied for registration with IPC on July 27, 2012 (the **Application**).

In its review of the Application, Staff considered information from the Mutual Fund Dealers Association of Canada (the **MFDA**) in respect of Mr. Lawson's conduct while sponsored by WAS. WAS applied on July 27, 2012 to surrender its registration as a dealer in the categories of mutual fund dealer and exempt market dealer.

Staff and Mr. Lawson have agreed to resolve the Application through a joint recommendation that: (i) Staff will not recommend that an application by Mr. Lawson for registration as a dealing representative with IPC in the category of mutual fund dealer be refused unless Staff becomes aware after the date of this joint recommendation of conduct impugning Mr. Lawson's integrity, proficiency or solvency; (ii) Mr. Lawson's registration be subject to strict supervision by IPC for a period of one year; and (iii) Mr. Lawson's registration be subject to terms and conditions requiring Mr. Lawson to successfully complete, and provide proof thereof, the Canadian Securities Course (**CSC**) offered by CSI Global Education Inc. by no later than August 1, 2013.

#### Agreed Statement of Facts

Staff and Mr. Lawson agree with the facts contained in the "Agreed Facts" section of the MFDA Settlement Agreement in *Re Douglas A. Lawson*, which is reproduced in its entirety at **Schedule A** to this joint recommendation.

#### Joint Recommendation

Staff and Mr. Lawson jointly recommend that in light of the facts agreed to above, and of the sanctions imposed by the MFDA, the appropriate conditions to address the agreed facts in this case are that:

- (i) Staff will not recommend that an application by Mr. Lawson for registration as a dealing representative with IPC in the category of mutual fund dealer be refused unless Staff becomes aware after the date of this joint recommendation of conduct impugning Mr. Lawson's integrity, proficiency or solvency;
- (ii) Mr. Lawson's registration will be subject to strict supervision by IPC for a period of one year from the date hereof; and
- (iii) Mr. Lawson's registration will be subject to terms and conditions requiring Mr. Lawson to successfully complete, and provide proof thereof, the CSC by no later than August 1, 2013.

Staff and Mr. Lawson submit that their joint recommendation is reasonable in light of the considerations identified by the Commission in decisions such as *Re Al-tar Energy Corp.* (2011), 34 O.S.C.B. 447.

#### Acknowledgements

1. Mr. Lawson acknowledges that if the Director accepts this joint recommendation:
  - a. He agrees to waive all rights to a full hearing, judicial review, or appeal of this matter; and
  - b. A copy of the Director's decision accepting this joint recommendation, which may include reference to all or part of the agreed statement of facts, may be published on the OSC website and in the OSC Bulletin;
2. Staff and Mr. Lawson acknowledge that if the Director does not accept this joint recommendation:
  - a. This joint recommendation and all discussions and negotiations between Staff and counsel for Mr. Lawson in relation to this matter shall be without prejudice to Staff or Mr. Lawson; and
  - b. Mr. Lawson will be entitled to all available proceedings in relation to Staff's recommendation should Staff recommend that the Application be refused or made subject to terms and conditions.

"Michael Denyszyn"

Michael Denyszyn,  
Senior Legal Counsel,  
Compliance and Registrant Regulation

August 15, 2012

Date

"Douglas Allan Lawson"

Douglas Allan Lawson

August 15, 2012

Date

\* \* \*

Having reviewed and considered the agreed statement of facts, representations, and submissions contained in this memorandum, I, Marianne Bridge, in my capacity as Director under the *Securities Act* (Ontario):

"X" Accept the joint recommendation of the parties, and hereby order that Douglas Allan Lawson's application for reactivation of registration as a dealing representative in the category of mutual fund dealer, sponsored by IPC Investment Corporation (IPC), is granted. I make this order on the express understanding that:

- Staff will recommend, and Mr. Lawson and IPC will accept, that Mr. Lawson's registration will be subject to strict supervision by IPC for a period of one year from the date hereof; and
- Staff will recommend, and Mr. Lawson and IPC will accept, that Mr. Lawson's registration be subject to terms and conditions requiring Mr. Lawson to successfully complete, and provide proof thereof, the Canadian Securities Course (CSC) offered by CSI Global Education Inc. by no later than August 1, 2013.

\_\_\_ Do not accept the joint recommendation of the parties.

"Marianne Bridge"

Marianne Bridge  
Deputy Director, Compliance and Registrant Regulation  
Ontario Securities Commission

## SCHEDULE A



**Mutual Fund Dealers Association of Canada**  
Association canadienne des courtiers de fonds mutuels

**Settlement Agreement**  
**File No. 200907**

**IN THE MATTER OF  
A SETTLEMENT HEARING  
PURSUANT TO SECTION 24.4 OF BY-LAW NO. 1 OF  
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

**Re: Douglas A. Lawson**

**SETTLEMENT AGREEMENT**

### **I. INTRODUCTION**

1. By Notice of Settlement Hearing the Mutual Fund Dealers Association of Canada (the "MFDA") announced that it proposed to hold a hearing to consider whether, pursuant to section 24.4 of By-law No. 1, a hearing panel of the MFDA Central Regional Council (the "Hearing Panel") should accept the settlement agreement (the "Settlement Agreement") entered into between staff of the MFDA ("Staff") and the Respondent, Douglas Lawson ("Lawson").

### **II. JOINT SETTLEMENT RECOMMENDATION**

2. Staff conducted an investigation of Lawson's activities. The investigation disclosed that Lawson had engaged in activity for which Lawson could be penalized on the exercise of the discretion of the Hearing Panel pursuant to s. 24.1 of By-law No. 1.

3. Staff and Lawson recommend settlement of the matters disclosed by the investigation in accordance with the terms and conditions set out below. Lawson agrees to the settlement on the basis of the facts set out in Parts IV and V herein and consents to the making of an Order in the form attached as Schedule "A".

4. Staff and Lawson agree that the terms of this Settlement Agreement, including the attached Schedule "A", will be released to the public only if and when the Settlement Agreement is accepted by the Hearing Panel.

### **III. ACKNOWLEDGEMENT**

5. Staff and Lawson agree with the facts set out in Parts IV and V herein for the purposes of this Settlement Agreement only and further agree that this agreement of facts is without prejudice to Lawson or Staff in any other proceeding of any kind including, but without limiting the generality of the foregoing, any proceedings brought by the MFDA (subject to paragraph 53 below) or any civil or other proceedings which may be brought by any other person or agency, whether or not this Settlement Agreement is approved by the MFDA.

### **IV. OVERVIEW**

6. Wealth Advisory Services ("WAS") is a Member of the MFDA. Lawson is and was at all times a salaried employee of WAS. Lawson is the President and Secretary of WAS, its only salesperson and its Compliance Officer. Promittere S & P 500 Limited ("Promittere") was a non-arm's length company to WAS by virtue of common ownership at the time the Promittere product described herein was launched. Robert J. Thiessen ("Thiessen") is the director of Promittere and the controlling mind of both WAS and of Promittere. WAS is wholly owned by Promittere Capital Group Limited Partnership, which at all material times was owned 70% by Thiessen through wholly-owned corporations. The remaining 30% was at all material times owned directly, indirectly or beneficially by members of Thiessen's family. In the ordinary course of activities at WAS, Lawson reported to and acted under the direction of Thiessen.

7. Between August 2002 and November 2005, Lawson sold shares of Promittere to clients of WAS as a means of investing in S&P 500 Futures Index Contracts and other similar instruments on the Chicago Mercantile Exchange. The trading in respect of Promittere was to be managed by G.H. Lewis & Associates ("G.H. Lewis"). In total, 48 clients of WAS invested \$2,883,993 USD (in 39 accounts) in shares of Promittere on the advice of Lawson. As a result of these sales, Lawson earned

fees of approximately \$50,000 CDN paid to him through WAS in the form of shares in Promittere. Upon the collapse of Promittere, Lawson's shares were cancelled and he has not participated in and hereby undertakes that he will not participate in any pro rata recovery paid to shareholders.

8. In September of 2006, Lawson was informed that a fraud had occurred and that Promittere could not account for WAS-client funds. Gordon H. Lewis ("Lewis"), the principal of G.H. Lewis, was subsequently charged with fraud and theft by the Metropolitan Toronto Police Force. On September 14, 2009, Lewis plead guilty to a fraud charge and was sentenced to 12 months under house arrest.

## **V. AGREED FACTS**

### **Lawson's History with Thiessen**

9. Thiessen is a chartered accountant. From 1983 to 1993, Thiessen was a senior executive at Equion Securities Ltd ("Equion"). Lawson joined Equion in January 1985 as a Manager of Corporate Services. Lawson understood that Thiessen, along with Equion's president at the time, was the creator of virtually all of Equion's investment products.

10. Lawson remained employed at Equion until December 31, 1994. Based on his 10 years at Equion, Lawson perceived Thiessen to be a skilled professional, specifically with respect to the creation of investment products.

11. In 1993, Thiessen left Equion to set up his own company, Promittere Securities Ltd., to create investment products. As set out in paragraph 13 below, Promittere Securities Ltd. was registered in Ontario as a limited market dealer and a securities dealer.

12. Lawson joined Thiessen in January of 1995 as a salaried employee of Promittere Securities Ltd. Lawson has been registered as the sole salesperson and the President, Secretary, and Compliance Officer of Promittere Securities Ltd. (and its successors) since 1995, as set out in paragraph 14 below.

### **Registration History**

13. Between January 19, 1993 and October 1, 1999, WAS carried on business as Promittere Securities Ltd. Between June 1, 1993 and December 22, 1994, Promittere Securities Ltd. was registered in Ontario as a limited market dealer. Between December 22, 1994 and November 20, 2001, WAS (operating as Promittere Securities Ltd. until October 1, 1999) was registered in Ontario as a securities dealer. Since November 20, 2001, WAS has been registered in Ontario as a mutual fund dealer and a limited market dealer. WAS became a Member of the MFDA on March 4, 2003.

14. Lawson has been registered as a mutual fund salesperson with WAS (and its predecessor, Promittere Securities Ltd.) since January 1, 1995. At all material times, Lawson was and remains registered as the President and Secretary of WAS, its sole salesperson and its Compliance Officer.

15. At all material times, WAS was essentially a one-person mutual fund dealer with Lawson as its only salesperson. Thiessen and Lawson worked out of the same office (which was shared by WAS and Promittere) and Promittere did not have any employees other than the two administrative support personnel that Promittere and WAS shared.

### **Sale of Promittere S & P 500**

16. On October 8, 1992, Thiessen incorporated 1003686 Ontario Limited. In early 2002, Thiessen and Lewis created the Promittere product. G.H. Lewis was retained to manage the investment of funds raised by the sale of shares of Promittere through trading in S&P Futures Index Contracts and other similar instruments on the Chicago Mercantile Exchange. On June 25, 2002, Thiessen changed the company's name from 1003686 Ontario Limited to Promittere S & P 500 Limited (defined above as "Promittere").

17. Thiessen has, at all material times, been the sole director, President and Secretary of Promittere and its predecessor.

18. Thiessen presented and recommended the Promittere product to Lawson for sale to WAS-clients and, on August 1, 2002, Lawson began selling shares of Promittere to WAS-clients.

19. Lawson states that he invested \$5,000 in Promittere as a means of testing the product. He did not monitor the trading conducted by Lewis in respect of these funds. Upon inquiry, Lawson was advised by Thiessen and Lewis that he made a profit but no back-up documentation was provided.

20. Lawson and his wife subsequently invested further funds in shares of Promittere such that their combined total investment was in the amount of \$135,118 CDN, plus the approximately \$50,000 CDN in fees that Lawson had received in the

form of shares as at September of 2006. To make their cash contributions for these shares, Lawson and his wife wrote personal cheques in the cumulative amount of \$58,163 CDN, Lawson's numbered company, 614385 Canada Inc., wrote cheques in the cumulative amount of \$63,955 CDN, and Lawson directed that fees or commissions payable to him by Promittere Capital Group for sales of other products in the cumulative amount of \$13,000 CDN be paid directly to Promittere.

21. Upon the collapse of Promittere, the Lawsons lost their entire investment.

22. Between August 1, 2002 and November 1, 2005, 48 clients of WAS invested \$2,883,993 USD in shares of Promittere on the advice of Lawson. In respect of those sales, Lawson directed clients to make cheques payable to Promittere in US funds. Thiessen forwarded these funds from Promittere's US dollar bank account to a US dollar bank account over which Lewis had sole signing authority. Lewis then allegedly transferred the funds to a trading account held by Lewis or G.H. Lewis at ED & F Man International Inc., a broker for exchange-listed futures and options.

23. Upon receipt of funds from Promittere, Promittere was issued units of a trust established as part of the Promittere product that Lewis and Thiessen had created. Corresponding shares of Promittere were then issued to clients of WAS who had invested in the product.

24. Once WAS-client investment funds were relinquished to Lewis or G.H. Lewis, the alleged performance of the trust units was reported to Thiessen by Lewis daily by email. The email contained a single figure which Lewis described as the closing value for the trust units for the day.

25. Thiessen provided investors in Promittere with a monthly update on the value of their shares. Each investor also received an annual statement from Promittere. Lawson and/or Thiessen periodically provided some investors with a copy of a monthly newsletter which Lewis provided to Promittere to describe his alleged trading activities.

26. At the time of sale, Lawson asked clients to complete a Promittere share subscription agreement and a WAS New Account Application Form. Lawson also provided clients with a current version of a 2-page share offering summary for Promittere, which had been prepared by Thiessen and reviewed by Lewis (the "Promittere Summaries"). The Promittere Summaries contained the following representations, with returns reported up to the most recent year-end:

- (a) Promittere was created to permit shareholders to participate in the managed trading of S&P 500 Futures Index Contracts;
- (b) Lewis' net return to investors to date has been: 77% in 1999 (six months), 163% in 2000, 169% in 2001, 230% in 2002, 102.6% in 2003, and 70.5% in 2004. The Promittere Summary noted that these returns were calculated net of management fees, trading costs and currency conversions;
- (c) G.H. Lewis would receive an incentive-based fee equal to 50% of the amount by which the percentage increase in the value of the investment exceeded an annual return of 20% (the "Management Fee"). The percentage increase in the value of the investment was to be calculated net of commissions. To the extent that the 20% threshold was not reached, the amount of such shortfall would be carried forward and deducted from the increase in the value of the investment in future years;
- (d) Promittere's investment objectives and risk management strategies included the active use of limit price and stop loss orders, the closure of all contracts at the end of the day resulting in 100% cash position, and a 15-20% limit of asset exposure on any one trade hence the risk of large losses as a percentage of assets was negligible;<sup>1</sup> and
- (e) Redemptions would only be processed once per year, on the last business day of December.

## **Regulatory Investigations, Proceedings and Fraud Charges**

### **Compliance Review – Conflict of Interest**

27. As set out in subparagraph 26(c) above, in return for managing the trading activities of Promittere, G.H. Lewis received the Management Fee. Lawson understands that G.H. Lewis then paid one of Thiessen's Promittere companies, but not Promittere as defined herein, a fee equal to 20% of the Management Fee collected, on an annual basis, in either cash or trust units (the "Promittere Fee"). Thiessen then paid Lawson, through WAS, a percentage of the Promittere Fee as a fee for his role in selling shares of Promittere to WAS-clients. Lawson earned fees in the amount of approximately \$50,000 CDN which he received in the form of shares in Promittere. Lawson states that these shares were cancelled after he discovered the fraud.

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<sup>1</sup> Note that the Promittere Summary for 2002 identified 25-30% of asset exposure on any one trade as opposed to 15-20%.

28. In September of 2005, MFDA Compliance Staff conducted a compliance examination (the "Compliance Examination") of WAS during which Staff advised Lawson that Staff was concerned with, among other things, the accuracy of WAS' disclosure to clients regarding its relationship with Promittere and Thiessen. At that time, clients had only been advised that Promittere was created by Thiessen to allow shareholders to participate in Lewis' trading activities. Written disclosure of the compensation payable to WAS, Thiessen and Lawson as a result of the sale of shares of Promittere, as well as the fact that Thiessen was a director and controlling mind of both WAS and Promittere, had not been made to clients of WAS.

29. Following the Compliance Examination, Lawson provided clients with written disclosure that Thiessen was a director of both WAS and Promittere. At that time he provided Form 45-501F3 to clients who he states had purchased under the closely held issuer exemption (as set out in paragraphs 42-44 below) and WAS advised clients that any requests for the sale of shares of Promittere would be accommodated. The compensation payable to WAS, Thiessen and Lawson for the sale of shares of Promittere was not disclosed.

30. In September 2006, Thiessen and Lawson advised Staff that they had just learned that the investment returns provided by Lewis appeared to have been fabricated such that the value of the investment was greatly overstated. They further advised Staff that they had been advised that the actual amount remaining in the bank and trading accounts was approximately \$40,000 USD. This represented a shortfall of approximately \$5,760,000 USD based on Lewis' reported value of Promittere in the amount of \$5,800,000 USD at that time.

31. In 2008, a handful of WAS-clients appear to have received payments directly from Promittere on account of their shares in Promittere in the cumulative amount of approximately \$63,000, in exchange for the provision of full and final releases.

32. Lawson believes that some Promittere shareholder funds have been recovered through court proceedings or may be recovered as a result of potential tax refunds not yet obtained. However, to date, WAS-clients have not been compensated for the losses they have incurred as a result of their investment in shares of Promittere (with the exception of the payments described in paragraph 31 above). Accordingly, these clients appear to have lost their entire investment in shares of Promittere with no reasonable prospect of recovery.

#### **MFDA Investigation**

33. On September 16, 2006, Lawson participated in an examination at his office conducted by Staff pursuant to s. 22 of MFDA By-law No. 1. On June 17, 2010, Lawson attended at the offices of the MFDA and participated in a second examination conducted by Staff. Lawson has had an opportunity to review the transcripts of both examinations in their entirety and confirms the truth of their contents. In September of 2006, at the request of MFDA Staff and as a result of the investigation of this matter, WAS agreed to accept terms and conditions on its membership which included a requirement to cease trading in all exempt securities and related issuers, as well as increased financial reporting requirements to the MFDA. While these terms and conditions expired on March 31, 2007, WAS agreed to continue to abide by them on a voluntary basis. The second and third round compliance examinations conducted by MFDA Compliance Staff confirm that WAS has continued to comply with the terms and conditions.

34. On September 15, 2006, the Manitoba Securities Commission ("MSC") issued a temporary cease trade order against Promittere in relation to the distribution of its shares to the public allegedly in reliance on the accredited investor exemption to the applicable statutory prospectus and registration requirements. An order was also made removing the availability of any trading registration exemptions from Thiessen. On August 3, 2007, the MSC extended the cease trade order against Promittere until a hearing is held to examine the allegations against Promittere. The MSC's order against Thiessen lapsed effective July 18, 2007.

#### **Fraud Charges Against Lewis**

35. On June 20, 2007, Lewis was arrested and charged with two counts of Fraud Over \$5,000 and Theft Over \$5,000 by the Metropolitan Toronto Police Force. On September 14, 2009, Lewis plead guilty to a fraud charge and has served a sentence of 12 months under house arrest.

#### **Failure to Conduct Adequate Due Diligence**

36. Lawson should have ensured that WAS subjected Promittere to a heightened level of due diligence to ensure that he fully understood the nature and risks of the investment before approving for sale and selling shares of Promittere to clients of WAS, for the following reasons, among others:

Promittere had never previously been sold by WAS or Lawson (or by anyone else) and Lawson had no prior experience with an investment like Promittere;



As a newly created investment, Promittere had no prior track record for Lawson to use to assess the performance of Promittere in varying market conditions;

Promittere employed a sophisticated strategy of trading in S&P Futures Contracts and other similar interests listed on the Chicago Mercantile Exchange Index and other similar interests listed with which Lawson had only a basic familiarity. The specifics of the strategy were not fully disclosed in the Promittere Summary or otherwise made available in writing to investors. There were also no controls on Lewis' ability to vary or change altogether the strategy employed by Promittere;

Promittere was not required by regulators to disclose the specific securities it held, the extent of its leveraging, or the extent of its short selling. Promittere had no obligation to make periodic or annual regulatory filings in respect of its performance and operations;

It was difficult to identify comparable investments, classes of investments or published benchmarks for investments of Promittere's nature against which Lawson would be able to evaluate its actual performance going forward; and

Lawson was aware that an actual or potential conflict of interest existed because Thiessen was the controlling mind of both WAS and Promittere and as a result of the financial compensation received by WAS, Thiessen and Lawson for the sale of shares in Promittere.

37. Lawson states that, on the basis of his 16 year professional relationship with Thiessen, he trusted and relied almost entirely on Thiessen to conduct the necessary due diligence in respect of G.H. Lewis, Lewis and Promittere.

38. Lawson did not ensure that WAS conducted appropriate due diligence on G.H. Lewis, Lewis and Promittere, before approving for sale and selling shares of Promittere to clients of WAS. Specifically, Lawson did not ensure that WAS took steps to, among other things:

- (a) **Conduct a review of G.H. Lewis' corporate status** – G.H. Lewis' corporate status was cancelled in 1992.
- (b) **Confirm the registration status of Lewis and G.H. Lewis** – Neither Lewis nor G.H. Lewis was registered to advise or trade in securities in Canada or the US.
- (c) **Conduct an assessment of G.H. Lewis' and Lewis' management qualifications and track record** - Lawson did not have a copy of or review Lewis' *curriculum vitae*. Lawson did not speak to or contact anyone who could provide a reference for Lewis, his qualifications or his abilities except Thiessen.
- (d) **Review the financial position and trading history of G.H. Lewis** - Lawson did not take any steps to verify the historic returns reported by Lewis. He also did not take any steps to confirm his assumption that Thiessen had put in place reasonable internal controls to: confirm that client funds were being handled properly; monitor Lewis' trading activities; and verify Lewis' reported returns.

39. Lawson states that prior to approving for sale and selling Promittere to WAS-clients, he inquired of Thiessen and Lewis and was informed of, the following: (a) the general nature of the trading to be conducted in the Promittere fund; (b) Lewis' representation that the assets of Promittere would typically only be invested to the extent of 15-20% in any one trade; and (c) Lewis' representation that G.H. Lewis would only receive a management fee if the value of the investment exceeded an annual return of 20%. Lawson also states that he was incorrectly advised by Thiessen that Lewis was registered to conduct securities trading in Canada and the US.

#### **Suitability of the Investments**

40. Lawson did not adequately assess and assign a risk level to Promittere. Lawson presented Promittere to clients as a medium to high-risk product. It was a high risk product based on, among other things, the lack of verified historic trading results for Promittere and the limited liquidity of the product. Further, the only internal controls to monitor G.H. Lewis' trading activities and the handling of client funds were those Lawson believed were being exercised by Thiessen. Lawson provided clients with the Promittere Summaries, which described the risk of large losses as a percentage of assets as negligible. Lawson did not disclose the full risks of investing in the Promittere product to clients of WAS.

41. For 34 clients of WAS to whom Lawson sold shares of Promittere, a risk tolerance of moderate or lower had been identified in their existing Know Your Client ("KYC") information. Promittere was therefore an unsuitable investment for those clients. Lawson did not record sufficient KYC information for 8 other WAS-clients who invested in shares of Promittere in order to determine that the investment was suitable for these clients.

42. Lawson states that he believed that investments in shares of Promittere could be made by clients of WAS in reliance on the closely held issuer or the accredited investor exemptions then provided for pursuant to Ontario securities laws.

43. Lawson believed that he understood the requirements for qualification for and use of the closely held issuer exemption.<sup>2</sup> However, he relied on Thiessen to determine whether the exemption remained available to clients of WAS. Lawson did not provide clients with a copy of Form 45-501F3 at least 4 days before their purchase of shares in Promittere, as was then required pursuant to Ontario securities law in order to rely on the closely held insurer exemption.<sup>3</sup> Accordingly, he was unable to rely on this exemption in respect of these sales.

44. Form 45-501F3 describes investments in small businesses as “inherently risky” and makes the following statement with respect to them, “NEVER MAKE A SMALL BUSINESS INVESTMENT THAT YOU CANNOT AFFORD TO LOSE IN ITS ENTIRETY.” As set out in paragraph 40 above, at the time of sale, Lawson presented the Promittere product to clients of WAS as a medium to high risk product and provided clients with the Promittere Summaries which described the risk of large losses as a percentage of assets as “negligible.”

45. Lawson states that he believed that 23 clients of WAS to whom he sold shares of Promittere (in addition to himself and his wife) qualified as accredited investors. However, complete documentation evidencing their qualification is only available for 14 of these clients. The documentation for the remaining 9 clients was insufficient to enable Lawson to qualify them as accredited investors.

## VI. CONTRAVENTIONS

46. Lawson, in his capacity as President and Secretary, Compliance Officer and mutual fund salesperson for WAS, admits that between August 1, 2002 and November 1, 2005:

- (a) He approved, recommended and allowed the sale of shares of Promittere, a related company of WAS, to clients without conducting or ensuring that adequate due diligence had been conducted on the product and without making adequate inquiries to ensure that the product was suitable for sale to clients of WAS and after having provided clients with incomplete and inaccurate information as to the risk level associated with the product, contrary to MFDA Rules 2.2.1(a) and (b) and MFDA Rule 2.1.1(c).
- (b) He sold shares of Promittere to 48 clients of WAS without ensuring that these investments were suitable for all of these clients and in keeping with the clients’ investment objectives, contrary to MFDA Rule 2.2.1(a), (b) and (c), and MFDA Rule 2.1.1(c).
- (c) He sold shares of Promittere to 9 clients of WAS in reliance on the accredited investor exemption without obtaining sufficient documentation to enable him to qualify them as accredited investors in accordance with s. 2.3 of Ontario Securities Commission Rule 45-501 and subsequently, s.2.3 of National Instrument 45-106, prior to selling them shares of Promittere, contrary to MFDA Rule 2.1.1(c).
- (d) He sold shares of Promittere to clients of WAS in reliance on the closely held issuer exemption when he had not complied with the requirements of such exemption as set out in s. 2.1 of Ontario Securities Commission Rule 45-501, in that he failed to provide any of the clients with a copy of Form 45-501F3 at least 4 days prior to their purchase of shares of Promittere. This contravention engages the jurisdiction of the Hearing Panel to impose a penalty on Lawson pursuant to s. 24.1.1(h) of MFDA By-Law No. 1 and contrary to MFDA Rule 2.1.1(c).
- (e) He facilitated the sale of shares of Promittere to 48 clients of WAS without providing clients with written disclosure of the relationship between WAS and Promittere at the time of sale or of WAS’ financial interest in the sale of shares of Promittere, thereby giving rise to an actual or potential conflict of interest which Lawson did not ensure was addressed by the exercise of responsible business judgment influenced only by the best interests of the clients, contrary to MFDA Rule 2.1.4.

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<sup>2</sup> In summary, at the material time, the exemption permitted closely-held issuers to raise a lifetime maximum of \$3,000,000 CDN in any number of financings from up to 35 investors. As set out in footnote 3 below, this exemption was replaced with the private issuer exemption in September 2005 which was further amended in 2009.

<sup>3</sup> In September of 2005, pursuant to National Instrument 45-106, the closely held issuer exemption (which had been provided for in s. 2.1 of Ontario Securities Commission Rule 45-501), was replaced with the private issuer exemption. Given the nature of the changes made to the exemption, the requirement to provide investors with a copy of Form 45-501F3 ceased. Lawson sold shares of Promittere to one client of WAS after this amendment.

## **VII. TERMS OF SETTLEMENT**

47. Lawson agrees to the following terms of settlement:

- (a) a fine in the amount of \$20,000;
- (b) a permanent prohibition against Lawson from holding the position of Officer, Director, Compliance Officer, Ultimate Designated Person or Branch Manager of an MFDA Member, except with respect to his continuing status as President and Chief Compliance Officer of WAS for the purpose of ensuring the orderly resignation of WAS;
- (c) a permanent prohibition against Lawson from selling any securities pursuant to any exemptions under applicable securities legislation;
- (d) that Lawson shall successfully complete the Canadian Securities Course or such other course acceptable to the MFDA within 12 months of the approval of this Settlement Agreement;
- (e) costs of \$5,000 payable to the MFDA;
- (f) that Lawson will in the future comply with all MFDA By-laws, Rules and Policies, and all applicable securities legislation and regulations; and
- (g) that Lawson will appear and give truthful testimony at a hearing commenced by the MFDA against any person or entity in relation to any of the facts or allegations referred to in this Settlement Agreement, if requested by Staff.

## **VIII. STAFF COMMITMENT**

48. If this Settlement Agreement is accepted by the Hearing Panel, Staff will not initiate any proceeding under the By-laws of the MFDA against Lawson in respect of any conduct or alleged conduct of Lawson in relation to the facts set out in Parts IV and V of this Settlement Agreement, subject to the provisions of paragraph 53 below.

## **IX. PROCEDURE FOR APPROVAL OF SETTLEMENT**

49. Acceptance of this Settlement Agreement shall be sought at a hearing of the Central Regional Council of the MFDA on a date agreed to by counsel for Staff and Lawson.

50. Staff and Lawson may refer to any part, or all, of the Settlement Agreement at the settlement hearing. Staff and Lawson also agree that if this Settlement Agreement is accepted by the Hearing Panel, it will constitute the entirety of the evidence to be submitted respecting Lawson in this matter, and Lawson agrees to waive his rights to a full hearing, a review hearing before the Board of Directors of the MFDA or any securities commission with jurisdiction in the matter under its enabling legislation, or a judicial review or appeal of the matter before any court of competent jurisdiction.

51. Staff and Lawson agree that if this Settlement Agreement is accepted by the Hearing Panel, then Lawson shall be deemed to have been penalized by the Hearing Panel pursuant to s. 24.1.2 of By-law No. 1 for the purpose of giving notice to the public thereof in accordance with s. 24.5 of By-law No. 1.

52. Staff and Lawson agree that if this Settlement Agreement is accepted by the Hearing Panel, neither Staff nor Lawson will make any public statement inconsistent with this Settlement Agreement. Nothing in this section is intended to restrict Lawson from making full answer and defence to any civil or other proceedings against him.

53. If this Settlement Agreement is accepted by the Hearing Panel and, at any subsequent time, Lawson fails to honour any of the Terms of Settlement set out herein, Staff reserves the right to bring proceedings under the By-laws of the MFDA against Lawson based on, but not limited to, the facts set out in Parts IV and V of the Settlement Agreement, as well as the breach of the Settlement Agreement.

54. If, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel or an Order in the form attached as Schedule "A" is not made by the Hearing Panel, each of Staff and Lawson will be entitled to any available proceedings, remedies and challenges, including proceeding to a disciplinary hearing pursuant to ss. 20 and 24 of By-law No. 1, unaffected by this Settlement Agreement or the settlement negotiations.

55. Whether or not this Settlement Agreement is accepted by the Hearing Panel, Lawson agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the negotiation or process of approval of this Settlement

Agreement as the basis for any allegation against the MFDA of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

**X. DISCLOSURE OF AGREEMENT**

56. The terms of this Settlement Agreement will be treated as confidential by the parties hereto until accepted by the Hearing Panel, and forever if, for any reason whatsoever, this Settlement Agreement is not accepted by the Hearing Panel, except with the written consent of both Lawson and Staff or as may be required by law.

57. Any obligations of confidentiality shall terminate upon acceptance of this Settlement Agreement by the Hearing Panel.

**XI. EXECUTION OF SETTLEMENT AGREEMENT**

58. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

59. A facsimile copy of any signature shall be effective as an original signature.

Dated: April 5, 2012

“David Liptrott”  
\_\_\_\_\_  
Witness – Signature

David Liptrott  
\_\_\_\_\_  
Witness – Print Name

“Douglas Lawson”  
\_\_\_\_\_  
Douglas A. Lawson

“Hugh Corbett”  
\_\_\_\_\_  
Witness – Signature

Hugh Corbett  
\_\_\_\_\_  
Witness – Print Name

“Shaun Devlin”  
\_\_\_\_\_  
Staff of the MFDA  
Per: Shaun Devlin  
Vice-President, Enforcement

**3.1.2 Portus Alternative Asset Management Inc. et al.**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC., BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**SETTLEMENT AGREEMENT  
BETWEEN STAFF AND MICHAEL LABANOWICH**

**PART I – INTRODUCTION<sup>1</sup>**

1. By Notice of Hearing dated October 5, 2005, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on November 14, 2005, pursuant to sections 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make the following orders as specified therein, against Portus Alternative Asset Management Inc. ("PAAM"), Boaz Manor ("Manor"), Michael Mendelson ("Mendelson"), Michael Labanowich ("Labanowich") and John Ogg ("Ogg") (collectively the "Respondents"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission dated October 5, 2005.

2. 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 Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Labanowich.

**PART II – JOINT SETTLEMENT RECOMMENDATION**

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated October 5, 2005 against Labanowich (the "Proceeding") in accordance with the terms and conditions set out below. Labanowich consents to the making of an order in the form attached as Schedule "A", based on the facts set out below.

**PART III – AGREED FACTS**

4. Labanowich was Chief Compliance Officer for Portus from approximately January 15, 2003 to May 20, 2004. Labanowich "rented" his license as a Investment Counsel & Portfolio Manager ("IC/PM") to Portus from February 19, 2003 to January 20, 2005, the effective date of his resignation from Portus. Labanowich was involved with the design and implementation of the Market Neutral Preservation Fund, as described in greater detail below, which was the first investment product offered by Portus.

5. Despite his role as Chief Compliance Officer, Labanowich did not have adequate information about the various roles of the entities that comprised Portus nor did he learn the specifics of the duties of the principals of Portus, Mendelson and Manor.

6. Accordingly, Labanowich does not dispute the facts as set out in paragraphs 8 to 47 as they relate to the time period from January 15, 2003 to May 20, 2004. Labanowich has no direct knowledge of the facts related to Portus from May 21, 2004 onwards .

7. Labanowich does acknowledge the compliance deficiencies set out in paragraphs 48, 49 and 50 as they apply to the time period from January 15, 2003 to May 20, 2004 when he was Chief Compliance Officer.

**The Corporate Structure**

8. PAAM, formerly Paradigm Alternative Asset Management Inc., is a corporation incorporated pursuant to the laws of Ontario on January 10, 2003. Its headquarters were located in Toronto.

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<sup>1</sup> Staff and the Respondents all agree that any references to sections of the Act, the Rules or Regulations contained in this Settlement Agreement and any Orders issued by the Commission in relation to this Settlement Agreement are consistent with the Act, Rules or Regulations as they existed at the filing of the Notice of Hearing dated October 5, 2005.

9. On March 14, 2003, PAAM was registered with the Ontario Securities Commission (the "Commission") as an IC/PM and Limited Market Dealer ("LMD"). PAAM was similarly registered in all other Canadian jurisdictions with the exception of Quebec. PAAM developed the financial products, distributed directly and indirectly to both accredited and retail investors, that are the subject of this proceeding.

10. Paradigm Asset Management Inc. is a corporation incorporated pursuant to the laws of Ontario on January 8, 2003. Portus Asset Management Inc. is a corporation incorporated pursuant to the laws of Ontario on May 12, 2004. These two entities were amalgamated on May 27, 2004 and the combined entity was continued as Portus Asset Management Inc. (these entities hereinafter are collectively referred to as "PAM").

11. At all material times, PAM operated out of the same business premises as PAAM in Toronto. PAM was identified as the Fund Manager for the investment products offered by PAAM. PAM was primarily responsible for the marketing of the investment products created by PAAM.

12. Portus Alternative Asset Management Inc. (BVI) ("PAAM BVI"), formerly Paradigm Alternative Asset Management Inc. (BVI), is a corporation incorporated pursuant to the laws of the British Virgin Islands on December 10, 2003.

13. At all material times, the business and affairs of PAAM, PAAM BVI and PAM were so inextricably intertwined that PAAM, PAAM BVI and PAM operated as a single functional entity. They are therefore referred to herein collectively as "Portus".

14. Manor was the President and Director of PAAM from its inception on January 10, 2003 until March 4, 2005 (the "Material Time"), when KPMG Inc. ("KPMG") was appointed Receiver over the assets, undertakings and properties of PAAM, PAM and other related entities (the "Receivership"). On February 19, 2003, Manor was registered with the Commission as the Associate Portfolio Manager for PAAM. Manor also held the positions of President and Secretary for PAM from January 8, 2003 to April of 2003. Manor was the chief architect of all of the investment products that are the subject of this proceeding and was a directing mind of all of the entities involved in those products.

15. Mendelson was the primary directing mind of PAM during the Material Time.

#### **Domestic and International Investment Structures**

16. Portus marketed three different investment structures (two domestically and one offshore) to investors during the Material Time:

- a) The Market Neutral Preservation Fund (MNPF), offered to accredited investors in Canada beginning in February of 2003;
- b) The BancNote Trust Series (BNT) and the BancLife Trust Series (BLT), offered to Canadian investors through their respective wholesalers from August 2003 to February 2005;
- c) The Offshore Structure, was purportedly identical in structure to the BNT and BLT, except that investments were made in U.S. dollars.

#### **The Market Neutral Preservation Fund**

17. Portus' first product, the Market Neutral Preservation Fund (the "MNPF"), was launched in February of 2003 and closed in or about May of 2003. Approximately \$19.2 million was invested in the MNPF primarily by Canadian investors.

18. The MNPF was a non-prospectus qualified mutual fund offered directly to accredited investors by way of Offering Memorandum in reliance upon the accredited investor exemption set out in section 2.3 of OSC Rule 45-501. Units of the MNPF were sold by investment dealers to their clients.

19. PAM was designated as the manager to the MNPF and the MNB Trust (the value of the units of which establish the returns achieved by investors in the MNPF). PAAM was designated as the advisor.

20. The MNPF was professed to offer investors principal protection in addition to a minimum return of 1.12 times the original amount invested. This fund also purportedly offered tax benefits through the deferral of taxes on income/gains and the reduction of taxes on capital gains versus income.

21. These tax benefits would accrue by virtue of a swap agreement whereby the \$19.2 million was to be paid to the Royal Bank of Canada ("RBC") which, through its subsidiary Royal Bank of Canada Dominion Securities ("RBCDS"), invested the funds in a basket of non-dividend paying shares of Canadian companies. RBCDS would then short sell the shares and invest the proceeds back into the trust.

22. The MNPF Offering Memorandum stated that “the manager is required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Trust and to exercise the care, diligence and skill of a prudent and qualified manager.”

#### **The BancNote Trust Series and the BancLife Trust Series**

23. The next investment product created and issued by Portus in July of 2003, following the close of the MNPF, were the BNT and BLT (collectively, the “Trusts”).

24. The BLT largely mirrored the BNT but was distinguished by a “death benefit” and a longer term to maturity. Unlike the MNPF, the Trusts were sold via investment dealers or referral agents to non-accredited investors through a series of agreements between Portus and these entities (the “Portfolio Management Agreements”). A total of 12 different BNT series and two BLT series were created and marketed by Portus. Portus’ promotional materials indicated an historical annual return of 7%.

25. The Trusts were designed to be tax efficient. By way of example, one of the Portfolio Management Agreements stated that “Paradigm initially intends to invest all of the assets in the Account in a structure intended to provide you with substantially the economic investments in the BancNote Trust – Series-IV with certain tax deferral and capital gains (rather than income) treatment.”

26. According to the proposed scheme of the BNT, clients could open a “discretionary managed account” with minimum contributions of \$5,000. Offshore counterparties were to purchase Canadian equities on behalf of those clients. These counterparties were Premiers Derive Paris Inc. (“PDP”) and BNote Management Inc (“BNote”).

27. Both PDP and BNote were represented to the public to be arms-length offshore counterparties to the Trusts. On behalf of its clients, Portus would purport to enter into option contracts with the counterparties which had the effect of a swap such that, at maturity, the economic value of the units of the Trusts would be swapped for the economic value of the Canadian Equities.

28. The alleged arms-length offshore counterparty (PDP) purchased Canadian equities (the “Canadian Equities”), on a weekly basis, on behalf of Portus’ clients. Portus, on behalf of its clients, then entered into option contracts with the alleged arms-length offshore counterparties (PDP and BNote Management) which had the effect of a swap such that, at maturity, the economic value of the units of the Trusts would be swapped for the economic value of the Canadian Equities. The option contracts were over-the-counter derivative contracts which were not prospectus qualified.

29. The investment objective of the BNT was to be ultimately realized by purchasing principal protected notes issued by Societe Generale Canada (the “Soc Gen Notes”) as a well as a linked hedge fund. The return on the notes was the greater of the principal amount invested or the returns achieved by the linked hedge fund. Investors were assured of a floor value at maturity equal to the principal invested.

30. Notwithstanding the description above, the investment scheme for the most part was not implemented as described.

31. During the Material Time, approximately 26,000 invested approximately \$750 million in the Trusts created by Portus. Manulife Securities requested specific offerings of BNT for its clients. Ultimately, six of the BNT series were marketed exclusively to Manulife.

#### **The Implementation of the Trusts**

32. When funds were received from investors, they were not initially placed into a segregated account for particular investments, but were instead pooled and placed in custodial accounts and thereafter were placed into separate accounts.

33. The “arms length” entities to which these investor funds were transferred were in actuality companies controlled by nominees with the ultimate controlling mind being Manor. As a result, there was a non arms length relationship between the Trusts and the PDP/BNote. These non arms length entities did not purchase securities as represented.

34. Nigel Freeman was the Director, Signatory and Beneficial owner of PDP. Freeman informed investigators from the Royal Canadian Mounted Police (the “RCMP”) that he did not have knowledge of what PDP did as a company nor did he have any knowledge of any of the transactions that took place between PDP, BNote and Portus.

35. Similarly, Arthur Berelowitz was the Director, Signatory and Beneficial owner of BNote. Berelowitz informed investigators from the RCMP that he did not have any knowledge of any of the transactions that took place between PDP, BNote and Portus.

36. For BNT Series II, III, IV, and parts of VI and VIa, funds from investors were paid from the PAAM custodial accounts to a PAAM trading account at Lines Overseas Management (“LOM”). According to the purported investment structure, these funds

were to be used by PAAM to purchase shares of non-dividend paying Canadian securities and engaged in the swap described in paragraph 27 above.

37. In fact, these collected investor funds totaling \$185.0 million were moved at the direction of Manor between four separate foreign bank accounts in the names of PAAM, PDP, BNote and another offshore company controlled by Manor called BNote Limited. At the direction of Manor, these investor funds were then transferred back into PAAM accounts in the name of each of the Trusts at RBC in Toronto. Manor then transferred these funds from the PAAM accounts at RBC to another PAAM account at RBCDS. These funds were then used to buy the Soc Gen Notes.

38. Commencing with a portion of BNT Series VI and Via and through the remaining BNT and BLT series, no further funds were transferred through the LOM accounts. Of the total of \$732.9 million in investor funds collected for the BNT/BLT series, \$93.5 million was not invested. Of these funds, \$41.2 million were sent from an account in the name of PDP at Basel Trust in Jersey in the Channel Islands to Bank Hapoalim, in Switzerland. Using a series of purported loans, funds were then returned to PAM, PAAM or a company incorporated and controlled by Manor and/or Mendelson called BancNote Corp. These funds were further traced to assorted Portus bank accounts from which Portus paid operating expenses including commissions, referral fees, rent, utilities, salaries and payroll.

### **The Implementation of the Offshore Structure**

39. From September of 2003 until February of 2005, Portus offered an identical investment structure to that of the Trusts for clients who opened international accounts (the "Offshore Structure"). Investments in this structure were made in US dollars.

40. The client documentation and marketing information prepared for the Offshore Structure were the same in all material respects to that of the Trusts. Portus' staff in Toronto performed all sales and back-office administration for the Offshore Structure in substantially the same manner as for the Trusts.

41. Approximately 700 investors placed approximately \$52.8 million (U.S.) accounts under the Offshore Structure. However, none of this money was actually invested by Portus.

### **Information Provided to Investors**

#### **A. The Nature of the Investment was not Adequately Disclosed**

42. Investors were advised through marketing, client confirmations and other materials prepared and disseminated by Portus that they were investing directly in the Trusts. However, investors were, concurrently, required to sign managed account agreements granting Portus full discretion over their investments and were informed that their investments would receive favourable tax treatment.

43. In addition, employees of Portus and, as a consequence, referring agents, largely believed that the structure was such that clients were investing directly in the Trusts (both domestic and offshore). This belief was routinely conveyed to clients of Portus by Portus' wholesalers and employees and by referral agents.

#### **B. Management Fees**

44. In relation to the investment structures (both domestic and offshore), the fee disclosure made by Portus was contained in the managed account agreement which describes the applicable fees as 2.25% annually of the market value of the assets in each managed account plus 18% of the growth in the market value of these assets over and above their previous highest market value. Pursuant to the disclosure, these fees were to be calculated and accrued weekly and paid at the end of each quarter.

45. The offering memorandum for the Trusts provided to investors described the fees for unitholders identically to the disclosure contained in the above-referenced managed account agreement.

46. Portus took approximately 13.3% of the principal invested by clients prior to the investment of funds (approximately \$95.4 million) and used those funds for the ongoing operations of Portus. For instance, a portion of these funds were used to pay management fees, performance fees, referral fees (4% or 5%), trailer fees (1% plus other performance fees) and salaries. These funds were also used to satisfy redemption requests. The amount of funds used for these purposes was approximately equal to the fees Portus would have been entitled to at the maturity date of the Trusts.

47. Investors in Portus received at least 97% and up to 102% of the funds invested. This was primarily the result of the fact that, as described above, in all of the domestic investment structures, investor funds were invested in guaranteed notes with Soc



Gen. The funds returned to investors also included the return of referral and brokerage fees from registered brokers and dealers who sold units in the Portus investment structures.<sup>2</sup>

### **Compliance Deficiencies at Portus**

48. Despite his role as Chief Compliance Officer, Labanowich did not have adequate information about the various roles of the entities that comprised Portus nor was he able to learn the specifics of the duties of Manor. Manor misled Labanowich about the operations of Portus.

49. Staff conducted an investigation and compliance review of Portus between January 24, 2005 and February 18, 2005 (the "Review"). During the Review, the following compliance deficiencies were noted in relation to the investment structures being offered by Portus:

- (a) Portus did not properly collect and assess Know Your Client ("KYC") and suitability information, contrary to subsection 1.5(1) of OSC Rule 31-505, in that suitability information collected was inadequate, incomplete and not properly followed-up;
- (b) Portus maintained deficient books and records, contrary to subsection 19(1) of the Act, and subsections 113(1), 113(3)1, 113(3)6 and 113(3)10 of Regulation 1015 to the Act, and Portus failed to provide Staff with numerous books and records required to be maintained, contrary to subsection 19(3) of the Act, in that i) records of monthly calculations of minimum free capital were not prepared or maintained; ii) trade instructions were not maintained regarding the alleged purchase and sale of securities; iii) the trades allegedly conducted on behalf of the Trusts were not contained in the trading blotter; iv) Staff were not provided with: sufficient evidence to ascertain client holdings, ledgers and/or other records that accurately reflect assets, liabilities, income, expenses and capital accounts; back-up information regarding Net Asset Value calculations; supporting documentation regarding performance data included in marketing materials; and, accurate and, in some cases any, back-up support for the alleged reconciliation of deposits and investments prepared by Ali Hamid; and v) Minutes of board of directors', management, portfolio management and executive meetings were either not kept or were withheld from Staff.
- (c) Portus engaged in improper or inadequate pricing of the units of the Trusts, contrary to subsection 116(1) of the Act and 2.1 of OSC Rule 31-505, in that prices were calculated exclusively by Manor. This was not in accordance with the manner of pricing disclosed in the relevant offering memoranda;
- (d) Portus maintained inadequate policies, procedures and internal controls in several key areas of business, contrary to subsection 1.2 of OSC Rule 31-505, these deficiencies include but are not limited to (i) the written policies and procedures manuals for Portus' IC/PM management operations did not adequately address several key issues, including but not limited to: the collection and updating of KYC and suitability information; the preparation, review and monitoring of monthly capital calculations; the preparation and maintenance of trade orders; and the performance of research; (ii) Portus did not follow all of the policies and procedures contained in its procedures manual; (iii) written policies and procedures for Fund Manager activities did not exist and oversight of Fund Manager activities was inadequate; (iv) the following weaknesses in internal controls were identified: the BancNote and BancLife Trusts' assets initially flowed into one broker account and were not properly segregated into the assets of the BancNote and BancLife Trusts; cheques were accepted on which the payee was not identified as PAAM; inadequate reviews were performed with respect to referral agreements, client statements, client confirmations and bank account reconciliations; bank reconciliations were not prepared; ongoing monitoring of clients' holdings was not performed; and (v) Portus' most recent statement of policies was not filed with the Commission, contrary to paragraph 223(3)(a) of the Regulation.

50. Labanowich, in his capacity as IC/PM and Chief Compliance Officer for Portus, should have been aware of the above-listed deficiencies. Labanowich should have taken all reasonable steps, commensurate with his registration status, his position at Portus and his corresponding duties to investors, to remedy such deficiencies and to determine whether such deficiencies were, in fact, indicia that the investment structures being offered by Portus were not as they were alleged to be. However, Labanowich was not aware of any fraudulent activity at Portus while he was Chief Compliance Officer.

### **PART IV – CONTRAVENTION OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

51. By engaging in the conduct described above, Labanowich admits and acknowledges that he contravened Ontario securities law during the Material Time in the following ways:

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<sup>2</sup> For complete reports and analysis of funds seized by KPMG Inc., Trustee in Bankruptcy & Court-Appointed Receiver for Portus, please refer to [www.portusgroup.ca](http://www.portusgroup.ca).

- (i) by engaging in the conduct described herein related to Portus' breaches of Ontario securities laws, Labanowich's actions were contrary to sections 2.1(1) and 2.1(2) of OSC Rule 31-505 respectively;
- (ii) as a consequence of his position of seniority and responsibility at Portus, Labanowich authorized, permitted or acquiesced in Portus' failure to exercise its powers and discharge its duties as a Fund Manager in the best interests of the mutual funds and, in connection therewith, failed to exercise the degree of care, diligence and skill expected of a reasonably prudent Fund Manager in the circumstances, contrary to section 116(1) of the Act; and

52. Labanowich admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in sub-paragraphs 51 (i) to (ii).

#### **PART V –RESPONDENT'S POSITION**

53. Labanowich requests that the settlement hearing panel consider the following mitigating circumstances.

54. Labanowich cooperated with Staff's investigation.

55. On June 13, 2006, Labanowich signed a undertaking with the Commission in which he agreed to refrain from the following activity, pending the Commission's final decision on liability and sanctions in the proceeding commenced by the Notice of Hearing against Labanowich, or an Order of the Commission releasing Labanowich from this undertaking or aspects of the undertaking:

- (i) acting or becoming an officer or director of a "reporting issuer", as that term is defined in the Act;
- (ii) applying to become a "registrant" or from being an employee, director or officer of a registrant, as that term is defined in the Act; and
- (iii) engaging in any registerable activity, including the solicitation of investment funds directly from the general public for investment in "securities," as that term is defined in the Act, in circumstances where registration would be required

56. As a result of signing the undertaking, Labanowich has been effectively unable to participate in his chosen field of the capital markets since June 13, 2006. Staff have no reason to believe that Labanowich has not complied with this undertaking.

#### **PART V – TERMS OF SETTLEMENT**

57. Labanowich agrees to the terms of settlement listed below.

58. The Commission will make an order, pursuant to sections 127(1) and section 127.1 of the Act, that:

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 7 of subsection 127(1), Labanowich resign all positions he holds as a director or officer of an issuer;
- (c) pursuant to clause 8 of the Act, Labanowich is prohibited for a period of six years from the date of this Order from becoming or acting as a director or officer of any reporting issuer;
- (d) pursuant to clause 8.2 of subsection 127(1), Labanowich is prohibited from becoming or acting as a compliance officer of a registrant; and,
- (e) pursuant to section 127.1 of the Act, Labanowich shall pay costs to the Commission in the amount of \$25,000.

59. Labanowich undertakes 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 sub-paragraph 58(b)-(e) above.

#### **PART VI – STAFF COMMITMENT**

60. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Labanowich in relation to the facts set out in Part III herein, subject to the provisions of paragraph 61 below.

61. If this Settlement Agreement is approved by the Commission, and at any subsequent time Labanowich fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Labanowich based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

#### **PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT**

62. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Labanowich for the scheduling of the hearing to consider the Settlement Agreement.

63. Staff and Labanowich agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Labanowich's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

64. If this Settlement Agreement is approved by the Commission, Labanowich agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

65. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

66. Whether or not this Settlement Agreement is approved by the Commission, Labanowich agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

#### **PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT**

67. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Labanowich leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Labanowich; and
- (b) Staff and Labanowich shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

68. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Labanowich and Staff or as may be required by law.

#### **PART IX. – EXECUTION OF SETTLEMENT AGREEMENT**

69. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement

70. A facsimile copy of any signature will be as effective as an original signature.

Dated this 27th day of August, 2012.

Signed in the presence of:

“Catalina French”  
\_\_\_\_\_  
Witness

“Michael Labanowich”  
\_\_\_\_\_  
Michael Labanowich

Dated this 27th day of August, 2012

**STAFF OF THE ONTARIO SECURITIES COMMISSION**

Per: "Karen Manarin"

**Tom Atkinson**

Director, Enforcement Branch

Dated this 27th day of August, 2012

**SCHEDULE "A"**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**ORDER  
(Sections 127(1))**

**WHEREAS** on \_\_\_\_\_, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") in respect of Michael Labanowich ("Labanowich");

**AND WHEREAS** Manor entered into a Settlement Agreement with Staff of the Commission dated \_\_\_\_\_, 2012 (the "Settlement Agreement") in which Labanowich agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement and upon hearing submissions from counsel for Labanowich and from Staff of the Commission;

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

**IT IS HEREBY ORDERED THAT:**

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 7 of subsection 127(1) of the Act, Labanowich resign all positions he holds as a director or officer of an issuer;
- (c) pursuant to clause 8 of subsection 127(1) of the Act, Labanowich is prohibited for a period of six years from the date of this Order from becoming or acting as a director or officer of any reporting issuer;
- (d) pursuant to clause 8.2 of subsection 127(1) of the Act, Labanowich is prohibited from becoming or acting as a compliance officer of a registrant; and,
- (e) pursuant to section 127.1 of the Act, Labanowich shall pay costs to the Commission in the amount of \$25,000.

**DATED AT TORONTO** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
  
\_\_\_\_\_

**3.1.3 Portus Alternative Asset Management Inc. et al.**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC., BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**SETTLEMENT AGREEMENT  
BETWEEN STAFF AND BOAZ MANOR**

**PART I – INTRODUCTION<sup>1</sup>**

1. By Notice of Hearing dated October 5, 2005, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing, commencing on November 14, 2005, pursuant to sections 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the “Act”), to consider whether it is in the public interest to make the following orders as specified therein, against Portus Alternative Asset Management Inc. (“PAAM”), Boaz Manor (“Manor”), Michael Mendelson (“Mendelson”), Michael Labanowich (“Labanowich”) and John Ogg (“Ogg”) (collectively the “Respondents”). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission dated October 5, 2005.

2. 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 Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Manor.

**PART II – JOINT SETTLEMENT RECOMMENDATION**

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated October 5, 2005 against Manor (the “Proceeding”) in accordance with the terms and conditions set out below. Manor consents to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

**PART III – AGREED FACTS**

**The Corporate Structure**

4. PAAM, formerly Paradigm Alternative Asset Management Inc., is a corporation incorporated pursuant to the laws of Ontario on January 10, 2003. Its headquarters were located in Toronto.

5. On March 14, 2003, PAAM was registered with the Ontario Securities Commission (the “Commission”) as an Investment Counsel & Portfolio Manager (“IC/PM”) and Limited Market Dealer (“LMD”). PAAM was similarly registered in all other Canadian jurisdictions with the exception of Quebec. PAAM developed the financial products, distributed directly and indirectly to both accredited and retail investors, that are the subject of this proceeding.

6. Paradigm Asset Management Inc. is a corporation incorporated pursuant to the laws of Ontario on January 8, 2003. Portus Asset Management Inc. is a corporation incorporated pursuant to the laws of Ontario on May 12, 2004. These two entities were amalgamated on May 27, 2004 and the combined entity was continued as Portus Asset Management Inc. (these entities hereinafter are collectively referred to as “PAM”).

7. At all material times, PAM operated out of the same business premises as PAAM in Toronto. PAM was identified as the Fund Manager for the investment products offered by PAAM. PAM was primarily responsible for the marketing of the investment products created by PAAM.

8. Portus Alternative Asset Management Inc. (BVI) (“PAAM BVI”), formerly Paradigm Alternative Asset Management Inc. (BVI), is a corporation incorporated pursuant to the laws of the British Virgin Islands on December 10, 2003.

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<sup>1</sup> Staff and the Respondents all agree that any references to sections of the Act, the Rules or Regulations contained in this Settlement Agreement and any Orders issued by the Commission in relation to this Settlement Agreement are consistent with the Act, Rules or Regulations as they existed at the filing of the Notice of Hearing dated October 5, 2005.

9. At all material times, the business and affairs of PAAM, PAAM BVI and PAM were so inextricably intertwined that PAAM, PAAM BVI and PAM operated as a single functional entity. They are therefore referred to herein collectively as "Portus".

10. Manor was the President and Director of PAAM from its inception on January 10, 2003 until March 4, 2005 (the "Material Time"), when KPMG Inc. ("KPMG") was appointed Receiver over the assets, undertakings and properties of PAAM, PAM and other related entities (the "Receivership"). On February 19, 2003, Manor was registered with the Commission as the Associate Portfolio Manager for PAAM. Manor also held the positions of President and Secretary for PAM from January 8, 2003 to April of 2003. Manor was the chief architect of all of the investment products that are the subject of this proceeding and was a directing mind of all of the entities involved in those products.

11. Mendelson was the primary directing mind of PAM during the Material Time.

#### **Domestic and International Investment Structures**

12. Portus marketed three different investment structures (two domestically and one offshore) to investors during the Material Time:

- a) The Market Neutral Preservation Fund (MNPf), offered to accredited investors in Canada beginning in February of 2003;
- b) The BancNote Trust Series (BNT) and the BancLife Trust Series (BLT), offered to Canadian investors through their respective wholesalers from August 2003 to February 2005;
- c) The Offshore Structure, was purportedly identical in structure to the BNT and BLT, except that investments were made in U.S. dollars.

#### **The Market Neutral Preservation Fund**

13. Portus' first product, the Market Neutral Preservation Fund (the "MNPf"), was launched in February of 2003 and closed in or about May of 2003. Approximately \$19.2 million was invested in the MNPf primarily by Canadian investors.

14. The MNPf was a non-prospectus qualified mutual fund offered directly to accredited investors by way of Offering Memorandum in reliance upon the accredited investor exemption set out in section 2.3 of OSC Rule 45-501. Units of the MNPf were sold by investment dealers to their clients.

15. PAM was designated as the manager to the MNPf and the MNB Trust (the value of the units of which establish the returns achieved by investors in the MNPf). PAAM was designated as the advisor.

16. The MNPf was professed to offer investors principal protection in addition to a minimum return of 1.12 times the original amount invested. This fund also purportedly offered tax benefits through the deferral of taxes on income/gains and the reduction of taxes on capital gains versus income.

17. These tax benefits would accrue by virtue of a swap agreement whereby the \$19.2 million was to be paid to the Royal Bank of Canada ("RBC") which, through its subsidiary Royal Bank of Canada Dominion Securities ("RBCDS"), invested the funds in a basket of non-dividend paying shares of Canadian companies. RBCDS would then short sell the shares and invest the proceeds back into the trust.

18. The MNPf Offering Memorandum stated that "the manager is required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Trust and to exercise the care, diligence and skill of a prudent and qualified manager."

#### **The BancNote Trust Series and the BancLife Trust Series**

19. The next investment product created and issued by Portus in July of 2003, following the close of the MNPf, were the BNT and BLT (collectively, the "Trusts").

20. The BLT largely mirrored the BNT but was distinguished by a "death benefit" and a longer term to maturity. Unlike the MNPf, the Trusts were sold via investment dealers or referral agents to non-accredited investors through a series of agreements between Portus and these entities (the "Portfolio Management Agreements"). A total of 12 different BNT series and two BLT series were created and marketed by Portus. Portus' promotional materials indicated an historical annual return of 7%.

21. The Trusts were designed to be tax efficient. By way of example, one of the Portfolio Management Agreements stated that "Paradigm initially intends to invest all of the assets in the Account in a structure intended to provide you with substantially

the economic investments in the BancNote Trust – Series-IV with certain tax deferral and capital gains (rather than income) treatment.”

22. According to the proposed scheme of the BNT, clients could open a “discretionary managed account” with minimum contributions of \$5,000. Offshore counterparties were to purchase Canadian equities on behalf of those clients. These counterparties were Premiers Derive Paris Inc. (“PDP”) and BNote Management Inc (“BNote”).

23. Both PDP and BNote were represented to the public to be arms-length offshore counterparties to the Trusts. On behalf of its clients, Portus would purport to enter into option contracts with the counterparties which had the effect of a swap such that, at maturity, the economic value of the units of the Trusts would be swapped for the economic value of the Canadian Equities.

24. The alleged arms-length offshore counterparty (PDP) purchased Canadian equities (the “Canadian Equities”), on a weekly basis, on behalf of Portus’ clients. Portus, on behalf of its clients, then entered into option contracts with the alleged arms-length offshore counterparties (PDP and BNote Management) which had the effect of a swap such that, at maturity, the economic value of the units of the Trusts would be swapped for the economic value of the Canadian Equities. The option contracts were over-the-counter derivative contracts which were not prospectus qualified.

25. The investment objective of the BNT was to be ultimately realized by purchasing principal protected notes issued by Societe Generale Canada (the “Soc Gen Notes”) as a well as a linked hedge fund. The return on the notes was the greater of the principal amount invested or the returns achieved by the linked hedge fund. Investors were assured of a floor value at maturity equal to the principal invested.

26. Notwithstanding the description above, the investment scheme for the most part was not implemented as described.

27. During the Material Time, approximately 26,000 invested approximately \$750 million in the Trusts created by Portus. Manulife Securities requested specific offerings of BNT for its clients. Ultimately, six of the BNT series were marketed exclusively to Manulife.

#### **The Implementation of the Trusts**

28. When funds were received from investors, they were not initially placed into a segregated account for particular investments, but were instead pooled and placed in custodial accounts and thereafter were placed into separate accounts.

29. The “arms length” entities to which these investor funds were transferred were in actuality companies controlled by nominees with the ultimate controlling mind being Manor. As a result, there was a non arms length relationship between the Trusts and the PDP/BNote. These non arms length entities did not purchase securities as represented.

30. Nigel Freeman was the Director, Signatory and Beneficial owner of PDP. Freeman informed investigators from the Royal Canadian Mounted Police (the “RCMP”) that he did not have knowledge of what PDP did as a company nor did he have any knowledge of any of the transactions that took place between PDP, BNote and Portus.

31. Similarly, Arthur Berelowitz was the Director, Signatory and Beneficial owner of BNote. Berelowitz informed investigators from the RCMP that he did not have any knowledge of any of the transactions that took place between PDP, BNote and Portus.

32. For BNT Series II, III, IV, and parts of VI and VIa, funds from investors were paid from the PAAM custodial accounts to a PAAM trading account at Lines Overseas Management (“LOM”). According to the purported investment structure, these funds were to be used by PAAM to purchase shares of non-dividend paying Canadian securities and engaged in the swap described in paragraph 23 above.

33. In fact, these collected investor funds totaling \$185.0 million were moved at the direction of Manor between four separate foreign bank accounts in the names of PAAM, PDP, BNote and another offshore company controlled by Manor called BNote Limited. At the direction of Manor, these investor funds were then transferred back into PAAM accounts in the name of each of the Trusts at RBC in Toronto. Manor then transferred these funds from the PAAM accounts at RBC to another PAAM account at RBCDS. These funds were then used to buy the Soc Gen Notes.

34. Commencing with a portion of BNT Series VI and VIa and through the remaining BNT and BLT series, no further funds were transferred through the LOM accounts. Of the total of \$732.9 million in investor funds collected for the BNT/BLT series, \$93.5 million was not invested. Of these funds, \$41.2 million were sent from an account in the name of PDP at Basel Trust in Jersey in the Channel Islands to Bank Hapoalim, in Switzerland. Using a series of purported loans, funds were then returned to PAM, PAAM or a company incorporated and controlled by Manor and/or Mendelson called BancNote Corp. These funds were further traced to assorted Portus bank accounts from which Portus paid operating expenses including commissions, referral fees, rent, utilities, salaries and payroll.



### **The Implementation of the Offshore Structure**

35. From September of 2003 until February of 2005, Portus offered an identical investment structure to that of the Trusts for clients who opened international accounts (the "Offshore Structure"). Investments in this structure were made in US dollars.

36. The client documentation and marketing information prepared for the Offshore Structure were the same in all material respects to that of the Trusts. Portus' staff in Toronto performed all sales and back-office administration for the Offshore Structure in substantially the same manner as for the Trusts.

37. Approximately 700 investors placed approximately \$52.8 million (U.S.) accounts under the Offshore Structure. However, none of this money was actually invested by Portus.

38. It was initially difficult for Staff to determine what happened to these funds as at Manor's direction, documentation was removed from the premises and Manor did not provide any documentation respecting the offshore structure to KPMG as required by the receivership. It was subsequently discovered that investor funds flowed through a series of accounts linked to Portus. These funds were traced through various foreign accounts in the Cayman Islands, Turks & Caicos, Bermuda, Italy, the United Kingdom, Switzerland, Hong Kong and the United States. Only \$35.2 million of these funds were subsequently recovered by KPMG, leaving approximately \$17.6 million outstanding.

39. As set out in greater detail below, Staff commenced its investigation of Portus and Manor late in 2004. Manor was interviewed for three days by OSC staff. Several weeks later in April 2005, Manor left Canada for Israel.

40. After leaving Canada, Manor purchased approximately \$8.8 million in diamonds using companies in Hong Kong between June 10, 2005 and July 8, 2005. Four shipments of diamonds were delivered to Hong Kong and picked up by Yu Jieying, the sister-in-law of Manor between June 24, 2005 and July 12, 2005. These diamonds were purchased using investor funds from the Offshore Trust.

41. Notwithstanding that Mr. Manor resided in Israel after April 2005, he was represented by Canadian counsel with respect to the ongoing OSC proceedings and the criminal investigation. It was always Manor's position that he would return to Canada attend any regulatory or criminal proceedings as required and, in fact, as soon as counsel was advised that criminal charges would be initiated, immediate arrangements were made for his voluntary return and surrender to Canadian authorities.

### **Legal Advice Received by Manor**

42. In July of 2004, Manor and Mendelson sought legal advice for Portus from a senior Toronto securities lawyer. Manor and Mendelson were told by this lawyer that the way in which the Portus companies were being operated showed serious regulatory compliance problems and that they should cease continuing to receive investor funds.

43. Manor disregarded this information and continued to operate Portus as before, raising over \$400 million in additional funds from investors in the manner set out above.

### **Compliance Deficiencies at Portus**

44. Staff conducted an investigation and compliance review of Portus between January 24, 2005 and February 18, 2005 (the "Review"). During the Review, the following compliance deficiencies were noted in relation to the investment structures being offered by Portus:

- (a) Portus did not properly collect and assess Know Your Client ("KYC") and suitability information, contrary to subsection 1.5(1) of OSC Rule 31-505, in that suitability information collected was inadequate, incomplete and not properly followed-up;
- (b) Portus maintained deficient books and records, contrary to subsection 19(1) of the Act, and subsections 113(1), 113(3)1, 113(3)6 and 113(3)10 of Regulation 1015 to the Act, and Portus failed to provide Staff with numerous books and records required to be maintained, contrary to subsection 19(3) of the Act, in that i) records of monthly calculations of minimum free capital were not prepared or maintained; ii) trade instructions were not maintained regarding the alleged purchase and sale of securities; iii) the trades allegedly conducted on behalf of the Trusts were not contained in the trading blotter; iv) Staff were not provided with: sufficient evidence to ascertain client holdings, ledgers and/or other records that accurately reflect assets, liabilities, income, expenses and capital accounts; back-up information regarding Net Asset Value calculations; supporting documentation regarding performance data included in marketing materials; and, accurate and, in some cases any, back-up support for the alleged reconciliation of deposits and investments prepared by Ali Hamid; and v) Minutes of board of directors', management, portfolio management and executive meetings were either not kept or were withheld from Staff.

- (c) Portus engaged in improper or inadequate pricing of the units of the Trusts, contrary to subsection 116(1) of the Act and 2.1 of OSC Rule 31-505, in that prices were calculated exclusively by Manor. This was not in accordance with the manner of pricing disclosed in the relevant offering memoranda;
- (d) Portus maintained inadequate policies, procedures and internal controls in several key areas of business, contrary to subsection 1.2 of OSC Rule 31-505, these deficiencies include but are not limited to (i) the written policies and procedures manuals for Portus' IC/PM management operations did not adequately address several key issues, including but not limited to: the collection and updating of KYC and suitability information; the preparation, review and monitoring of monthly capital calculations; the preparation and maintenance of trade orders; and the performance of research; (ii) Portus did not follow all of the policies and procedures contained in its procedures manual; (iii) written policies and procedures for Fund Manager activities did not exist and oversight of Fund Manager activities was inadequate; (iv) the following weaknesses in internal controls were identified: the BancNote and BancLife Trusts' assets initially flowed into one broker account and were not properly segregated into the assets of the BancNote and BancLife Trusts; cheques were accepted on which the payee was not identified as PAAM; inadequate reviews were performed with respect to referral agreements, client statements, client confirmations and bank account reconciliations; bank reconciliations were not prepared; ongoing monitoring of clients' holdings was not performed; and (v) Portus' most recent statement of policies was not filed with the Commission, contrary to paragraph 223(3)(a) of the Regulation.

### **Information Provided to Investors**

#### **A. The Nature of the Investment was not Adequately Disclosed**

45. Investors were advised through marketing, client confirmations and other materials prepared and disseminated by Portus that they were investing directly in the Trusts. However, investors were, concurrently, required to sign managed account agreements granting Portus full discretion over their investments and were informed that their investments would receive favourable tax treatment.

46. In addition, employees of Portus and, as a consequence, referring agents, largely believed that the structure was such that clients were investing directly in the Trusts (both domestic and offshore). This belief was routinely conveyed to clients of Portus by Portus' wholesalers and employees and by referral agents.

#### **B. Management Fees**

47. In relation to the investment structures (both domestic and offshore), the fee disclosure made by Portus was contained in the managed account agreement which describes the applicable fees as 2.25% annually of the market value of the assets in each managed account plus 18% of the growth in the market value of these assets over and above their previous highest market value. Pursuant to the disclosure, these fees were to be calculated and accrued weekly and paid at the end of each quarter.

48. The offering memorandum for the Trusts provided to investors described the fees for unit holders identically to the disclosure contained in the above-referenced managed account agreement.

49. Portus took approximately 13.3% of the principal invested by clients prior to the investment of funds (approximately \$95.4 million) and used those funds for the ongoing operations of Portus. For instance, a portion of these funds were used to pay management fees, performance fees, referral fees (4% or 5%), trailer fees (1% plus other performance fees) and salaries. These funds were also used to satisfy redemption requests. The amount of funds used for these purposes was approximately equal to the fees Portus would have been entitled to at the maturity date of the Trusts.

### **Return of Investor Funds<sup>2</sup>**

50. Investors in Portus received at least 97% and up to 102% of the funds invested. This was primarily the result of the fact that, as described above, in all of the domestic investment structures, investor funds were invested in guaranteed notes with Soc Gen. The funds returned to investors also included the return of referral and brokerage fees from registered brokers and dealers who sold units in the Portus investment structures.

### **Criminal Proceedings**

51. Mr. Manor entered a plea of guilty on November 19, 2010 in the Superior Court of Justice of Ontario at Toronto to one count of transferring investor funds contrary to his obligations as a trustee, contrary to s. 462.31(1) of the Criminal Code, and

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<sup>2</sup> For complete reports and analysis of funds seized by KPMG Inc., Trustee in Bankruptcy & Court-Appointed Receiver for Portus, please refer to [www.portusgroup.ca](http://www.portusgroup.ca).

one count of disobeying a court order, by transferring those funds, contrary to s. 127(1) of the Criminal Code. Mr. Manor was sentenced to a global sentence of 4 years in jail on May 25, 2011. .

#### **PART IV – CONTRAVENTION OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

52. By engaging in the conduct described above, Manor admits and acknowledges that he contravened Ontario securities law during the Material Time in the following ways:

- (i) by engaging in the conduct described herein, Manor's actions were contrary to sections 2.1(1) and 2.1(2) of OSC Rule 31-505 respectively;
- (ii) as a consequence of his position of seniority and responsibility at Portus, Manor authorized, permitted or acquiesced in Portus' failure to exercise its powers and discharge its duties as a Fund Manager in the best interests of the mutual funds and, in connection therewith, failed to exercise the degree of care, diligence and skill expected of a reasonably prudent Fund Manager in the circumstances, contrary to section 116(1) of the Act; and

53. Manor admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in sub-paragraphs 52 (i) and (ii).

#### **PART V – TERMS OF SETTLEMENT**

54. Manor agrees to the terms of settlement listed below.

55. The Commission will make an order, pursuant to sections 127(1) of the Act, that:

- (a) the Settlement Agreement is approved;
- (b) trading in any securities by Manor cease permanently from the date of the approval of the Settlement Agreement;
- (c) the acquisition of any securities by Manor is prohibited permanently from the date of the approval of the Settlement Agreement with the exception that Manor is permitted to trade in securities in mutual funds through a registered dealer for the account of his Registered Retirement Savings Plan (as defined in the *Income Tax Act* (Canada));
- (d) any exemptions contained in Ontario securities law do not apply to Manor permanently from the date of the approval of the Settlement Agreement;
- (e) Manor be prohibited permanently from becoming or acting as a director or officer of any issuer;
- (f) Manor resign one or more positions he holds as a director or officer of any issuer;
- (g) Manor disgorge to the Commission \$8,800,000 obtained as a result of his non-compliance with securities law, for allocation to or for the benefit of third parties, through the Receiver/Trustee KPMG Inc., if appropriate; and
- (h) Manor be reprimanded.

56. Manor undertakes 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 sub-paragraphs 55 (b) to (h) above.

#### **PART VI – STAFF COMMITMENT**

57. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Manor in relation to the facts set out in Part III herein, subject to the provisions of paragraph 58 below.

58. If this Settlement Agreement is approved by the Commission, and at any subsequent time Manor fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Manor based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

## PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

59. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Manor for the scheduling of the hearing to consider the Settlement Agreement.

60. Staff and Manor agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Manor's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

61. If this Settlement Agreement is approved by the Commission, Manor agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

62. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

63. Whether or not this Settlement Agreement is approved by the Commission, Manor agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

## PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

64. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Manor leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Manor; and
- (b) Staff and Manor shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

65. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Manor and Staff or as may be required by law.

## PART IX. – EXECUTION OF SETTLEMENT AGREEMENT

66. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement

67. A facsimile copy of any signature will be as effective as an original signature.

Dated this 27th day of August, 2012.

Signed in the presence of:

"Robin Mckechney"  
Witness

"Boaz Manor"  
Boaz Manor

Dated this 27th day of August, 2012

## STAFF OF THE ONTARIO SECURITIES COMMISSION

Per: "Karen Manarin"

Tom Atkinson

Director, Enforcement Branch

Dated this 27th day of August, 2012

**SCHEDULE "A"**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**ORDER  
(Sections 127(1))**

**WHEREAS** on \_\_\_\_\_, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") in respect of Boaz Manor ("Manor");

**AND WHEREAS** Manor entered into a Settlement Agreement with Staff of the Commission dated \_\_\_\_\_, 2012 (the "Settlement Agreement") in which Manor agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement, and upon hearing submissions from counsel for Manor and from Staff of the Commission;

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

**IT IS HEREBY ORDERED THAT:**

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Manor cease permanently;
- (c) pursuant to clause 2.1 of subsection 127(1) of the Act, Manor is prohibited permanently from the acquisition of any securities with the exception that Manor is permitted to acquire securities in mutual funds and exchange traded funds through a registered dealer for the account of his Registered Retirement Savings Plan (as defined in the *Income Tax Act* (Canada));
- (d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Manor permanently;
- (e) pursuant to clause 6 of subsection 127(1) of the Act, Manor is reprimanded;
- (f) pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Manor is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- (g) pursuant to clause 8.5 of subsection 127(1) of the Act, Manor is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and
- (h) pursuant to clause 10 of subsection 127(1) of the Act, Manor disgorge to the Commission \$8,800,000 obtained as a result of his non-compliance with securities law, for allocation in accordance with subsection 3.4(2)(b)(i) of the Act to or for the benefit of third parties. Such amounts are to be distributed to security holders of Portus through the Receiver/Trustee KPMG Inc., if appropriate, or as otherwise directed by the Commission.

DATED AT TORONTO this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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\_\_\_\_\_  
\_\_\_\_\_

**3.1.4 Portus Alternative Asset Management Inc. et al.**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC., BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**SETTLEMENT AGREEMENT  
BETWEEN STAFF AND JOHN OGG**

**PART I – INTRODUCTION<sup>1</sup>**

1. By Notice of Hearing dated October 5, 2005, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing, commencing on November 14, 2005, pursuant to sections 127, and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), to consider whether it is in the public interest to make the following orders as specified therein, against Portus Alternative Asset Management Inc. (“PAAM”), Boaz Manor (“Manor”), Michael Mendelson (“Mendelson”), Michael Labanowich (“Labanowich”) and John Ogg (“Ogg”) (collectively the “Respondents”). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission dated October 5, 2005.

2. 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 Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Ogg.

**PART II – JOINT SETTLEMENT RECOMMENDATION**

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated October 5, 2005 against Ogg (the “Proceeding”) in accordance with the terms and conditions set out below. Ogg consents to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

**PART III – AGREED FACTS**

4. From July of 2003 to May 20, 2004, Ogg’s primary responsibility was to create a compliant operational structure for Portus. On May 20, 2004, Ogg was designated as Chief Compliance Officer. He held this position until March 4, 2005, at which time his employment was terminated as a consequence of the Receivership. Portus itself effectively ceased to operate on February 5, 2005.

5. Despite his role as Chief Compliance Officer, Ogg did not have adequate information about the various roles of the entities that comprised Portus nor did he learn the specifics of the duties of the principals of Portus, Mendelson and Manor.

6. Accordingly, Ogg does not dispute the facts as set out in paragraphs 7 to 46. Ogg does acknowledge the compliance deficiencies set out in paragraphs 47 to 50.

**The Corporate Structure**

7. PAAM, formerly Paradigm Alternative Asset Management Inc., is a corporation incorporated pursuant to the laws of Ontario on January 10, 2003. Its headquarters were located in Toronto.

8. On March 14, 2003, PAAM was registered with the Ontario Securities Commission (the “Commission”) as an Investment Counsel & Portfolio Manager (“IC/PM”) and Limited Market Dealer (“LMD”). PAAM was similarly registered in all other Canadian jurisdictions with the exception of Quebec. PAAM developed the financial products, distributed directly and indirectly to both accredited and retail investors, that are the subject of this proceeding.

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<sup>1</sup> Staff and the Respondents all agree that any references to sections of the Act, the Rules or Regulations contained in this Settlement Agreement and any Orders issued by the Commission in relation to this Settlement Agreement are consistent with the Act, Rules or Regulations as they existed at the filing of the Notice of Hearing dated October 5, 2005.

9. Paradigm Asset Management Inc. is a corporation incorporated pursuant to the laws of Ontario on January 8, 2003. Portus Asset Management Inc. is a corporation incorporated pursuant to the laws of Ontario on May 12, 2004. These two entities were amalgamated on May 27, 2004 and the combined entity was continued as Portus Asset Management Inc. (these entities hereinafter are collectively referred to as "PAM").

10. At all material times, PAM operated out of the same business premises as PAAM in Toronto. PAM was identified as the Fund Manager for the investment products offered by PAAM. PAM was primarily responsible for the marketing of the investment products created by PAAM.

11. Portus Alternative Asset Management Inc. (BVI) ("PAAM BVI"), formerly Paradigm Alternative Asset Management Inc. (BVI), is a corporation incorporated pursuant to the laws of the British Virgin Islands on December 10, 2003.

12. At all material times, the business and affairs of PAAM, PAAM BVI and PAM were so inextricably intertwined that PAAM, PAAM BVI and PAM operated as a single functional entity. They are therefore referred to herein collectively as "Portus".

13. Manor was the President and Director of PAAM from its inception on January 10, 2003 until March 4, 2005 (the "Material Time"), when KPMG Inc. ("KPMG") was appointed Receiver over the assets, undertakings and properties of PAAM, PAM and other related entities (the "Receivership"). On February 19, 2003, Manor was registered with the Commission as the Associate Portfolio Manager for PAAM. Manor also held the positions of President and Secretary for PAM from January 8, 2003 to April of 2003. Manor was the chief architect of all of the investment products that are the subject of this proceeding and was a directing mind of all of the entities involved in those products.

14. Mendelson was the primary directing mind of PAM during the Material Time.

#### **Domestic and International Investment Structures**

15. Portus marketed three different investment structures (two domestically and one offshore) to investors during the Material Time:

- a) The Market Neutral Preservation Fund (MNPF), offered to accredited investors in Canada beginning in February of 2003;
- b) The BancNote Trust Series (BNT) and the BancLife Trust Series (BLT), offered to Canadian investors through their respective wholesalers from August 2003 to February 2005;
- c) The Offshore Structure, was purportedly identical in structure to the BNT and BLT, except that investments were made in U.S. dollars.

#### **The Market Neutral Preservation Fund**

16. Portus' first product, the Market Neutral Preservation Fund (the "MNPF"), was launched in February of 2003 and closed in or about May of 2003. Approximately \$19.2 million was invested in the MNPF primarily by Canadian investors.

17. The MNPF was a non-prospectus qualified mutual fund offered directly to accredited investors by way of Offering Memorandum in reliance upon the accredited investor exemption set out in section 2.3 of OSC Rule 45-501. Units of the MNPF were sold by investment dealers to their clients.

18. PAM was designated as the manager to the MNPF and the MNB Trust (the value of the units of which establish the returns achieved by investors in the MNPF). PAAM was designated as the advisor.

19. The MNPF was professed to offer investors principal protection in addition to a minimum return of 1.12 times the original amount invested. This fund also purportedly offered tax benefits through the deferral of taxes on income/gains and the reduction of taxes on capital gains versus income.

20. These tax benefits would accrue by virtue of a swap agreement whereby the \$19.2 million was to be paid to the Royal Bank of Canada ("RBC") which, through its subsidiary Royal Bank of Canada Dominion Securities ("RBCDS"), invested the funds in a basket of non-dividend paying shares of Canadian companies. RBCDS would then short sell the shares and invest the proceeds back into the trust.

21. The MNPF Offering Memorandum stated that "the manager is required to exercise its powers and discharge its duties honestly, in good faith and in the best interests of the Trust and to exercise the care, diligence and skill of a prudent and qualified manager."

### **The BancNote Trust Series and the BancLife Trust Series**

22. The next investment product created and issued by Portus in July of 2003, following the close of the MNPF, were the BNT and BLT (collectively, the "Trusts").

23. The BLT largely mirrored the BNT but was distinguished by a "death benefit" and a longer term to maturity. Unlike the MNPF, the Trusts were sold via investment dealers or referral agents to non-accredited investors through a series of agreements between Portus and these entities (the "Portfolio Management Agreements"). A total of 12 different BNT series and two BLT series were created and marketed by Portus. Portus' promotional materials indicated an historical annual return of 7%.

24. The Trusts were designed to be tax efficient. By way of example, one of the Portfolio Management Agreements stated that "Paradigm initially intends to invest all of the assets in the Account in a structure intended to provide you with substantially the economic investments in the BancNote Trust – Series-IV with certain tax deferral and capital gains (rather than income) treatment."

25. According to the proposed scheme of the BNT, clients could open a "discretionary managed account" with minimum contributions of \$5,000. Offshore counterparties were to purchase Canadian equities on behalf of those clients. These counterparties were Premiers Derive Paris Inc. ("PDP") and BNote Management Inc ("BNote").

26. Both PDP and BNote were represented to the public to be arms-length offshore counterparties to the Trusts. On behalf of its clients, Portus would purport to enter into option contracts with the counterparties which had the effect of a swap such that, at maturity, the economic value of the units of the Trusts would be swapped for the economic value of the Canadian Equities.

27. The alleged arms-length offshore counterparty (PDP) purchased Canadian equities (the "Canadian Equities"), on a weekly basis, on behalf of Portus' clients. Portus, on behalf of its clients, then entered into option contracts with the alleged arms-length offshore counterparties (PDP and BNote Management) which had the effect of a swap such that, at maturity, the economic value of the units of the Trusts would be swapped for the economic value of the Canadian Equities. The option contracts were over-the-counter derivative contracts which were not prospectus qualified.

28. The investment objective of the BNT was to be ultimately realized by purchasing principal protected notes issued by Societe Generale Canada (the "Soc Gen Notes") as well as a linked hedge fund. The return on the notes was the greater of the principal amount invested or the returns achieved by the linked hedge fund. Investors were assured of a floor value at maturity equal to the principal invested.

29. Notwithstanding the description above, the investment scheme for the most part was not implemented as described.

30. During the Material Time, approximately 26,000 invested approximately \$750 million in the Trusts created by Portus. Manulife Securities requested specific offerings of BNT for its clients. Ultimately, six of the BNT series were marketed exclusively to Manulife.

### **The Implementation of the Trusts**

31. When funds were received from investors, they were not initially placed into a segregated account for particular investments, but were instead pooled and placed in custodial accounts and thereafter were placed into separate accounts.

32. The "arms length" entities to which these investor funds were transferred were in actuality companies controlled by nominees with the ultimate controlling mind being Manor. As a result, there was a non arms length relationship between the Trusts and the PDP/BNote. These non arms length entities did not purchase securities as represented.

33. Nigel Freeman was the Director, Signatory and Beneficial owner of PDP. Freeman informed investigators from the Royal Canadian Mounted Police (the "RCMP") that he did not have knowledge of what PDP did as a company nor did he have any knowledge of any of the transactions that took place between PDP, BNote and Portus.

34. Similarly, Arthur Berelowitz was the Director, Signatory and Beneficial owner of BNote. Berelowitz informed investigators from the RCMP that he did not have any knowledge of any of the transactions that took place between PDP, BNote and Portus.

35. For BNT Series II, III, IV, and parts of VI and VIa, funds from investors were paid from the PAAM custodial accounts to a PAAM trading account at Lines Overseas Management ("LOM"). According to the purported investment structure, these funds were to be used by PAAM to purchase shares of non-dividend paying Canadian securities and engaged in the swap described in paragraph 26 above.



36. In fact, these collected investor funds totaling \$185.0 million were moved at the direction of Manor between four separate foreign bank accounts in the names of PAAM, PDP, BNote and another offshore company controlled by Manor called BNote Limited. At the direction of Manor, these investor funds were then transferred back into PAAM accounts in the name of each of the Trusts at RBC in Toronto. Manor then transferred these funds from the PAAM accounts at RBC to another PAAM account at RBCDS. These funds were then used to buy the Soc Gen Notes.

37. Commencing with a portion of BNT Series VI and Via and through the remaining BNT and BLT series, no further funds were transferred through the LOM accounts. Of the total of \$732.9 million in investor funds collected for the BNT/BLT series, \$93.5 million was not invested. Of these funds, \$41.2 million were sent from an account in the name of PDP at Basel Trust in Jersey in the Channel Islands to Bank Hapoalim, in Switzerland. Using a series of purported loans, funds were then returned to PAM, PAAM or a company incorporated and controlled by Manor and/or Mendelson called BancNote Corp. These funds were further traced to assorted Portus bank accounts from which Portus paid operating expenses including commissions, referral fees, rent, utilities, salaries and payroll.

### **The Implementation of the Offshore Structure**

38. From September of 2003 until February of 2005, Portus offered an identical investment structure to that of the Trusts for clients who opened international accounts (the "Offshore Structure"). Investments in this structure were made in US dollars.

39. The client documentation and marketing information prepared for the Offshore Structure were the same in all material respects to that of the Trusts. Portus' staff in Toronto performed all sales and back-office administration for the Offshore Structure in substantially the same manner as for the Trusts.

40. Approximately 700 investors placed approximately \$52.8 million (U.S.) accounts under the Offshore Structure. However, none of this money was actually invested by Portus.

### **Information Provided to Investors**

#### **A. The Nature of the Investment was not Adequately Disclosed**

41. Investors were advised through marketing, client confirmations and other materials prepared and disseminated by Portus that they were investing directly in the Trusts. However, investors were, concurrently, required to sign managed account agreements granting Portus full discretion over their investments and were informed that their investments would receive favourable tax treatment.

42. In addition, employees of Portus and, as a consequence, referring agents, largely believed that the structure was such that clients were investing directly in the Trusts (both domestic and offshore). This belief was routinely conveyed to clients of Portus by Portus' wholesalers and employees and by referral agents.

#### **B. Management Fees**

43. In relation to the investment structures (both domestic and offshore), the fee disclosure made by Portus was contained in the managed account agreement which describes the applicable fees as 2.25% annually of the market value of the assets in each managed account plus 18% of the growth in the market value of these assets over and above their previous highest market value. Pursuant to the disclosure, these fees were to be calculated and accrued weekly and paid at the end of each quarter.

44. The offering memorandum for the Trusts provided to investors described the fees for unitholders identically to the disclosure contained in the above-referenced managed account agreement.

45. Portus took approximately 13.3% of the principal invested by clients prior to the investment of funds (approximately \$95.4 million) and used those funds for the ongoing operations of Portus. For instance, a portion of these funds were used to pay management fees, performance fees, referral fees (4% or 5%), trailer fees (1% plus other performance fees) and salaries. These funds were also used to satisfy redemption requests. The amount of funds used for these purposes was approximately equal to the fees Portus would have been entitled to at the maturity date of the Trusts.

46. Investors in Portus received at least 97% and up to 102% of the funds invested. This was primarily the result of the fact that, as described above, in all of the domestic investment structures, investor funds were invested in guaranteed notes with Soc Gen. The funds returned to investors also included the return of referral and brokerage fees from registered brokers and dealers who sold units in the Portus investment structures.<sup>2</sup>

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<sup>2</sup> For complete reports and analysis of funds seized by KPMG Inc., Trustee in Bankruptcy & Court-Appointed Receiver for Portus, please refer to [www.portusgroup.ca](http://www.portusgroup.ca).

### **Compliance Deficiencies at Portus**

47. Despite his role as Chief Compliance Officer, Ogg did not have adequate information about the various roles of the entities that comprised Portus nor was he able to learn the specifics of the duties of Mendelson and Manor. Manor misled Ogg about the operations of Portus.

48. Staff conducted an investigation and compliance review of Portus between January 24, 2005 and February 18, 2005 (the "Review"). During the Review, the following compliance deficiencies were noted in relation to the investment structures being offered by Portus:

- (a) Portus did not properly collect and assess Know Your Client ("KYC") and suitability information, contrary to subsection 1.5(1) of OSC Rule 31-505, in that suitability information collected was inadequate, incomplete and not properly followed-up;
- (b) Portus maintained deficient books and records, contrary to subsection 19(1) of the Act, and subsections 113(1), 113(3)1, 113(3)6 and 113(3)10 of Regulation 1015 to the Act, and Portus failed to provide Staff with numerous books and records required to be maintained, contrary to subsection 19(3) of the Act, in that i) records of monthly calculations of minimum free capital were not prepared or maintained; ii) trade instructions were not maintained regarding the alleged purchase and sale of securities; iii) the trades allegedly conducted on behalf of the Trusts were not contained in the trading blotter; iv) Staff were not provided with: sufficient evidence to ascertain client holdings, ledgers and/or other records that accurately reflect assets, liabilities, income, expenses and capital accounts; back-up information regarding Net Asset Value calculations; supporting documentation regarding performance data included in marketing materials; and, accurate and, in some cases any, back-up support for the alleged reconciliation of deposits and investments prepared by Ali Hamid; and v) Minutes of board of directors', management, portfolio management and executive meetings were either not kept or were withheld from Staff.
- (c) Portus engaged in improper or inadequate pricing of the units of the Trusts, contrary to subsection 116(1) of the Act and 2.1 of OSC Rule 31-505, in that prices were calculated exclusively by Manor. This was not in accordance with the manner of pricing disclosed in the relevant offering memoranda;
- (d) Portus maintained inadequate policies, procedures and internal controls in several key areas of business, contrary to subsection 1.2 of OSC Rule 31-505, these deficiencies include but are not limited to (i) the written policies and procedures manuals for Portus' IC/PM management operations did not adequately address several key issues, including but not limited to: the collection and updating of KYC and suitability information; the preparation, review and monitoring of monthly capital calculations; the preparation and maintenance of trade orders; and the performance of research; (ii) Portus did not follow all of the policies and procedures contained in its procedures manual; (iii) written policies and procedures for Fund Manager activities did not exist and oversight of Fund Manager activities was inadequate; (iv) the following weaknesses in internal controls were identified: the BancNote and BancLife Trusts' assets initially flowed into one broker account and were not properly segregated into the assets of the BancNote and BancLife Trusts; cheques were accepted on which the payee was not identified as PAAM; inadequate reviews were performed with respect to referral agreements, client statements, client confirmations and bank account reconciliations; bank reconciliations were not prepared; ongoing monitoring of clients' holdings was not performed; and (v) Portus' most recent statement of policies was not filed with the Commission, contrary to paragraph 223(3)(a) of the Regulation.

49. Nonetheless, Ogg, in his capacity as Chief Compliance Officer for Portus from May 20, 2004 to March 4, 2005, should also have known of the above-listed deficiencies. Ogg should have taken all reasonable steps, commensurate with his position at Portus and his corresponding duties to investors, to remedy such deficiencies and to determine whether such deficiencies were, in fact, indicia that the investment structures being offered by Portus were not as they were alleged to be. However, Ogg was not aware of any fraudulent activity at Portus.

50. When Ogg did learn of the compliance deficiencies at Portus, Ogg did not alert Staff promptly.

### **PART IV – CONTRAVENTION OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

51. By engaging in the conduct described above, Ogg admits and acknowledges that he contravened Ontario securities law during the Material Time in the following ways:

- (i) by engaging in the conduct described herein related to Portus' breaches of Ontario securities laws, Ogg's actions were contrary to sections 2.1(1) and 2.1(2) of OSC Rule 31-505 respectively;

- (ii) as a consequence of his position of seniority and responsibility at Portus, Ogg authorized, permitted or acquiesced in Portus' failure to exercise its powers and discharge its duties as a Fund Manager in the best interests of the mutual funds and, in connection therewith, failed to exercise the degree of care, diligence and skill expected of a reasonably prudent Fund Manager in the circumstances, contrary to section 116(1) of the Act; and

52. Ogg admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in sub-paragraphs 51 (i) to (ii).

#### **PART V –RESPONDENT’S POSITION**

53. Ogg requests that the settlement hearing panel consider the following mitigating circumstances.

54. Ogg cooperated with Staff's investigation.

55. On June 13, 2006, Ogg signed a undertaking with the Commission in which he agreed to refrain from the following activity, pending the Commission's final decision on liability and sanctions in the proceeding commenced by the Notice of Hearing against Ogg, or an Order of the Commission releasing Ogg from this undertaking or aspects of the undertaking:

- (i) acting or becoming an officer or director of a "reporting issuer", "affiliated company" of a reporting issuer, as these terms are defined in the Act, and in particular, subsections 1(1) and 1(1.1) of the Act, respectively;
- (ii) applying to become a "registrant" or from being an employee, director or officer of a registrant or an affiliated company of a registrant, as that term is defined in the Act; and
- (iii) engaging directly or indirectly in the solicitation of funds from the general public for investment in "securities," as that term is defined in the Act and, in particular, subsection 1(1) thereof

56. As a result of signing the undertaking, Ogg has been effectively unable to participate in his chosen field of business in the capital markets since June 13, 2006. Staff have no reason to believe that Ogg has not complied with this undertaking.

#### **PART V – TERMS OF SETTLEMENT**

57. Ogg agrees to the terms of settlement listed below.

58. The Commission will make an order, pursuant to sections 127(1) and section 127.1 of the Act, that:

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 7 of subsection 127(1), Ogg resign all positions he holds as a director or officer of an issuer;
- (c) pursuant to clauses 8 of the Act, Ogg is prohibited for a period of six years from the date of this Order from becoming or acting as a director or officer of any reporting issuer;
- (d) pursuant to clause 8.2 of subsection 127(1), Ogg is prohibited from becoming or acting as a compliance officer of a registrant; and,
- (e) pursuant to section 127.1 of the Act, Ogg shall pay costs to the Commission in the amount of \$25,000.

59. Ogg undertakes 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 sub-paragraph 58 (b) above.

#### **PART VI – STAFF COMMITMENT**

60. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Ogg in relation to the facts set out in Part III herein, subject to the provisions of paragraph 61 below.

61. If this Settlement Agreement is approved by the Commission, and at any subsequent time Ogg fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Ogg based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

## PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

62. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Ogg for the scheduling of the hearing to consider the Settlement Agreement.

63. Staff and Ogg agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Ogg's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

64. If this Settlement Agreement is approved by the Commission, Ogg agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

65. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

66. Whether or not this Settlement Agreement is approved by the Commission, Ogg agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

## PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

67. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Ogg leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Ogg; and
- (b) Staff and Ogg shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

68. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Ogg and Staff or as may be required by law.

## PART IX. – EXECUTION OF SETTLEMENT AGREEMENT

69. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement

70. A facsimile copy of any signature will be as effective as an original signature.

Dated this 27th day of August, 2012.

Signed in the presence of:

"John Bassani"  
\_\_\_\_\_  
Witness

"John Ogg"  
\_\_\_\_\_  
John Ogg

Dated this 27th day of August, 2012

## STAFF OF THE ONTARIO SECURITIES COMMISSION

Per: "Karen Manarin"  
\_\_\_\_\_

**Tom Atkinson**

Director, Enforcement Branch

Dated this 27th day of August, 2012

**SCHEDULE "A"**

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

**AND**

**IN THE MATTER OF  
PORTUS ALTERNATIVE ASSET MANAGEMENT INC.,  
PORTUS ASSET MANAGEMENT INC.,  
BOAZ MANOR, MICHAEL MENDELSON,  
MICHAEL LABANOWICH AND JOHN OGG**

**ORDER  
(Sections 127(1))**

**WHEREAS** on \_\_\_\_\_, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") in respect of John Ogg ("Ogg");

**AND WHEREAS** Ogg entered into a Settlement Agreement with Staff of the Commission dated \_\_\_\_\_, 2012 (the "Settlement Agreement") in which Ogg agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing, subject to the approval of the Commission;

**AND UPON** reviewing the Settlement Agreement, and upon hearing submissions from counsel for Ogg and from Staff of the Commission;

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

**IT IS HEREBY ORDERED THAT:**

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 7 of subsection 127(1) of the Act, Ogg resign all positions he holds as a director or officer of an issuer;
- (c) pursuant to clause 8 of subsection 127(1) of the Act, Ogg is prohibited for a period of six years from the date of this Order from becoming or acting as a director or officer of any reporting issuer;
- (d) pursuant to clause 8.2 of subsection 127(1) of the Act, Ogg is prohibited from becoming or acting as a compliance officer of a registrant; and,
- (e) pursuant to section 127.1 of the Act, Ogg shall pay costs to the Commission in the amount of \$25,000.

**DATED AT TORONTO** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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## Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Blue Horizon Industries Inc.	10 Aug 12	22 Aug 12		24 Aug 12
Goldnev Resources Inc.	10 Aug 12	22 Aug 12	23 Aug 12	
Sierra Madre Developments Inc.	10 Aug 12	22 Aug 12	22 Aug 12	
TAC Gold Corporation	10 Aug 12	22 Aug 12	22 Aug 12	
Hart Stores Inc.	10 Aug 12	22 Aug 12	22 Aug 12	
Arius3D Corp.	09 Aug 12	21 Aug 12	23 Aug 12	

### 4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS FOR THIS WEEK.

### 4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS FOR THIS WEEK.

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## **Chapter 7**

# **Insider Reporting**

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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](http://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](http://www.sedi.ca)).



## Chapter 8

# Notice of Exempt Financings

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### REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1

Transaction Date	No of Purchasers	Issuer/Security	Total Purchase Price (\$)	No of Securities Distributed
07/31/2012	2	Advent International GPE VII-E Limited Partnership - Limited Partnership Units	27,000,000.00	2.00
07/26/2012	2	All Nippon Airways Co; Ltd. - Common Shares	12,782,132.70	5,381,000.00
07/26/2012	2	All Nippon Airways Co; Ltd. - Common Shares	12,782,242.64	5,381,000.00
07/12/2012	6	AndeanGold Ltd. - Units	360,000.00	7,200,000.00
07/16/2012	1	Augustine Ventures Inc. - Common Shares	115,000.00	1,000,000.00
08/09/2012		Aura Silver Resources Inc. - Common Shares		2,000,000.00
07/30/2012	6	Auriga Gold Corp. - Units	224,400.00	1,320,000.00
07/30/2012	6	Auriga Gold Corp. - Units	224,400.00	1,320,000.00
02/08/2012	3	Aurora USA Oil & Gas Inc. - Notes	19,389,801.22	3.00
07/17/2012	3	Avrev Canada Inc. - Common Shares	64,999.80	433,332.00
07/09/2012	4	BE Aerospace, Inc. - Notes	15,624,360.00	4.00
07/06/2012	2	Bending Lake Iron Group Limited - Debt	200,000.00	200,000.00
07/31/2012	10	Blackline GPS Corp. - Units	4,000,000.00	3,200,000.00
07/29/2008	2	Blue Coast Ltd. - Notes	4,104,400.00	4,000.00
04/03/2012	1	Blue Danube Ltd. - Notes	1,486,500.00	1,500.00
06/13/2012	6	Broccolini Limited Partnership No. 2 - Limited Partnership Units	1,720,000.00	172.30
08/03/2012	104	C2C Industrial Properties Inc. - Common Shares	22,000,160.00	4,835,200.00
07/23/2012	16	Calvista Gold Corporation - Units	1,534,144.00	3,835,360.00
08/02/2012	39	Cancen Oil Canada Inc. - Debentures	2,960,000.00	2,960.00
07/27/2012	1	Canstar Resources Inc. - Common Shares	15,000.00	100,000.00
08/01/2012	8	Capital Direct I Income Trust - Trust Units	382,278.89	38,227.89
07/20/2012	2	Cheniere Energy Inc. - Common Shares	1,489,950.00	105,000.00
07/30/2012	5	Clean Harbors, Inc. - Notes	14,982,278.90	5.00
08/13/2012	7	Cleanfield Alternative Energy Inc. - Common Shares	85,671.23	428,356.00
07/26/2012	2	Cleanfield Alternative Energy Inc. - Common Shares	84,250.00	1,685,000.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b>No of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b>No of Securities Distributed</b>
07/24/2012	12	Clearview Resources Ltd. - Preferred Shares	100.00	100.00
07/10/2012 to 07/11/2012	3	Colwood City Centre Limited Partnership - Notes	115,000.00	115,000.00
08/15/2012	15	Crown Gold Corporation - Flow-Through Shares	404,883.31	4,763,333.00
04/25/2012	1	CRS Electronics Inc. - Debentures	300,000.00	1.00
07/23/2012	1	Daymak Inc. - Common Shares	100,000.00	2.50
07/24/2012	3	eBay Inc. - Notes	11,213,605.00	11,000,000.00
07/10/2012	22	Ecuador Capital Corp. - Debentures	4,500,000.00	150,000.00
07/12/2012	1	Exam Works Group, Inc. - Common Shares	85,000.00	6,190.00
06/29/2012	2	Exro Technologies Inc. - Common Shares	229,060.00	352,400.00
07/30/2012	1	First Point Minerals Corp. - Units	436,454.00	779,382.00
08/13/2012	5	Flemish Gold Corp. - Units	2,175,000.00	5,437,500.00
07/24/2012	5	General Electric Capital Corporation - Common Shares	19,395,200.00	190.00
04/13/2012	1	Good Shepherd Non-Profit Homes Inc. - Debentures	24,509,055.22	1.00
08/16/2012	130	Graniz Mondal Inc. - Units	316,999.92	2,641,666.00
07/31/2012	19	Green Swan Capital Corp. - Units	1,423,040.00	2,177,000.00
07/06/2012	13	Greystone Real Estate Fund Inc. - Common Shares	420,570.82	420,570.83
07/31/2012	18	GWR Resources Inc. - Flow-Through Units	843,684.00	7,030,700.00
08/01/2012	7	Hologic, Inc. - Notes	4,519,670.40	7.00
06/29/2012	10	Honeycomb Power Systems Corp. - Preferred Shares	6,717,988.50	0.00
06/26/2012	16	Innergex Renewable Energy Inc. - Common Shares	123,656,524.00	12,040,499.00
07/19/2012	2	Innovation Ventures, LLC/Innovation Ventures Finance Corp - Notes	6,046,200.00	6,046,200.00
07/31/2012	19	Institutional Mortgage Securities Canada Inc. - Mortgage	252,674,623.72	19.00
06/29/2012	1	Interface Biologics Inc. - Preferred Shares	1,000,001.41	593,367.00
08/03/2012	13	International Tower Hill Mines Ltd. - Common Shares	24,591,600.00	9,458,307.69
07/18/2012	1	Jiminex Inc. - Units	538,000.00	6,725,000.00
07/25/2012	6	Kayak Software Corporation - Common Shares	741,176.80	28,000.00
06/27/2012	2	KingSett Canadian Real Estate Income Fund LP - Units	225,000.00	184.23
08/14/2012	1	Lake Shore Gold Corp. - Common Shares	330,000.00	300,000.00

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b>No of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b>No of Securities Distributed</b>
07/30/2012	9	Legend Gold Corp. - Common Shares	300,000.00	6,000,000.00
06/13/2012	2	Manicouagan Minerals Inc. - Units	150,000.00	3,000,000.00
07/23/2012	2	MicroPlanet Technology Corp. - Notes	300,000.00	300.00
12/22/2010	1	Montana Re Ltd. - Notes	8,118,400.00	8,000.00
08/06/2012 to 08/15/2012	5	Newport Balanced Fund - Trust Units	304,600.00	N/A
08/06/2012 to 08/15/2012	6	Newport Canadian Equity Fund - Trust Units	175,000.00	N/A
08/06/2012 to 08/15/2012	5	Newport Fixed Income Fund - Trust Units	246,204.77	N/A
08/06/2012 to 08/15/2012	4	Newport Global Equity Fund - Trust Units	48,400.00	N/A
08/06/2012 to 08/15/2012	31	Newport Yield Fund - Trust Units	762,521.07	N/A
08/21/2012	1	Northquest Ltd. - Common Shares	0.00	500,000.00
07/19/2012 to 07/27/2012	60	Omniarch Capital Corporation - Bonds	1,724,820.00	N/A
07/31/2012	5	OPEL Technologies Inc. - Units	357,400.00	3,010,044.00
07/25/2012	12	Palo Alto Networks, Inc. - Common Shares	4,553,961.30	106,500.00
07/28/2009	1	Parkton Re Ltd. - Notes	2,720,000.00	2,720.00
07/19/2012	4	PC Merger Sub, Inc. / Party City Holdings Inc. - Notes	3,224,640.00	3,200.00
08/14/2012	17	Pelangio Exploration Inc. - Common Shares	1,150,000.00	4,600,000.00
07/09/2012	16	Phenomenome Discoveries Inc. - Preferred Shares	3,621,600.00	45,270.00
07/31/2012	1	Preferred Commerce, Inc. - Units	250,000.00	1.00
07/04/2012	5	Prestige Hospitality HW Registered Investments Inc. - Units	120,000.00	1,200.00
07/18/2012	2	ProMetic Life Sciences Inc. - Common Shares	44,609.58	371,746.00
08/15/2012	17	RedWater Energy Corp. - Flow-Through Shares	550,000.00	2,200,000.00
08/02/2012	18	Royal Bank of Canada - Common Shares	2,515,500.00	25,000.00
08/16/2012	1	Royal Bank of Canada - Notes	98,810.00	100.00
08/10/2012	1	Royal Bank of Canada - Notes	2,000,000.00	20,000.00
08/10/2012	24	Royal Bank of Canada - Notes	8,820,000.00	88,200.00
05/29/2012	49	SAO Special Finance Corp. - Receipts	1,488,125.00	875,051.00
07/16/2012	13	ShopLocket Inc. - Preferred Shares	1,052,488.79	411,857.00
07/18/2012	7	Smithfield Foods, Inc. - Notes	30,892,160.00	30,703.64

**Notice of Exempt Financings**

<b>Transaction Date</b>	<b>No of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b>No of Securities Distributed</b>
07/27/2012	2	Solvista Gold Corporation - Common Shares	450,000.00	1,800,000.00
06/18/2012	1	Splunk Inc. - Common Shares	143,806.63	5,000.00
07/30/2012	7	Strike Minerals Inc. - Flow-Through Units	317,000.00	2,150,000.00
08/07/2012	1	Superior Copper Corporation - Common Shares	37,500.00	750,000.00
07/24/2012	14	Talmora Diamond Inc. - Flow-Through Units	280,000.00	5,600,000.00
08/15/2012	20	Threegold Resources Inc. - Common Shares	510,300.00	8,505,000.00
07/31/2012	1	TMX Group Inc. - Preferred Shares	30,150,000.00	30,150,000.00
07/31/2012	1	TMX Group Inc. - Preferred Shares	148,300,000.00	148,300,000.00
06/29/2012	31	TomaGold Corporation - Units	750,000.00	3,750,000.00
07/26/2012	3	Toys "R" Us, Inc. - Notes	11,003,655.66	3.00
07/30/2012	30	TriStar Gold Inc. - Units	1,400,000.00	5,600,000.00
07/25/2012	5	Trunity Holdings, Inc. - Debentures	215,300.00	5.00
07/13/2012 to 07/19/2012	27	UBS AG, Jersey Branch - Certificates	18,077,464.12	27.00
07/23/2012 to 07/27/2012	36	UBS AG, Jersey Branch - Certificates	24,344,478.92	36.00
08/02/2012	2	Unilver Capital Corporation - Notes	9,982,459.89	2.00
07/24/2012	5	Universal Hospital Services, Inc. - Notes	9,312,000.00	15,000.00
07/27/2012	175	Vista Gold Corp. - Units	15,089,999.99	5,000,000.00
07/30/2012	1	Vita Capital V Ltd. - Notes	16,279,250.00	16,279,250.00
07/12/2012	10	Vital Alert Communication Inc. - Preferred Shares	300,007.44	3,333,416.00
07/19/2012	109	Walton Alliston Development LP - Limited Partnership Units	5,342,500.00	534,250.00
07/19/2012	23	Walton GA Yargo Township LP - Limited Partnership Units	1,104,563.60	108,824.00
07/19/2012	22	Walton MD Gardner Woods Investment - Common Shares	618,310.00	61,831.00
07/05/2012	16	Walton MD Gardner Woods Investment Corporation - Common Shares	487,000.00	48,700.00
06/28/2012	15	Walton MD Gardner Woods Investment Corporation - Common Shares	371,180.00	37,118.00
05/24/2012	65	Walton MD Gardner Woods investment Corporation - Common Shares	1,196,570.00	119,657.00
06/07/2012	24	Walton MD Gardner Woods Investment Corporation - Common Shares	1,407,730.00	140,773.00
06/07/2012	7	Walton MD Gardner Woods LP - Limited Partnership Units	1,599,840.03	153,683.00

**Notice of Exempt Financings**

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<b>Transaction Date</b>	<b>No of Purchasers</b>	<b>Issuer/Security</b>	<b>Total Purchase Price (\$)</b>	<b>No of Securities Distributed</b>
07/12/2012	3	Walton NC Westlake LP - Limited Partnership Units	409,825.28	40,022.00
06/07/2012	12	Walton Westphalia Development Corporation - Units	850,000.00	85,000.00
05/10/2012	15	Wlaton MD Gardner Woods LP - Units	562,331.25	56,250.00

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## Chapter 11

# IPOs, New Issues and Secondary Financings

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**Issuer Name:**

01 Communique Laboratory Inc.

Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated August 21, 2012

NP 11-202 Receipt dated August 21, 2012

**Offering Price and Description:**

\$3,000,000.00 - 3,000,000 Common Shares Price: \$1.00 per Common Share

**Underwriter(s) or Distributor(s):**

CLARUS SECURITIES INC.

NCP NORTHLAND CAPITAL PARTNERS INC.

PARADIGM CAPITAL INC.

MGI SECURITIES INC.

**Promoter(s):**

-

**Project #1947224**

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**Issuer Name:**

Atna Resources Ltd.

Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated August 27, 2012

NP 11-202 Receipt dated

**Offering Price and Description:**

C\$15,000,000.00 - 15,000,000 Shares Price: C \$1.00

**Underwriter(s) or Distributor(s):**

Canaccord Genuity Corp.

NCP Northland Capital Partners Inc.

**Promoter(s):**

-

**Project #1951095**

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**Issuer Name:**

APMEX Physical - 1 oz. Gold Redeemable Trust

Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated August 23, 2012

NP 11-202 Receipt dated August 24, 2012

**Offering Price and Description:**

U.S.\$ \* (\* Units) Minimum Subscription: U.S.\$1,000 (100 Units) PRICE U.S. \$10.00 PER UNIT

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.

Stifel Nicolaus Canada Inc.

**Promoter(s):**

APMEX Precious Metals Management Services Inc.

**Project #1949829**

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**Issuer Name:**

Coxe Global Agribusiness Income Fund

Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated August 23, 2012

NP 11-202 Receipt dated August 23, 2012

**Offering Price and Description:**

\$\* - \* Units \$\* per Unit

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.

**Promoter(s):**

BMO Nesbitt Burns Inc.

**Project #1948330**

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**Issuer Name:**

Lake Shore Gold Corp.

Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated August 22, 2012

NP 11-202 Receipt dated August 22, 2012

**Offering Price and Description:**

\$90,000,000.00 - 6.25% Convertible Senior Unsecured Debentures Due September 30, 2017 Price: \$1,000.00 per Debenture

**Underwriter(s) or Distributor(s):**

BMO NESBITT BURNS INC.

CIBC WORLD MARKETS INC.

NATIONAL BANK FINANCIAL INC.

RBC DOMINION SECURITIES INC.

TD SECURITIES INC.

**Promoter(s):**

-

**Project #1947969**

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**Issuer Name:**

Partners Real Estate Investment Trust  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated August 21, 2012  
NP 11-202 Receipt dated August 21, 2012

**Offering Price and Description:**

\$30,000,000.00 - 6.0% Convertible Unsecured  
Subordinated Debentures Price: \$1,000 per Debenture

**Underwriter(s) or Distributor(s):**

NATIONAL BANK FINANCIAL INC.  
SCOTIA CAPITAL INC.  
CANACCORD GENUITY CORP.  
CIBCWORLDMARKETS INC.  
RBC DOMINION SECURITIES INC.  
TD SECURITIES INC.  
MACQUARIE CAPITALMARKETS CANADA LTD.  
RAYMOND JAMES LTD.  
MPARTNERS INC.

**Promoter(s):**

-

**Project #**1947464

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**Issuer Name:**

Picton Mahoney Tactical Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated August 24, 2012  
NP 11-202 Receipt dated August 27, 2012

**Offering Price and Description:**

\$\* - \* Class A and \* Class F Units Price: \$10.00 per Unit

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.  
CIBC World Markets Inc.  
TD Securities Inc.  
BMO Nesbitt Burns Inc.  
MacQuarie Private Wealth Inc.  
Scotia Capital Inc.  
GMP Securities L.P.  
Canaccord Genuity Corp.  
Raymond James Ltd.

**Promoter(s):**

Picton Mahoney Asset Management  
**Project #**1950671

**Issuer Name:**

Primaris Retail Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Base Shelf Prospectus dated August 21, 2012  
NP 11-202 Receipt dated August 21, 2012

**Offering Price and Description:**

\$900,000,000.00:  
Units  
Subscription Receipts  
Warrants  
Debt Securities

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**1947407

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**Issuer Name:**

SANDSTORM GOLD LTD.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated August 24, 2012  
NP 11-202 Receipt dated August 24, 2012

**Offering Price and Description:**

\$130,500,000.00 - 13,050,000 Units Price: \$10.00 per Unit

**Underwriter(s) or Distributor(s):**

CORMARK SECURITIES INC.  
NATIONAL BANK FINANCIAL INC.  
PARADIGM CAPITAL INC.  
BMO NESBITT BURNS INC.  
CASIMIR CAPITAL LTD.  
CANACCORD GENUITY CORP.  
TD SECURITIES INC.

**Promoter(s):**

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**Project #**1950238

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**Issuer Name:**

SQI Diagnostics Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Base Shelf Prospectus dated August 23, 2012  
NP 11-202 Receipt dated August 23, 2012

**Offering Price and Description:**

\$20,000,000.00  
Common Shares  
Subscription Receipts  
Warrants  
Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**1948478

**Issuer Name:**

01 Communique Laboratory Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated August 27, 2012  
NP 11-202 Receipt dated August 27, 2012

**Offering Price and Description:**

\$3,000,000.00 - 3,000,000 Common Shares Per Offered  
Share \$1.00

**Underwriter(s) or Distributor(s):**

CLARUS SECURITIES INC.  
NCP NORTHLAND CAPITAL PARTNERS INC.  
PARADIGM CAPITAL INC.  
MGI SECURITIES INC.

**Promoter(s):**

-

**Project #**1947224

---

**Issuer Name:**

Anchor Managed Defensive Income Fund  
Anchor Managed Dividend Growth Fund  
Anchor Managed High Income Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated August 17, 2012  
NP 11-202 Receipt dated August 22, 2012

**Offering Price and Description:**

Class A units, Class F units, Verus Class A units and Verus  
Class F units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Scotia Managed Companies Administration Inc.

**Project #**1931745

---

**Issuer Name:**

CANOE 'GO CANADA!' BOND ADVANTAGE CLASS  
(Series A and F)  
CANOE 'GO CANADA!' BOND ADVANTAGE FUND  
(Series A, F and I)  
CANOE 'GO CANADA!' ENERGY INCOME CLASS (Series  
A and F)  
CANOE 'GO CANADA!' ENHANCED INCOME FUND  
(Series A, F and I)  
CANOE 'GO CANADA!' ENHANCED INCOME CLASS  
(Series A and F)  
Principal Regulator - Alberta

**Type and Date:**

Amendment #1 dated August 8, 2012 to the Simplified  
Prospectuses dated January 19, 2012  
NP 11-202 Receipt dated August 21, 2012

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Canoe Financial Corp.

**Project #**1824623

**Issuer Name:**

Caterpillar Financial Services Limited  
Principal Regulator - Ontario

**Type and Date:**

Final Base Shelf Prospectus dated August 21, 2012  
NP 11-202 Receipt dated August 22, 2012

**Offering Price and Description:**

Cdn \$1,500,000,000.00 - Medium Term Notes (unsecured)

**Underwriter(s) or Distributor(s):**

RBC Dominion Securities Inc.  
TD Securities Inc.

**Promoter(s):**

-

**Project #**1940988

---

**Issuer Name:**

Cott Corporation  
Principal Regulator - Ontario

**Type and Date:**

Final Base Shelf Prospectus dated August 22, 2012  
NP 11-202 Receipt dated August 22, 2012

**Offering Price and Description:**

U.S. \$300,000,000.00 - Debt Securities, Preferred Shares,  
Common Shares, Depositary Shares, Warrants to  
Purchase Debt Securities, Warrants to Purchase Common  
Shares, Warrants to Purchase Preferred Shares, Warrants  
to Purchase Depositary Shares, Stock Purchase Contracts  
and Stock Purchase Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**1922605

---

**Issuer Name:**

Crescent Point Energy Corp.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated August 23, 2012  
NP 11-202 Receipt dated August 23, 2012

**Offering Price and Description:**

\$550,220,000.00 - 13,420,000 Common Shares; \$41.00  
per Common Share

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.  
CIBC World Markets Inc.  
Scotia Capital Inc.  
RBC Dominion Securities Inc.  
TD Securities Inc.  
FirstEnergy Capital Corp  
National Bank Financial Inc.  
GMP Securities L.P.  
Macquarie Capital Markets Canada Ltd.  
Peters & Co. Limited.

**Promoter(s):**

-

**Project #**1945283

**Issuer Name:**

Dundee International Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated August 24, 2012  
NP 11-202 Receipt dated August 24, 2012

**Offering Price and Description:**

\$71,740,000.00 - 6,800,000 Units PRICE: \$10.55 per Unit

**Underwriter(s) or Distributor(s):**

TD SECURITIES INC.  
SCOTIA CAPITAL INC.  
CIBC WORLD MARKETS INC.  
RBC DOMINION SECURITIES INC.  
BMO NESBITT BURNS INC.  
CANACCORD GENUITY CORP.  
DUNDEE SECURITIES LTD.  
BROOKFIELD FINANCIAL CORP.  
GMP SECURITIES L.P.  
HSBC SECURITIES (CANADA) INC.  
NATIONAL BANK FINANCIAL INC.

**Promoter(s):**

-

**Project #**1946235

---

**Issuer Name:**

Galileo Global Opportunities Fund  
Galileo High Income Plus Fund  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated August 24, 2012  
NP 11-202 Receipt dated August 24, 2012

**Offering Price and Description:**

Class A and F units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**1934348

---

**Issuer Name:**

Horizons Dividend ETF  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 dated August 17, 2012 to the Long Form  
Prospectus dated January 24, 2012  
NP 11-202 Receipt dated August 22, 2012

**Offering Price and Description:**

-

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

ALPHAPRO MANAGEMENT INC.  
**Project #**1842250

**Issuer Name:**

Horizons Income Plus ETF  
Horizons Tactical Bond ETF  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated August 22, 2012  
NP 11-202 Receipt dated August 24, 2012

**Offering Price and Description:**

Class E units and Advisor class units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**1934294

---

**Issuer Name:**

Horizons S&P 500® Index (C\$ Hedged) ETF  
Horizons S&P/TSX 60 Index ETF  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated August 22, 2012  
NP 11-202 Receipt dated August 24, 2012

**Offering Price and Description:**

Class A units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #**1934266

---

**Issuer Name:**

Kitrinor Metals Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated August 24, 2012  
NP 11-202 Receipt dated August 24, 2012

**Offering Price and Description:**

Minimum of \$500,000.00 or 2,000,000 Units; Maximum of  
\$1,520,000.00 or 2,000,000 Units and up to 3,400,000 FT  
Units

**Underwriter(s) or Distributor(s):**

PI Financial Corp.

**Promoter(s):**

-

**Project #**1930747

**Issuer Name:**

McEwen Mining Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final MJDS Prospectus dated August 24, 2012  
NP 11-202 Receipt dated August 24, 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:**

Quartet Resources Limited  
Principal Regulator - Alberta

**Type and Date:**

Final CPC Prospectus dated August 23, 2012  
NP 11-202 Receipt dated August 24, 2012

**Offering Price and Description:**

\$200,000.00 - 2,000,000 Ordinary Shares Price: \$0.10 per  
Ordinary Share

**Underwriter(s) or Distributor(s):**

Mackie Research Capital Corporation

**Promoter(s):**

James Varanese

**Project #**1936747

**Issuer Name:**

RBC Target 2013 Corporate Bond Index ETF (formerly  
RBC Target 2013 Corporate Bond ETF)  
RBC Target 2014 Corporate Bond Index ETF (formerly  
RBC Target 2014 Corporate Bond ETF)  
RBC Target 2015 Corporate Bond Index ETF (formerly  
RBC Target 2015 Corporate Bond ETF)  
RBC Target 2016 Corporate Bond Index ETF (formerly  
RBC Target 2016 Corporate Bond ETF)  
RBC Target 2017 Corporate Bond Index ETF (formerly  
RBC Target 2017 Corporate Bond ETF)  
RBC Target 2018 Corporate Bond Index ETF (formerly  
RBC Target 2018 Corporate Bond ETF)  
RBC Target 2019 Corporate Bond Index ETF (formerly  
RBC Target 2019 Corporate Bond ETF)  
RBC Target 2020 Corporate Bond Index ETF (formerly  
RBC Target 2020 Corporate Bond ETF)  
RBC Target 2021 Corporate Bond Index ETF  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated August 23, 2012  
NP 11-202 Receipt dated August 24, 2012

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

RBC GLOBAL ASSET MANAGEMENT INC.

**Project #**1931907

---

**Issuer Name:**

Redwood Equity Growth Class  
(formerly Ark StoneCastle Stable Growth Class)\*  
(Series A and F Shares)  
Redwood Income Growth Class  
(formerly Ark StoneCastle Stable Income Class)\*  
(Series A and F Shares)  
(\* Each a class of shares of Ark Mutual Funds Ltd.)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated August 16, 2012  
NP 11-202 Receipt dated August 23, 2012

**Offering Price and Description:**

Series A and F shares @ Net Asset Value

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Redwood Asset Management Inc.

**Project #**1932440

**Issuer Name:**

Sprott Power Corp.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated August 21, 2012  
NP 11-202 Receipt dated August 22, 2012

**Offering Price and Description:**

\$30,000,000.00 - 6.75% Extendible Convertible Unsecured  
Subordinated Debentures

**Underwriter(s) or Distributor(s):**

Canaccord Genuity Corp.  
TD Securities Inc.  
National Bank Financial Inc.  
NCP Northland Capital Partners Inc.  
Stifel Nicolaus Canada Inc.  
Macquarie Capital Markets Canada Ltd.

**Promoter(s):**

Jeffrey Jenner  
**Project #1944350**

---

**Issuer Name:**

STONE & CO. DIVIDEND GROWTH CLASS CANADA  
(Series A, B, C, F, L, T8A, T8B and T8C)  
STONE & CO. RESOURCE PLUS CLASS (Series A, B, C  
and L)  
(classes of Mutual Fund Shares of Stone & Co. Corporate  
Funds Limited)  
STONE & CO. FLAGSHIP GROWTH & INCOME FUND  
CANADA (Series F, L, AA, BB, CC, FF, T8A,  
T8B and T8C)  
STONE & CO. FLAGSHIP STOCK FUND CANADA (Series  
A, B, C, F, L, T8A, T8B and T8C)  
STONE & CO. FLAGSHIP GLOBAL GROWTH FUND  
(Series A, B, C, F, L, T8A, T8B and T8C)  
STONE & CO. GROWTH INDUSTRIES FUND (Series A,  
B, C, F and L)  
STONE & CO. FLAGSHIP MONEY MARKET FUND  
CANADA (Series A, B, C and L)  
STONE & CO. EUROPLUS DIVIDEND GROWTH FUND  
(Series A, B, C, F, L T8A, T8B and T8C)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated August 20, 2012  
NP 11-202 Receipt dated August 21, 2012

**Offering Price and Description:**

Series A, B, C, F, L, LL, AA, BB, CC, FF, T8A, T8B and  
T8C

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

Stone Asset Management Limited  
**Project #1934848**

---

**Issuer Name:**

Series A, Series AH, Series T5, Series T8, Series D, Series  
F and Series I Units (as indicated) of  
Sun Life MFS McLean Budden Global Growth Fund  
(formerly Sun Life MFS Global Growth Fund) (Series A, T5,  
T8, F, I)  
Sun Life MFS McLean Budden Global Value Fund  
(formerly Sun Life MFS Global Value Fund) (Series A, T5,  
T8, F, I)  
Sun Life MFS McLean Budden U.S. Growth Fund  
(formerly Sun Life MFS U.S. Growth Fund) (Series A, AH,  
T5, T8, F, I)  
Sun Life MFS McLean Budden U.S. Value Fund  
(formerly Sun Life MFS U.S. Value Fund) (Series A, AH,  
T5, T8, F, I)  
Sun Life MFS McLean Budden International Growth Fund  
(formerly Sun Life MFS International Growth Fund) (Series  
A, T5, T8, F, I)  
Sun Life MFS McLean Budden International Value Fund  
(formerly Sun Life MFS International Value Fund) (Series  
A, T5, T8, F, I)  
Sun Life Tradewinds Emerging Markets Fund (Series A, F,  
I)  
Sun Life MFS McLean Budden Global Total Return Fund  
(formerly Sun Life MFS Global Total Return Fund) (Series  
A, T5, F, I)  
Sun Life Milestone 2020 Fund (Series A)  
Sun Life Milestone 2025 Fund (Series A)  
Sun Life Milestone 2030 Fund (Series A)  
Sun Life Milestone 2035 Fund (Series A)  
Sun Life Beutel Goodman Canadian Bond Fund (Series A,  
F, I)  
Sun Life MFS McLean Budden Monthly Income Fund  
(formerly Sun Life McLean Budden Monthly Income Fund)  
(Series A, T5, F, I)  
Sun Life Money Market Fund (Series A, D, F, I)  
Principal Regulator - Ontario

**Type and Date:**

Final Simplified Prospectuses dated August 24, 2012  
NP 11-202 Receipt dated August 27, 2012

**Offering Price and Description:**

Series A, Series AH, Series T5, Series T8, Series D, Series  
F and Series I Units @ Net Asset Value

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #1934158**

---

**Issuer Name:**

Tourmaline Oil Corp.  
Principal Regulator - Alberta

**Type and Date:**

Final Short Form Prospectus dated August 21, 2012  
NP 11-202 Receipt dated August 21, 2012

**Offering Price and Description:**

\$116,000,000.00 - 4,000,000 Common Shares

**Underwriter(s) or Distributor(s):**

Peters & Co. Limited  
Scotia Capital Inc.  
FirstEnergy Capital Corp.  
National Bank Financial Inc.  
Stifel Nicolaus Canada Inc.  
CIBC World Markets Inc.  
TD Securities Inc.  
Cormark Securities Inc.

**Promoter(s):**

-

**Project #**1944430

---

**Issuer Name:**

APMEX Physical - 1 oz. Gold Redeemable Trust  
Principal Jurisdiction - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated April 20, 2012  
Amended and Restated Preliminary Long Form Prospectus  
dated April 27, 2012 and  
Amended and Restated Preliminary Long Form Prospectus  
dated May 7, 2012  
Closed on August 24, 2012

**Offering Price and Description:**

U.S.\$ \* (\* Units) Minimum Subscription: U.S.\$1,000 (100  
Units)

**Underwriter(s) or Distributor(s):**

BMO NESBITT BURNS INC.  
STIFEL NICOLAUS CANADA INC.  
SCOTIA CAPITAL INC.  
DESJARDINS SECURITIES INC.  
DUNDEE SECURITIES LTD.  
MACQUARIE PRIVATE WEALTH INC.  
MACKIE RESEARCH CAPITAL CORPORATION  
MANULIFE SECURITIES INCORPORATED

**Promoter(s):**

APMEX PRECIOUS METALS MANAGEMENT SERVICES,  
INC.

**Project #**1893179

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## Chapter 12

# Registrations

### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Genova Private Management Inc.	From: Portfolio Manager Exempt Market Dealer  To: Portfolio Manager	August 21, 2012
Voluntary Surrender	Galam Securities Canada Corp.	Futures Commission Merchant	August 21, 2012
New Registration	Penbrooke Partners Investment Management Ltd.	Exempt Market Dealer	August 21, 2012
Voluntary Surrender of Registration	Lincluden Management Limited	Investment Fund Manager, Exempt Market Dealer and Portfolio Manager	August 22, 2012

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## Chapter 13

# SROs, Marketplaces and Clearing Agencies

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### 13.3 Clearing Agencies

#### 13.3.1 Notice of Commission Approval – Material Amendments to CDS Procedures – Amendments to Buy-In Process Functionality

##### **CDS CLEARING AND DEPOSITORY SERVICES INC.**

##### **MATERIAL AMENDMENTS TO CDS PROCEDURES**

##### **AMENDMENTS TO BUY-IN PROCESS FUNCTIONALITY**

##### **NOTICE OF COMMISSION APPROVAL**

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved on August 24, 2012, amendments filed by CDS to its procedures relating to the functionality of the buy-in process in its Continuous Net Settlement Service. A copy and description of the procedural amendments were published for comment on May 10, 2012 at (2012) 35 OSCB 4625. No comments were received.

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