# REGISTER NOW: OSC DIALOGUE 2012

ONTARIO SECURITIES COMMISSION

## OSC DIALOGUE 2012

**Tuesday, October 30, 2012**
8:00 a.m. – 2:30 p.m.
Toronto Board of Trade
1 First Canadian Place
Toronto, Ontario

**Keynote Speakers**
**Howard Wetston, Chair**
Ontario Securities Commission
**Gary Gensler, Chairman**
U.S. Commodity Futures Trading Commission

Join the OSC at this year's OSC Dialogue and hear from securities industry experts about the top issues affecting today's complex and interconnected capital markets.

OSC Dialogue will feature two plenary sessions as well as interactive break-outs. The agenda will include discussions on market quality and market integrity, capital formation, systemic risk, corporate governance, market structures, proactive enforcement and investor issues.

Visit the OSC website for more information and to register.
For questions contact Dialogue@osc.gov.on.ca.

OSC
ONTARIO SECURITIES COMMISSION

**The Ontario Securities Commission**

# OSC Bulletin

October 4, 2012

Volume 35, Issue 40

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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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20 Queen Street West
Toronto, Ontario
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# Table of Contents

# Chapter 1

# Notices / News Releases

## 1.1 Notices

### 1.1.1 Current Proceedings Before The Ontario Securities Commission

**October 4, 2012**

**CURRENT PROCEEDINGS**

**BEFORE**

**ONTARIO SECURITIES COMMISSION**

- - - - - - - - - - - - - - - - - - - - -

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

The Harry S. Bray Hearing Room
Ontario Securities Commission
Cadillac Fairview Tower
Suite 1700, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

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| Lawrence E. Ritchie, Vice Chair | — | LER |
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| Kevin J. Kelly | — | KJK |
| 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**

| | |
|---|---|
| October 9, 2012<br><br>2:30 p.m. | **Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)**<br><br>s. 127<br><br>M. Vaillancourt in attendance for Staff<br><br>Panel: VK |
| October 10-19, 2012<br><br>10:00 a.m. | **New Found Freedom Financial, Ron Deonarine Singh, Wayne Gerard Martinez, Pauline Levy, David Whidden, Paul Swaby and Zompas Consulting**<br><br>s. 127<br><br>A. Heydon in attendance for Staff<br><br>Panel: JDC |
| October 10, 2012<br><br>10:00 a.m. | **Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: MGC |
| October 10, 2012<br><br>10:00 a.m. | **Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho, Simon Yeung and David Horsley**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: MGC |

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|---|---|
| October 10, 2012<br><br>10:00 a.m. | **Empire Consulting Inc. and Desmond Chambers**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: EPK |
| October 11, 2012<br><br>9:00 a.m. | **New Solutions Capital Inc., New Solutions Financial Corporation, New Solutions Financial (II) Corporation, New Solutions Financial (III) Corporation, New Solutions Financial (VI) Corporation and Ron Ovenden**<br><br>s. 127<br><br>S. Horgan in attendance for Staff<br><br>Panel: CP |
| October 15, 2012<br><br>10:00 a.m. | **Anna Pyasetsky**<br><br>s. 8<br><br>S. Chandra in attendance for Staff<br><br>Panel: EPK |
| October 16 and October 19, 2012<br><br>10:00 a.m. | **Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg**<br><br>s. 127<br><br>H Craig in attendance for Staff<br><br>Panel: EPK |
| October 17, 2012<br><br>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**<br><br>s. 127<br><br>C. Watson in attendance for Staff<br><br>Panel: EPK |
| October 19, 2012<br><br>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**<br><br>s. 127<br><br>C. Watson in attendance for Staff<br><br>Panel: PLK |
| October 22 and October 24 – November 5, 2012<br><br>10:00 a.m. | **MBS Group (Canada) Ltd., Balbir Ahluwalia and Mohinder Ahluwalia**<br><br>s. 37, 127 and 127.1<br><br>C. Rossi in attendance for staff<br><br>Panel: CP |
| October 22 and October 24-29, 2012<br><br>10:00 a.m. | **Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk**<br><br>s. 37, 127 and 127.1 |
| October 23, 2012<br><br>2:30 p.m. | C. Price in attendance for Staff<br><br>Panel: JDC/MCH |
| October 26, 2012<br><br>10:00 a.m. | **Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung**<br><br>s. 144<br><br>K. Manarin in attendance for Staff<br><br>Panel: MGC/JEAT/SA |

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|---|---|
| October 29, October 31 and November 1, 2012<br><br>10:00 a.m. | **Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva and Abraham Herbert Grossman aka Allen Grossman and Kevin Wash**<br><br>s. 127<br><br>H. Craig/S. Schumacher in attendance for Staff<br><br>Panel: JEAT |
| October 31 – November 5, November 7-9, December 3, December 5-17 and December 19, 2012<br><br>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**<br><br>s. 127(1) and (5)<br><br>A. Heydon in attendance for Staff<br><br>Panel: EPK |
| November 5, November 7-19, November 21-27 and November 29-30, 2012<br><br>10:00 a.m.<br><br>November 28, 2012<br><br>10:30 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.**<br><br>s. 127<br><br>B. Shulman in attendance for Staff<br><br>Panel: MGC |
| November 7, 2012<br><br>10:00 a.m. | **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**<br><br>s. 127<br><br>Y. Chisholm in attendance for Staff<br><br>Panel: CP/PLK |
| November 8, 2012<br><br>10:00 a.m. | **Global RESP Corporation and Global Growth Assets Inc.**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: JEAT |
| November 12-19 and November 21, 2012<br><br>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.**<br><br>s. 127<br><br>J. Feasby in attendance for Staff<br><br>Panel: JDC |
| November 13, 2012<br><br>10:00 a.m. | **Knowledge First Financial Inc.**<br><br>s. 127<br><br>M. Vaillancourt/D. Ferris in attendance for Staff<br><br>Panel: JEAT |

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|---|---|
| November 16, 2012<br><br>10:00 a.m. | **Roger Carl Schoer**<br><br>s. 21.7<br><br>C. Johnson in attendance for Staff<br><br>Panel: JEAT |
| November 21 – December 3 and December 5-December 14, 2012<br><br>10:00 a.m. | **Bernard Boily**<br><br>s. 127 and 127.1<br><br>M. Vaillancourt/U. Sheikh in attendance for Staff<br><br>Panel: TBA |
| November 22, 2012<br><br>11:30 a.m. | **Heritage Education Funds Inc.**<br><br>s. 127<br><br>M. Vaillancourt/D. Ferris in attendance for Staff<br><br>Panel: JEAT |
| November 27-28, 2012<br><br>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**<br><br>s. 127 and 127.1<br><br>C. Johnson in attendance for Staff<br><br>Panel: JDC |
| December 4, 2012<br><br>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**<br><br>s. 127<br><br>H. Craig/C. Rossi in attendance for Staff<br><br>Panel: CP |
| December 5, 2012<br><br>10:00 a.m. | **Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjaiants, Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group**<br><br>s. 127 and 127.1<br><br>D. Campbell in attendance for Staff<br><br>Panel: VK |
| December 6, 2012<br><br>10:00 a.m. | **Children's Education Funds Inc.**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: JEAT |
| December 11, 2012<br><br>9:00 a.m. | **Systematech Solutions Inc., April Vuong and Hao Quach**<br><br>s. 127<br><br>D. Ferris in attendance for Staff<br><br>Panel: EPK |
| December 20, 2012<br><br>10:00 a.m. | **New Hudson Television Corporation, New Hudson Television L.L.C. & James Dmitry Salganov**<br><br>s. 127<br><br>C. Watson in attendance for Staff<br><br>Panel: TBA |

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|---|---|
| January 7-14, January 16-28 and January 30 – February 5, 2013<br><br>10:00 a.m. | **Jowdat Waheed and Bruce Walter**<br><br>s. 127<br><br>J. Lynch in attendance for Staff<br><br>Panel: TBA |
| January 18, 2013<br><br>10:00 a.m. | **Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang**<br><br>s. 127 and 127.1<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA |
| January 21-28 and January 30 – February 1, 2013<br><br>10:00 a.m. | **Moncasa Capital Corporation and John Frederick Collins**<br><br>s. 127<br><br>T. Center in attendance for Staff<br><br>Panel: TBA |
| January 23-25 and January 30-31, 2013<br><br>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**<br><br>s. 127<br><br>C. Watson in attendance for Staff<br><br>Panel: TBA |
| February 1, 2013<br><br>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**<br><br>s. 127<br><br>S. Schumacher in attendance for Staff<br><br>Panel: TBA |
| February 4-11 and February 13, 2013<br><br>10:00 a.m. | **Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.**<br><br>s. 127<br><br>J. Feasby in attendance for Staff<br><br>Panel: TBA |
| February 11, February 13-15, February 19-25 and February 27 – March 6, 2013<br><br>10:00 a.m. | **David Charles Phillips and John Russell Wilson**<br><br>s. 127<br><br>Y. Chisholm in attendance for Staff<br><br>Panel: TBA |
| March 18-25, March 27-28, April 1-5 and April 24-25, 2013<br><br>10:00 a.m. | **Peter Sbaraglia**<br><br>s. 127<br><br>J. Lynch in attendance for Staff<br><br>Panel: CP |
| March 18-25 and March 27-28, 2013<br><br>10:00 a.m. | **2196768 Ontario Ltd carrying on business as Rare Investments, Ramadhar Dookhie, Adil Sunderji and Evgueni Todorov**<br><br>s. 127<br><br>D. Campbell in attendance for Staff<br><br>Panel: TBA |
| April 11-22 and April 24, 2013<br><br>10:00 a.m. | **Morgan Dragon Development Corp., John Cheong (aka Kim Meng Cheong), Herman Tse, Devon Ricketts and Mark Griffiths**<br><br>s. 127<br><br>J. Feasby in attendance for Staff<br><br>Panel: TBA |

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|---|---|---|
| April 29 – May 6 and May 8-10, 2013<br><br>10:00 a.m. | **North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti**<br><br>s. 127<br><br>M. Vaillancourt in attendance for Staff<br><br>Panel: TBA | |
| September 16-23, September 25 – October 7, October 9-21, October 23 – November 4, November 6-18, November 20 – December 2, December 4-16 and December 18-20, 2013<br><br>10:00 a.m. | **Eda Marie Agueci, Dennis Wing, Santo Iacono, Josephine Raponi, Kimberley Stephany, Henry Fiorillo, Giuseppe (Joseph) Fiorini, John Serpa, Ian Telfer, Jacob Gornitzki and Pollen Services Limited**<br><br>s. 127<br><br>J, Waechter/U. Sheikh in attendance for Staff<br><br>Panel: TBA | |
| TBA | **Yama Abdullah Yaqeen**<br><br>s. 8(2)<br><br>J. Superina in attendance for Staff<br><br>Panel: TBA | |
| TBA | **Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell**<br><br>s. 127<br><br>J. Waechter in attendance for Staff<br><br>Panel: TBA | |
| TBA | **Frank Dunn, Douglas Beatty, Michael Gollogly**<br><br>s. 127<br><br>K. Daniels in attendance for Staff<br><br>Panel: TBA | |
| TBA | **MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric**<br><br>s. 127 and 127(1)<br><br>D. Ferris in attendance for Staff<br><br>Panel: TBA | |
| TBA | **Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc.,Donald Iain Buchanan, Lisa Buchanan and Sandra Gale**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA | |
| TBA | **Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA | |
| TBA | **Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York**<br><br>s. 127<br><br>H. Craig in attendance for Staff<br><br>Panel: TBA | |
| TBA | **Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)**<br><br>s. 127<br><br>T. Center/D. Campbell in attendance for Staff<br><br>Panel: TBA | |

TBA

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

s. 127

H. Craig/C.Rossi in attendance for Staff

Panel: TBA

TBA

**FactorCorp Inc., FactorCorp Financial Inc. and Mark Twerdun**

s. 127

C. Price in attendance for Staff

Panel: TBA

TBA

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

s. 127

H. Craig/C. Watson in attendance for Staff

Panel: TBA

TBA

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

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

**David M. O'Brien**

s. 37, 127 and 127.1

B. Shulman in attendance for Staff

Panel: TBA

TBA

**American Heritage Stock Transfer Inc., American Heritage Stock Transfer, Inc., BFM Industries Inc., Denver Gardner Inc., Sandy Winick, Andrea Lee McCarthy, Kolt Curry and Laura Mateyak**

s. 127

J. Feasby in attendance for Staff

Panel: TBA

TBA

**Energy Syndications Inc. Green Syndications Inc. , Syndications Canada Inc., Daniel Strumos, Michael Baum and Douglas William Chaddock**

s. 127

C. Johnson in attendance for Staff

Panel: TBA

TBA

**Bunting & Waddington Inc., Arvind Sanmugam, Julie Winget and Jenifer Brekelmans**

s. 127

S. Schumacher in attendance for Staff

Panel: TBA

TBA

**Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Vadim Tsatskin, Michael Schaumer, Elliot Feder, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff**

s. 37, 127 and 127.1

C. Watson in attendance for Staff

Panel: TBA

TBA

**Colby Cooper Capital Inc.. Colby Cooper Inc., Pac West Minerals Limited John Douglas Lee Mason**

s. 127

B. Shulman in attendance for Staff

Panel: TBA

TBA

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

s. 127

B. Shulman in attendance for Staff

Panel: TBA

TBA

**Beryl Henderson**

s. 127

S. Schumacher in attendance for Staff

Panel: TBA

TBA

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

s. 127

M. Vaillancourt in attendance for Staff

Panel: TBA

TBA

**International Strategic Investments, International Strategic Investments Inc., Somin Holdings Inc., Nazim Gillani and Ryan J. Driscoll**

s. 127

C. Watson in attendance for Staff

Panel: TBA

TBA

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

s. 37, 127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

TBA

**Juniper Fund Management Corporation, Juniper Income Fund, Juniper Equity Growth Fund and Roy Brown (a.k.a. Roy Brown-Rodrigues)**

s. 127 and 127.1

D. Ferris in attendance for Staff

Panel: TBA

TBA

**Crown Hill Capital Corporation and Wayne Lawrence Pushka**

s. 127

A. Perschy/A. Pelletier in attendance for Staff

Panel: TBA

TBA

**David Charles Phillips**

s. 127

Y. Chisholm in attendance for Staff

Panel: TBA

TBA

**Energy Syndications Inc., Green Syndications Inc., Syndications Canada Inc., Land Syndications Inc. and Douglas Chaddock**

s. 127

C. Johnson in attendance for Staff

Panel: TBA

**ADJOURNED SINE DIE**

**Global Privacy Management Trust and Robert Cranston**

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

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

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

### 1.1.2 OSC Staff Notice 21-706 – Marketplaces' Initial Operations and Material System Changes

**OSC STAFF NOTICE 21-706 –**
**MARKETPLACES' INITIAL OPERATIONS**
**AND MATERIAL SYSTEM CHANGES**

## I. Background

OSC Staff (Staff) have been examining the regulatory requirements for recognized exchanges (Exchanges) and alternative trading systems (ATSs) set out in National Instrument 21-101 *Marketplace Operation* (NI 21-101) and in National Instrument 23-101 *Trading Rules* (together, the Marketplace Rules). We have also been reviewing the practices set out around those requirements in various recognition orders, rule protocols and staff practices. The purpose of our review was to update and, where appropriate, to align the regulatory requirements and processes for review of new operations and changes to the operations of Exchanges and ATSs.

As a first step, we issued OSC Staff Notice 21-703 – *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems* (OSC Staff Notice 21-703), where we described Staff's process for reviewing the initial filings for Exchanges and ATSs and changes to certain of their operations. In that notice, we also set out our expectation that Exchanges and ATSs maintain an appropriate degree of transparency for certain aspects of their operations to ensure that investors and market participants are better informed as to how securities trade on these marketplaces. We described the types of information that marketplaces should publish in order to obtain feedback from other market participants regarding certain proposed changes to marketplace operations, and to increase transparency of marketplace features and operations. We also described the process for publication and Staff review.

The next phase of our examination was a review of the regulatory requirements set out in the Marketplace Rules in order to streamline and update them and to increase consistency, where appropriate, between the requirements applicable to Exchanges and to ATSs. We made a number of revisions to the Marketplace Rules (the Amendments) that came into force on July 1, 2012. In addition to the objectives outlined above, the Amendments also aim to increase the transparency of the operations of marketplaces. For example, a marketplace must disclose on its website information regarding its operations including fees, a description of its order types and how these orders interact, and access requirements.

## II. Purpose of this notice

This notice sets out Staff's process to review the initial filings of entities applying to be recognized as Exchanges by the Commission and those applying to be registered as ATSs. The notice also sets out Staff's expectations regarding the timing of a marketplace's commencement of operations and the timing of the implementation of material systems changes. This notice incorporates and updates the content of OSC Staff Notice 21-703 and replaces that notice. The processes for filing, publication, review and approval of changes in marketplace operations, previously documented in OSC Staff Notice 21-703, have been set out in the Marketplace Rules and in each marketplace's protocol for reviewing rules or changes to the marketplace's operations (the Marketplace Protocols).

## III. Review of initial operations

### *(a) Exchanges*

An applicant that seeks to carry on business as an Exchange in Ontario must file an application for recognition under section 21 of the *Securities Act* (Ontario) (Application). The Application must include a description of the operations of the Exchange and how the Exchange would meet the provisions of NI 21-101 and certain recognition criteria such as governance, fees, access, regulation of products and participants, rulemaking, clearing and settlement, and systems and technology. The rules of the Exchange also form part of the Application and often describe the order types and structure of the Exchange. As part of the process, an applicant for recognition as an Exchange must also file Form 21-101F1 *Information Statement Exchange or Quotation and Trade Reporting System* (F1).[1] The F1 contains detailed information about many of the aspects described in the Application, and is confidential as it contains proprietary financial, commercial and technical information.

The Application, along with the Exchange's rules, policies and a draft recognition order are published for a 30-day comment period in the OSC Bulletin and on the OSC website. Once all the issues raised during the comment process and Staff's own review of the application materials and the F1 are resolved, the Commission may exercise its discretion to recognize the Exchange.[2] If recognized, Staff will publish a notice indicating the approval of the Exchange recognition (Notice of Approval of Exchange Recognition) and the final recognition order.

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[1] The F1 contains information about the Exchange that describes, among other things, the governance of the Exchange, the manner of operation of its trading system, the means of access to the market and the Exchange's listing criteria, fees and regulation.

[2] Some of the factors that would be considered by the Commission are described in Part 4 of 21-101CP.

### *(b) ATSs*

Pursuant to section 6.1 of NI 21-101, an ATS cannot carry on business in Ontario unless it registers as a dealer and is a member of a self-regulatory entity. Currently, the Investment Industry Regulatory Organization of Canada (IIROC) is the only applicable self-regulatory entity. An ATS must also file Form 21-101F2 *Initial Operation Report Alternative Trading System* (F2) at least 45 days before it begins to carry on business.[3] The information in the F2 is similar to that provided in an Exchange's F1 and is also confidential for the same reasons.

An ATS is also expected to file a notice providing summary information regarding its operations, similar to that in an Exchange's Application, but modified accordingly to reflect the fact that an ATS does not perform regulation functions (Notice of Initial Operations). The information to be included in the Notice of Initial Operations is set out in the next section.

The ATS's Notice of Initial Operations is published and accompanied by a notice published by Staff for a 30-day comment period in the OSC Bulletin and on the OSC website. The review process by Staff is similar to the review process for an Exchange Application. Once all of the issues associated with the ATS's filing(s) are resolved, including any issues with the associated registration application, the registration as an investment dealer is issued and staff will publish a notice indicating that Staff's review is complete (Notice of Completion of Staff Review).

Where an existing registered investment dealer is proposing to operate an ATS, the same filing, publication and review processes apply.

## IV. Information regarding initial operations

As noted above, when a marketplace plans to start operations and files the applicable documents, certain information is made publicly available to ensure transparency regarding the proposed operations of the marketplace and to give market participants an opportunity to provide feedback.

This information must be sufficiently detailed to allow marketplace participants to understand and assess the marketplace's proposed operations, given that the F1 or F2 is not published. As described in the previous section, in the case of an Exchange, this information would be contained in the Application and in the rules and policies that are published along with the Application. In the case of an ATS, the information would be contained in the Notice of Initial Operations. At a minimum, the Application or Notice of Initial Operations should include a description of:

- the structure of the marketplace, including how orders are entered, displayed (if applicable), executed, how they interact, and how they are cleared and settled;
- the marketplace's fees and fee model, if known;
- the services provided by the marketplace, including the hours of operation;
- the means of access to the market or facility and its services;
- the order types it offers;
- other information disseminated by the marketplace and the recipients of that information, such as indications of interest disseminated by a marketplace that operates without pre-trade transparency;
- the types of securities listed, quoted or traded on the marketplace, as applicable; and
- the types of marketplace participants.

If applicable, the materials published may include additional information, such as a description of the marketplace's policies and procedures to manage conflicts of interest, referral, outsourcing or custody arrangements, or any other information relevant to the entity's operations.

After the commencement of operations, a marketplace is required to maintain information regarding its operations on its website, in accordance with the disclosure requirements applicable to all marketplaces set out in section 10.1 *Disclosure by Marketplaces* of NI 21-101. Information regarding changes to a marketplace's operations, as reflected in changes to its F1 or F2, as applicable, may also be published for comment. The information to be filed for changes to a marketplace's F1 or F2 and the criteria and process for publication are set out in the Marketplace Protocols.

[3] See subsection 3.1(2) of NI 21-101.

## V. Systems and launch of operations

Before a marketplace commences operations or makes any material system change (including introducing a new market or trading facility), it must make publicly available the technology requirements to interface with or access the marketplace or trading facility, and must make testing facilities available. Specifically, NI 21-101 requires that a marketplace make all technology requirements publicly available at least three months before it begins operations or before it implements a material change to its technology requirements.[4] NI 21-101 also requires a marketplace to make testing facilities available at least two months before beginning operations or before implementing a material change to its technology requirements.[5]

Marketplaces need to ensure that marketplace participants and service providers have a reasonable opportunity to make the necessary changes to their systems so that they can access the marketplace. This involves time to do technology work and to test the system. We believe that three months is a reasonable time to allow marketplace participants and third parties to do the necessary development work and testing. However, it has come to our attention that due to potential uncertainty in the timing and outcome of the regulatory review process, many marketplace participants and service providers will not begin the systems work and testing before the Notice of Approval of Exchange Recognition or Notice of Completion of Staff Review, as applicable, has been published. As a result, if a marketplace launches operations or implements material system changes shortly after publication of the applicable Notice, market participants and service providers may not have sufficient time to make necessary systems changes and to complete their system testing, notwithstanding the fact that the marketplace has made the technology requirements and testing facilities publicly available for the requisite time periods in compliance with NI 21-101.

When planning the launch of operations or the implementation of material system changes, we expect marketplaces to take into consideration the commercial reality that market participants and service providers may postpone systems work and testing until the Notice of Approval of Exchange Recognition or Notice of Completion of Staff Review, as applicable, has been published.

With respect to the launch of initial operations (or a new market or trading facility), marketplaces should consider postponing the launch for a period of at least three months from the date of the publication of the Notice of Approval of Exchange Recognition or the Notice of Completion of Staff Review (as the case may be), rather than from the date the marketplace makes the technology requirements publicly available. Experience has shown that a three-month period generally provides reasonable advance notice to ensure fair access to the marketplace, promote fair, efficient and orderly markets, and facilitate market participants' compliance with applicable rules, including the Order Protection Rule. However, in some cases a longer period may be required. We believe that allowing a reasonable delay of the launch fairly balances the needs of marketplace participants and service providers with the interests of the marketplace.

Once a marketplace has commenced operations, if it intends to make a material system change (other than introducing a new market or trading facility) that would require marketplace participants or service providers to do development work or testing, it is our expectation that the marketplace will conduct an assessment of the amount of time and effort required to do the necessary work. The marketplace should delay the implementation of the material change until marketplace participants and their service providers have had a reasonable amount of time to complete the necessary work and testing following the approval of the change. What constitutes a reasonable amount of time will depend on the materiality and complexity of the change and its impact on marketplace participants' ability to comply with applicable regulatory requirements. Normally, the impact on marketplace participants will be greater for markets that display details of orders (and are subject to the Order Protection Rule) than for marketplaces that do not provide pre-trade transparency of orders.

## VI. Questions

Questions may be referred to any of:

Timothy Baikie
Ontario Securities Commission
(416) 593-8136

Jonathan Sylvestre
Ontario Securities Commission
(416) 593-2378

Tracey Stern
Ontario Securities Commission
(416) 593-8167

**October 4, 2012**

[4] Subsection 12.3(1) of NI 21-101.

[5] Subsection 12.3(2) of NI 21-101.

### 1.1.3 Processes for the Review and Approval of Rules and the Information Contained in Forms 21-101F1 and 21-101F2

**PROCESSES FOR THE REVIEW AND APPROVAL OF EXCHANGE RULES AND OF THE INFORMATION CONTAINED IN FORMS 21-101F1 AND 21-101F2**

As part of the process of updating and replacing OSC Staff Notice 21-703 – *Transparency of the Operations of Stock Exchanges and Alternative Trading Systems*, and in connection with the publication today of OSC Staff Notice 21-706 – *Marketplaces' Initial Operations and Material System Changes* the OSC has also developed protocols governing the review and approval of exchange rules and of the information contained in Forms 21-101F1 and 21-101F2.

The process applicable to an exchange recognized in Ontario (Exchange Protocol) is set out in Appendix A to this notice, while the process applicable to an alternative trading system (ATS) registered in Ontario (ATS Protocol) is set out in Appendix B.

The OSC also issued orders on June 22, 2012 that took effect on July 1, 2012 that had the effect of requiring the recognized exchanges and ATSs registered in Ontario to follow the Exchange Protocol and ATS Protocol, respectively. Copies of these orders can be found on the OSC website.

Specifically, for recognized exchanges, orders were issued to vary each of the recognition orders applicable to TMX Group Inc. and TSX Inc., Alpha Trading Systems Limited Partnership and Alpha Exchange Inc., as well as CNSX Markets Inc., to require compliance with the process set out in the Exchange Protocol.[1] For ATSs, orders were issued applicable to each of Bloomberg Tradebook Canada Company, CanDeal.ca Inc., Chi-X Canada ATS Limited, EquiLend Canada Corp., Instinet Canada Cross Limited, Liquidnet Canada Inc., MarketAxess Canada Limited, Omega Securities Inc., Perimeter Markets Inc., TMX Select Inc., and TriAct Canada Marketplace LP, requiring compliance with the process set out in the ATS Protocol.

[1] Subsequent to the variation of the recognition orders applicable to TMX Group Inc., TSX Inc., Alpha Trading Systems Limited Partnership and Alpha Exchange Inc. to require compliance with the Exchange Protocol, the recognition orders were revoked and replaced by an order recognizing each of these exchanges, together with Maple Group Acquisition Corporation, that includes the Exchange Protocol.

## APPENDIX A

## EXCHANGE PROTOCOL

### Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto

**1. Purpose**

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 2 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director.

**2. Definitions**

For the purposes of this Protocol:

(a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.

(b) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.

(c) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that

(i) does not have an impact on the Exchange's market structure, members, issuers, investors or the capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(d) *Housekeeping Rule* means a new Rule or an amendment to a Rule that

(i) does not have an impact on the Exchange's market structure, members, issuers, investors or the capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(e) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.

(f) *Rule* includes a rule, policy and other similar instrument of the Exchange.

(g) *Significant Change* means an amendment to the information in Form 21-101F1 other than

(i) a Housekeeping Change,

(ii) a Fee Change, or

(iii) a Rule,

and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.

(h) *Significant Change subject to Public Comment* means a Significant Change that

(i) is listed in paragraphs 6.1(4)(a), (b), (c) or (d) of Companion Policy 21-101 CP, or

(ii) in Staff's view, has an impact on the Exchange's market structure or members, or on issuers, investors or the capital markets or otherwise raises public interest concerns and should be subject to public comment.

**3. Scope**

(a) The Exchange and Staff will follow the process for review and approval set out in this Protocol for all Changes, new Rules and Rule amendments.

**4. Board Approval**

(a) The Exchange's board of directors, or a duly authorized committee of the board, must approve all Rules prior to their submission under this Protocol.

**5. Waiving or Varying the Protocol**

(a) The Exchange may file a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.

(b) Staff will use their best efforts to provide to the Exchange within five business days of receipt of its request either:

(i) written notice that Staff object to granting the waiver or variation; or

(ii) written notice that the waiver or variation has been granted by Staff.

**6. Materials to be Filed and Timelines**

(a) Prior to the implementation of a Fee Change, Public Interest Rule or Significant Change, the Exchange will file with Staff the following materials:

(i) a cover letter that, together with the notice for publication filed under paragraph 6(a)(ii), if applicable, fully describes:

(A) the proposed Fee Change, Public Interest Rule or Significant Change;

(B) the expected date of implementation of the proposed Fee Change, Public Interest Rule or Significant Change;

(C) the rationale for the proposal and any relevant supporting analysis;

(D) the expected impact of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers and the capital markets;

(E) whether a proposed Public Interest Rule or Significant Change would increase or decrease systemic risk in the Canadian financial system and how any increase would be mitigated, if applicable;

(F) a discussion of the expected impact of the Fee Change, Public Interest Rule or Significant Change on the Exchange's compliance with Ontario securities law and in particular on requirements for fair access and maintenance of fair and orderly markets;

(G) details of any consultations undertaken in formulating the Fee Change, Public Interest Rule or Significant Change, including the internal governance process followed to approve the Rule or Change;

(H) if the Public Interest Rule or Significant Change will require members and service vendors to modify their own systems after implementation of the Rule or Change, a reasonable estimate of the amount of time needed to perform the necessary work, or an explanation as to why a reasonable estimate was not provided;

(I) a discussion of any alternatives considered; and

(J) if applicable, whether the proposed Fee Change, Significant Change or Public Interest Rule would introduce a fee model, feature or Rule that currently exists in other markets or jurisdictions;

(ii) for a proposed Public Interest Rule or Significant Change subject to Public Comment, a notice for publication that includes the information required under paragraph 6(a)(i) above, except that the following may be excluded from the notice:

(A) supporting analysis required under subparagraph 6(a)(i)(C) above that, if included in the notice, would result in the public disclosure of intimate financial, commercial or technical information;

(B) the information on systemic risk required under subparagraph 6(a)(i)(E) above;

(C) the information on the internal governance processes followed required under subparagraph 6(a)(i)(G) above;

(D) the reasonable estimate of time needed for members and service vendors to modify their own systems, or the explanation as to why a reasonable estimate was not provided, required under subparagraph 6(a)(i)(H), so long as the notice for publication contains a statement that the Exchange did not or could not make a reasonable estimate; and

(E) the discussion of alternatives required under subparagraph 6(a)(i)(I) above.

(iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.

(b) The Exchange will file the materials set out in subsection 6(a)

(i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and

(ii) at least seven business days prior to the expected implementation date of a proposed Fee Change.

(c) For a Housekeeping Rule, the Exchange will file with Staff the following materials:

(i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;

(ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;

(iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) a notice for publication on the OSC website and in the OSC Bulletin that contains the information in paragraph (ii) above as well as the implementation date for the Rule, and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.

(d) For a Housekeeping Change, the Exchange will file with Staff the following materials:

(i) a cover letter that indicates that the Change was classified as a Housekeeping Change and provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and

(ii) blacklined and clean copies of Form 21-101F1 showing the Change.

(e) The Exchange will file the materials set out in subsection 6(d) by the earlier of

(i) the Exchange's close of business on the 10th calendar day after the end of the month in which the Housekeeping Change was implemented; and

(ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

**7. Review by Staff of notice and materials to be published for comment**

(a) Within 5 business days of the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 6(a), Staff will review the notice and materials to ensure that they contain an adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a refilling of the notice and materials.

(b) Where the notice and materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and materials accordingly, and the date of resubmission will serve as the filing date for the purposes of this Protocol.

(c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 8.

**8. Publication of a Public Interest Rule or Significant Change Subject to Public Comment**

(a) As soon as practicable after the receipt of the notice and materials filed by the Exchange relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with subsection 6(a), Staff will publish in the OSC Bulletin and on the OSC website the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.

(b) If public comments are received

(i) the Exchange will forward copies of the comments promptly to Staff; and

(ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

**9. Review and Approval Process for Proposed Fee Changes, Public Interest Rules and Significant Changes**

(a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change within

(i) 45 days from the date of filing of a proposed Public Interest Rule or Significant Change; and

(ii) seven business days from the date of filing of a proposed Fee Change.

(b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule or Significant Change will exceed the timelines in subsection 9(a).

(c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule or Significant Change subject to Public Comment, and promptly after the receipt of the materials filed under section 6 for all other Changes.

(d) The Exchange will respond to any comments received from Staff in writing.

(e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule or Significant Change after it has been deemed withdrawn, the Exchange will have to be re-submit it for review and approval in accordance with this Protocol.

(f) Upon completion of Staff's review of a Fee Change, Public Interest Rule or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection 9(g), to the Commission, for a decision within the following timelines:

(i) for a Public Interest Rule or a Significant Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;

(ii) for any other Significant Change, the later of 45 days from the date of filing of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or

(iii) for a Fee Change, the later of seven business days from the date of filing of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.

(g) A Fee Change, Public Interest Rule or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection 9(f),

(i) if the proposed Fee Change, Public Interest Rule or Significant Change is complex or introduces a novel feature to the Exchange or the capital markets;

(ii) if comments received through the public comment process raise significant public interest concerns; or

(iii) in any other situation where, in Staff's view, Commission approval is appropriate.

(h) Staff will promptly notify the Exchange of the decision.

(i) If a Public Interest Rule or Significant Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and on the OSC website promptly after the approval:

(i) a notice indicating that the proposed Rule or Change is approved;

(ii) the summary of public comments and responses prepared by the Exchange, if applicable; and

(iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

**10. Review Criteria for a Fee Change, Public Interest Rule and Significant Change**

(a) Staff will review a proposed Fee Change, Public Interest Rule or Significant Change in order to assess whether it is in the public interest for the Director or the Commission to approve the Rule or Change. In making this determination, Staff will have regard to the mandate of the Commission as set out section 1.1 of the *Securities Act* (Ontario). The factors that Staff will consider in making their determination also include whether:

(i) the Rule or Change would impact the Exchange's compliance with Ontario securities law;

(ii) the Exchange followed its established internal governance practices in approving the proposed Rule or Change;

(iii) the Exchange followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of the Rule or Change; and

(iv) the Exchange adequately addressed any comments received.

**11. Effective Date of a Fee Change, Public Interest Rule or Significant Change**

(a) A Fee Change, Public Interest Rule or Significant Change will be effective on the later of:

(i) the date that the Exchange is notified that the Change or Rule is approved;

(ii) if applicable, the date of publication of the notice of approval on the OSC website; and

(iii) the date designated by the Exchange.

**12. Significant Revisions and Republication**

(a) If, subsequent to its publication for comment, the Exchange revises a Public Interest Rule or a Significant Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Rule or Change, Staff will, in consultation with the Exchange, determine whether or not the revised Rule or Change should be published for an additional 30-day comment period.

(b) If a Public Interest Rule or Significant Change subject to Public Comment is republished under subsection 12(a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the Exchange, and an explanation of the revisions and the supporting rationale for the revisions.

**13. Withdrawal of a Fee Change, Public Interest Rule or Significant Change**

(a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.

(b) If the notice of withdrawal relates to a Public Interest Rule or Significant Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and OSC website as soon as practicable.

(c) If a Public Interest Rule or Significant Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 9(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

**14. Effective Date of a Housekeeping Rule or Housekeeping Change**

(a) Subject to subsections 14(c) and 14(d), a Housekeeping Rule will be effective on the later of

(i) the date of the publication of the notice to be published on the OSC website in accordance with subsection 14(e), and

(ii) the date designated by the Exchange.

(b) Subject to subsections 14(c) and 14(d), a Housekeeping Change will be effective on the date designated by the Exchange.

(c) Staff will review the materials filed by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange filed the documents in accordance with subsections 6(c) and 6(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.

(d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, file the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment if applicable.

(e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin and on the OSC website as soon as is practicable.

**15. Immediate Implementation of a Public Interest Rule or Significant Change**

(a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers or investors.

(b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible but in any event at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must also be included as part of the written notice.

(c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following filing of the notice under subsection 15(b). If the disagreement is not resolved, the Exchange will file the Public Interest Rule or Significant Change in accordance with the timelines in section 6.

**16. Review of a Public Interest Rule or Significant Change Implemented Immediately**

(a) A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 15 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 9, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

**17. Application of Section 21 of the Securities Act (Ontario)**

(a) The Commission's powers under subsection 21(5) of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Rule or Change having been approved under this Protocol."

## APPENDIX B

## ATS PROTOCOL

### Process for the Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto

**1. Purpose**

This Protocol sets out the procedures an alternative trading system (ATS) must follow for any Change as defined in section 2 below, and describes the procedures for its review by Commission Staff (Staff) and approval by the Commission or the Director.

**2. Definitions**

(a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.

(b) *Fee Change* means any new fee or fee model of the ATS and any amendment to a fee or fee model.

(c) *Housekeeping Change* means an amendment to the information in Form 21-101F2 that

(i) does not have an impact on the ATS's market structure, subscribers, investors or the capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(d) *Significant Change* means an amendment to the information in Form 21-101F2 other than

(i) a Housekeeping Change, or

(ii) a Fee Change,

and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.

(e) *Significant Change subject to Public Comment* means a Significant Change that

(i) is listed in paragraphs 6.1(4)(a), (b), (c) or (d) of Companion Policy 21-101 CP, or

(ii) in Staff's view, has an impact on the ATS's market structure or subscribers, or on investors or the capital markets or otherwise raises public interest concerns, and should be subject to public comment.

**3. Scope**

(a) The ATS and Staff will follow the process for review and approval set out in this Protocol for all Changes.

**4. Waiving or Varying the Protocol**

(a) The ATS may file a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.

(b) Staff will use their best efforts to provide to the ATS within five business days of receipt of its request either:

(i) written notice that Staff object to granting the waiver or variation; or

(ii) written notice that the waiver or variation has been granted by Staff.

**5. Materials to be Filed and Timelines**

(a) Prior to the implementation of a Fee Change or Significant Change, the ATS will file with Staff the following materials:

(i) a cover letter that, together with the notice for publication filed under paragraph 5(a)(ii), if applicable, fully describes:

(A) the proposed Fee Change or Significant Change;

(B) the expected date of implementation of the proposed Fee Change or Significant Change;

(C) the rationale for the proposal and any relevant supporting analysis;

(D) the expected impact of the proposed Fee Change or Significant Change on the market structure, subscribers and, if applicable, on investors and the capital markets;

(E) whether a proposed Significant Change would increase or decrease systemic risk in the Canadian financial system and how any increase would be mitigated, if applicable;

(F) a discussion of the expected impact of the Fee Change or Significant Change on the ATS's compliance with Ontario securities law and in particular on requirements for fair access and maintenance of fair and orderly markets;

(G) details of any consultations undertaken in formulating the Fee Change or Significant Change, including the internal governance process followed to approve the Change;

(H) if the Significant Change will require subscribers and service vendors to modify their own systems after implementation of the Change, a reasonable estimate of the amount of time needed to perform the necessary work, or an explanation as to why a reasonable estimate was not provided;

(I) a discussion of any alternatives considered;

(J) if applicable, whether the proposed Fee Change or Significant Change would introduce a fee model or feature that currently exists in other markets or jurisdictions; and

(K) blacklined and clean copies of Form 21-101F2 showing the proposed Change.

(ii) for a proposed Significant Change subject to Public Comment, a notice for publication that includes the information required under paragraph 5(a)(i) above, except that the following may be excluded from the notice:

(A) supporting analysis required under subparagraph 5(a)(i)(C) above that, if included in the notice would result in the public disclosure of intimate financial, commercial or technical information;

(B) the information on systemic risk required under subparagraph 5(a)(i)(E) above;

(C) the information on the internal governance processes followed required under subparagraph 5(a)(i)(G) above;

(D) the reasonable estimate of time needed for subscribers and service vendors to modify their own systems, or the explanation as to why a reasonable estimate was not provided, required under subparagraph 5(a)(i)(H), so long as the notice for publication contains a statement that the ATS did not or could not make a reasonable estimate; and

(E) the discussion of alternatives required under subparagraph 5(a)(i)(I) above.

(b) The ATS will file the materials set out in subsection 5(a)

(i) at least 45 days prior to the expected implementation date of a proposed Significant Change; and

(ii) at least seven business days prior to the expected implementation date of a proposed Fee Change.

(c) For a Housekeeping Change, the ATS will file with Staff the following materials:

(i) a cover letter that indicates fully describes the Change and indicates that it was classified as a Housekeeping Change and provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and

(ii) blacklined and clean copies of Form 21-101F2 showing the Change.

(d) The ATS will file the materials set out in subsection 5(c) by the earlier of

(i) the ATS's close of business on the 10th calendar day after the end of the month in which the Housekeeping Change was implemented; and

(ii) the date on which the ATS publicly announces a Housekeeping Change, if applicable.

**6. Review by Staff of notice and materials to be published for comment**

(a) Within 5 business days of the receipt of the notice and materials filed by the ATS relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with paragraph 5(a)(ii), Staff will review the notice and materials to ensure that they contain an adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the ATS of any deficiency requiring a refilling of the notice and materials.

(b) Where the notice and materials are considered by Staff to be deficient, the ATS will amend and resubmit the notice and materials accordingly, and the date of resubmission will serve as the filing date for the purposes of this Protocol.

(c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 7.

**7. Publication of a Significant Change Subject to Public Comment**

(a) As soon as practicable after the receipt of the notice and materials filed by the ATS relating to a Significant Change subject to Public Comment in accordance with subsection 5(a)(ii), Staff will publish in the OSC Bulletin and on the OSC website the notice prepared by the ATS, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the ATS within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.

(b) If public comments are received

(i) the ATS will forward copies of the comments promptly to Staff; and

(ii) the ATS will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

**8. Review and Approval Process for Proposed Fee Changes and Significant Changes**

(a) Staff will use their best efforts to complete their review of a proposed Fee Change or Significant Change within

(i) 45 days from the date of filing of a proposed Significant Change; and

(ii) seven business days from the date of filing of a proposed Fee Change.

(b) Staff will notify the ATS if they anticipate that their review of the proposed Fee Change or Significant Change will exceed the timelines in subsection 8(a).

(c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change or Significant Change, Staff will use best efforts to provide the ATS with a comment letter promptly by the end of the public comment period for a Significant Change subject to Public Comment, and promptly after the receipt of the materials filed under section 5 for all other Changes.

(d) The ATS will respond to any comments received from Staff in writing.

(e) Unless Staff agree to an extension of time, if the ATS fails to respond to comments from Staff within 120 days after the receipt of Staff's comment letter, the ATS will be deemed to have withdrawn the proposed Fee Change or Significant Change. If the ATS wishes to proceed with the Fee Change or Significant Change after it has been deemed withdrawn, the ATS will have to be re-submit it for review and approval, in accordance with this Protocol.

(f) Upon completion of Staff's review of a Fee Change or Significant Change, Staff will submit the Change to the Director or, in the circumstances described in subsection 8(g), to the Commission, for a decision within the following timelines:

(i) for a Significant Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the ATS;

(ii) for any other Significant Change, the later of 45 days from the date of filing of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the ATS; or

(iii) for a Fee Change, the later of seven business days from the date of filing of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the ATS.

(g) A Fee Change or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection 8(f),

(i) if the proposed Fee Change or Significant Change is complex or introduces a novel feature to the ATS or the capital markets;

(ii) if comments received through the public comment process raise significant public interest concerns; or

(iii) in any other situation where, in Staff's view, Commission approval is appropriate.

(h) Staff will promptly notify the ATS of the decision.

(i) If a Significant Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and on the OSC website promptly after the approval:

(i) a notice indicating that the proposed Change is approved;

(ii) the summary of public comments and responses prepared by the ATS, if applicable; and

(iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the ATS and a blacklined copy of the revised Change highlighting the revisions made.

**9. Review Criteria for a Fee Change and Significant Change**

(a) Staff will review a proposed Fee Change or Significant Change in order to assess whether it is in the public interest for the Director or the Commission to approve the Change. In making this determination, Staff will have regard to the mandate of the Commission as set out section 1.1 of the *Securities Act* (Ontario). The factors that Staff will consider in making their determination also include whether:

(i) the Change would impact the ATS's compliance with Ontario securities law;

(ii) the ATS followed its established internal governance practices in approving the proposed Change;

(iii) the ATS followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of the Change; and

(iv) the ATS adequately addressed any comments received.

**10. Effective Date of a Fee Change or Significant Change**

(a) A Fee Change or Significant Change will be effective on the later of:

(i) the date that the ATS is notified that the Change is approved;

(ii) if applicable, the date of publication of the notice of approval on the OSC website; and

(iii) the date designated by the ATS.

**11. Significant Revisions and Republication**

(a) If, subsequent to its publication for comment, the ATS revises a Significant Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Change, Staff will, in consultation

with the ATS, determine whether or not the revised Change should be published for an additional 30-day comment period.

(b) If a Significant Change subject to Public Comment is republished under subsection 11(a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the ATS, and an explanation of the revisions and the supporting rationale for the revisions.

**12. Withdrawal of a Fee Change or Significant Change**

(a) If the ATS withdraws a Fee Change or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.

(b) If the notice of withdrawal relates to a Significant Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and OSC website as soon as practicable.

(c) If a Significant Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 8(e), Staff will prepare and publish a notice informing market participants that the ATS did not proceed with the Change.

**13. Effective Date of a Housekeeping Change**

(a) Subject to subsections 13(b) and 13(c), a Housekeeping Change will be effective on the date designated by the ATS.

(b) Staff will review the materials filed by the ATS for a Housekeeping Change to assess the appropriateness of the categorization of the Change as housekeeping within five business days from the date that the ATS filed the documents in accordance with subsections 5(c) and 5(d). The ATS will be notified in writing if there is disagreement with respect to the categorization of the Change as housekeeping.

(c) If Staff disagree with the categorization of the Change as housekeeping, the ATS will immediately repeal the Change, file the proposed Change as a Significant Change, and follow the review and approval process described in this Protocol as applying to a Significant Change, including those processes applicable to a Significant Change subject to Public Comment if applicable.

**14. Immediate Implementation of a Significant Change**

(a) The ATS may need to make a Significant Change effective immediately where the ATS determines that there is an urgent need to implement the Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the ATS, its subscribers, other market participants or investors.

(b) When the ATS determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible but in any event at least five business days prior to the proposed implementation of the Significant Change. The written notice will include the expected effective date of the Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must also be included as part of the written notice.

(c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the ATS, in writing, of the disagreement no later than the end of the third business day following filing of the notice under subsection 14(b). If the disagreement is not resolved, the ATS will file the Significant Change in accordance with the timelines in section 5.

**15. Review of a Significant Change Implemented Immediately**

(a) A Significant Change that has been implemented immediately in accordance with section 14 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 8, with necessary modifications. If the Director or the Commission does not approve the Significant Change, the ATS will immediately repeal the Change and inform its subscribers of the decision.

**16. Application of Section 21 of the *Securities Act* (Ontario)**

(a) The Commission's powers under section 21.0.1 of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Change having been approved under this Protocol.

## 1.2 Notices of Hearing

### 1.2.1 Sino-Forest Corporation et al. – s. 144

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

**AND**

**IN THE MATTER OF**
**SINO-FOREST CORPORATION, ALLEN CHAN, ALBERT IP, ALFRED C.T. HUNG, GEORGE HO AND SIMON YEUNG**

**NOTICE OF HEARING**
**Section 144**

**WHEREAS** on August 26, 2011, the Ontario Securities Commission (the "Commission") issued a temporary order pursuant to sections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") and an order pursuant to section 144(1) of the Act varying the prior order (together the "Temporary Order");

**AND WHEREAS** the Temporary Order ordered that all trading in the securities of Sino-Forest Corporation ("Sino-Forest") shall cease and that all trading by Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho and Simon Yeung (the "Individual Respondents") in securities shall cease;

**AND WHEREAS** on September 8, 2011, the Temporary Order was extended by order of the Commission until January 25, 2012;

**AND WHEREAS** on September 15, 2011, the Temporary Order was further varied by order of the Commission pursuant to section 144(1) of the Act in the matter of Canadian Derivatives Clearing Corporation (the "CDCC Order") but otherwise remained in effect, unamended except as expressly provided in the CDCC Order;

**AND WHEREAS** on January 23, 2012, the Temporary Order was extended by order of the Commission until April 16, 2012;

**AND WHEREAS** on March 30, 2012, Sino-Forest applied in front of the Superior Court of Justice (Ontario) for protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36, as amended (the "CCAA");

**AND WHEREAS** on April 13, 2012, the Temporary Order was extended by order of the Commission until July 16, 2012;

**AND WHEREAS** on July 12, 2012, the Temporary Order was extended by order of the Commission until October 15, 2012;

**AND WHEREAS** on August 14, 2012, Sino Forest filed a Plan of Compromise and Reorganization pursuant to the CCAA and the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, as amended (as amended, supplemented or restated from time to time, the "Plan");

**AND WHEREAS** the meeting of certain creditors to approve the Plan and the implementation of certain steps of the Plan, including without limitation (a) the assignment, transfer and conveyance of claims by holders of notes of Sino-Forest ("Sino-Forest Notes") in respect of or in relation to the Sino-Forest Notes to a new corporation to be incorporated pursuant to the Plan ("Newco") in consideration for common shares and notes of Newco pursuant to Section 6.3(i) of the Plan, (b) the cancellation of the outstanding common shares of Sino-Forest, and (c) the creation and issuance of a new class of shares of Sino-Forest, may involve trades in the securities of Sino-Forest (collectively, the "Sino-Forest Trades");

**AND WHEREAS** on September 18, 2012, the Temporary Order was further varied by order of the Commission pursuant to section 144(1) of the Act to allow Sino-Forest and the court appointed monitor in the CCAA proceedings, to distribute various meeting materials concerning the Plan, including a Notice of Meeting and Information Circular, along with proxy materials and any amendments and supplements, to all potential creditors, including noteholders of Sino-Forest, (the "CCAA Order") but otherwise the Temporary Order remained in effect, unamended except as expressly provided in the CCAA Order;

**AND WHEREAS** absent a variation by the Commission, the Temporary Order would prohibit the Sino-Forest Trades and therefore the implementation of the Plan in its current form;

**AND WHEREAS** the Plan will also require, among other things, approval by certain of Sino-Forest's creditors and the Superior Court of Justice (Ontario) before the Plan is implemented;

**TAKE NOTICE THAT** the Commission will hold a hearing (the "Hearing") pursuant to subsections 127(7) and (8) of the Act in Hearing Room B of the Commission, 20 Queen Street West, 17th Floor, commencing on October 26, 2012 at 10 a.m., or as soon thereafter as the Hearing can be held;

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

(i) to vary the Temporary Order pursuant to section 144(1) of the Act to permit the Sino-Forest Trades upon implementation of the Plan; and

(ii) to make such further orders as the Commission considers appropriate;

**BY REASON OF** the recitals set out in the Temporary Order and such allegations and evidence as counsel may advise and the Commission may permit;

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

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

**DATED** at Toronto this 28th day of September, 2012.

"John Stevenson"
Secretary to the Commission

**1.3 News Releases**

**1.3.1 OSC Panel Issues Sanctions Against Marlon Gary Hibbert, Ashanti Corporate Services Inc., Dominion International Resource Management Inc., Kabash Resource Management and Power To Create Wealth Inc.**

**FOR IMMEDIATE RELEASE**
**September 27, 2012**

**OSC PANEL ISSUES SANCTIONS AGAINST MARLON GARY HIBBERT, ASHANTI CORPORATE SERVICES INC., DOMINION INTERNATIONAL RESOURCE MANAGEMENT INC., KABASH RESOURCE MANAGEMENT AND POWER TO CREATE WEALTH INC.**

**TORONTO** – A panel of the Ontario Securities Commission today released its Reasons for Decision on Sanctions and Costs against Marlon Gary Hibbert, Ashanti Corporate Services Inc., Dominion International Resource Management Inc., Kabash Resource Management and Power To Create Wealth Inc. (the "Respondents").

In its Decision on the Merits, released April 4, 2012, the Commission found that Hibbert misled Staff and perpetrated a fraud on investors. The Commission also found that the Respondents traded in securities and acted as advisors without registration, engaged in an illegal distribution of securities and acted contrary to the public interest.

In today's decision, the OSC panel observed that Hibbert engaged in an ongoing course of deceitful and fraudulent conduct designed to personally enrich Hibbert at the expense of innocent investors.

Accordingly, the panel made protective orders permanently removing the Respondents from the Ontario capital markets and permanently banning Hibbert from acting as a director or officer in the securities industry. The OSC panel further ordered Hibbert disgorge the amount of $4,672,779.98 which the Respondents obtained as a result of their non-compliance with Ontario securities law, pay an administrative penalty of $750,000 and pay costs of $200,000 to the Commission.

A copy of the Reasons for Decision on Sanctions and Costs and the Reasons and Decision on the Hearing on the Merits are available on the OSC website at www.osc.gov.on.ca.

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

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### 1.3.2 OSC Investor Alert – Titan Resources International Corporation

**FOR IMMEDIATE RELEASE**
**September 28, 2012**

**OSC INVESTOR ALERT –**
**TITAN RESOURCES INTERNATIONAL CORPORATION**

**TORONTO** – The Ontario Securities Commission (OSC) is warning Ontario investors to exercise caution in any dealings with representatives of Titan Resources International Corporation (Titan).

Titan is headquartered in Toronto, Ontario, however its shares trade on the over-the-counter market in the United States.

On January 12, 2010, the OSC added Titan to its Warning List advising the public that Titan is not registered to engage in the business of trading securities or advising investors with respect to investing in, buying or selling securities.

On September 26, 2012, the United States Securities and Exchange Commission (SEC) suspended trading in the shares of Titan because "*Questions have arisen concerning the adequacy and accuracy of press releases and other public statements concerning Titan's business operation and financial condition*".

Trading in the shares of Titan has been suspended for a period of 10 days, ending on October 9, 2012.

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.

If you have any questions or information relating to this matter, please contact the OSC Contact Centre at 1-877-785-1555.

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### 1.3.3 OSC Panel Releases Decision Regarding Gordon Driver, Steven M. Taylor, Reynold Mainse, Axcess Automation LLC and Others Related to Breaches of the Ontario Securities Act

**FOR IMMEDIATE RELEASE**
**September 28, 2012**

**OSC PANEL RELEASES DECISION REGARDING GORDON DRIVER, STEVEN M. TAYLOR, REYNOLD MAINSE, AXCESS AUTOMATION LLC AND OTHERS RELATED TO BREACHES OF THE ONTARIO SECURITIES ACT**

**TORONTO** – In a decision released yesterday, an Ontario Securities Commission panel found that Gordon Driver (Driver), Axcess Automation LLC and other companies (the Axcess Companies), Steven M. Taylor (Taylor), Berkshire Management Services Inc. and other companies (the Taylor Companies), Reynold Mainse and World Class Communications Inc. (WCC) breached the Ontario *Securities Act* in connection with raising more than $15 million from 252 investors (all figures in US dollars).

In its decision, the Panel found that Driver, the Axcess Companies, Taylor and the Taylor Companies breached the Securities Act by committing a fraud upon investors, trading securities without being registered and trading securities without filing a prospectus with the Commission. Reynold Mainse and WCC traded securities without registration, but were not party to the fraud.

The Panel found that two schemes were operated. Both schemes were premised on Driver's purported use of investors' funds to trade E-mini S & P 500 futures using proprietary software to generate superior returns. In fact, of more than $15 million received from investors by Driver, only about $3.6 million was used to trade in E-mini 500 S & P futures, and Driver incurred a cumulative net loss of about $3.5 million. The Panel found that despite this, Driver represented that the Axcess Investments were generating substantial returns, clearly knowing that his fraudulent acts would cause deprivation to investors. The Panel held that Taylor was aware of the fraudulent nature of his and Driver's actions, and made false and misleading representations to investors and put their funds at significant risk.

As part of the schemes, about $10 million was returned to investors. The Panel found that even though not all investors suffered losses, their money was put at significant risk because most of it was diverted to pay Driver's personal expenses, commissions, or returns to investors. In many cases, investors were paid with proceeds of investments made by subsequent investors.

The Panel ordered the parties to appear before the panel on November 7, 2012 for a hearing with respect to sanctions and costs.

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. Cease trade orders prohibit individuals or companies from trading in securities. Investors are urged to check the registration of any person or company offering an investment opportunity and to review the OSC investor materials available at www.osc.gov.on.ca.

Staff acknowledge and appreciate the assistance provided in this matter by staff of the U.S. Securities and Exchange Commission and the Commodity Futures Trading Commission.

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### 1.3.4 Statement by Canadian Authorities on Clearing of Standardized OTC Derivatives Contracts

**FOR IMMEDIATE RELEASE**
**October 1, 2012**

**STATEMENT BY CANADIAN AUTHORITIES ON CLEARING OF STANDARDIZED OTC DERIVATIVES CONTRACTS**

**Toronto** – In response to the economic and financial crisis, G-20 leaders initiated a reform of the over-the-counter (OTC) derivatives market in 2009 to improve transparency, mitigate systemic risk, and protect against market abuse.

Since December 2009, the Bank of Canada, the Canadian Securities Administrators (CSA), the Office of the Superintendent of Financial Institutions (OSFI), and the Canadian Department of Finance have coordinated efforts to implement reform of Canada's OTC derivatives markets in line with the G-20 commitments, including the commitment to clear standardized OTC derivatives.

Canadian authorities are committed to clearing standardized OTC derivative contracts, subject to appropriate exemptions, through central counterparties (CCPs). Canadian market participants can respect this commitment by clearing OTC derivatives using any CCP recognized by Canadian authorities, including global CCPs.

Canadian authorities judge that global CCPs will provide a safe, robust and resilient environment for clearing OTC derivatives, provided that they comply with the Principles for Financial Market Infrastructure published by CPSS-IOSCO and that the following four safeguards identified by the Financial Stability Board (FSB) are met:

- Fair and open access by market participants to CCPs,
- Cooperative oversight arrangements for CCPs between relevant authorities,
- Resolution and recovery regimes that aim to ensure the core functions of CCPs are maintained during times of crisis, and
- Appropriate emergency liquidity arrangements for CCPs in currencies in which they clear.

Canadian authorities are satisfied with the direction and pace of the international efforts on the four safeguards, including with regard to implementation at global CCPs serving the Canadian market.

Canadian authorities will continue to work with authorities in other jurisdictions towards the achievement of the four safeguards at global CCPs and will monitor the evolution of the market for clearing services.

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

**For more information:**

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Richard Gilhooley
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## 1.4 Notices from the Office of the Secretary

### 1.4.1 Oversea Chinese Fund Limited Partnership et al.

**FOR IMMEDIATE RELEASE**
**September 26, 2012**

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

**AND**

**IN THE MATTER OF**
**OVERSEA CHINESE FUND LIMITED PARTNERSHIP,**
**WEIZHEN TANG AND ASSOCIATES INC.,**
**WEIZHEN TANG CORP. AND WEIZHEN TANG**

**TORONTO** – The Commission issued a Temporary Order in the above named which provides that the Temporary Order is extended until January 21, 2013 and the hearing of this matter is adjourned to January 18, 2013 at 10:00 a.m.

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

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### 1.4.2 Rezwealth Financial Services Inc. et al.

**FOR IMMEDIATE RELEASE**
**September 26, 2012**

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

**AND**

**IN THE MATTER OF**
**REZWEALTH FINANCIAL SERVICES INC.,**
**PAMELA RAMOUTAR, JUSTIN RAMOUTAR,**
**TIFFIN FINANCIAL CORPORATION, DANIEL TIFFIN,**
**2150129 ONTARIO INC., SYLVAN BLACKETT,**
**1778445 ONTARIO INC. AND WILLOUGHBY SMITH**

**TORONTO** – The Commission issued an Order in the above named matter which provides that this proceeding shall continue to the hearing on the merits, which is scheduled to commence on October 31, 2012.

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

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### 1.4.3 David Charles Phillips

**FOR IMMEDIATE RELEASE**
**September 26, 2012**

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

**AND**

**IN THE MATTER OF**
**DAVID CHARLES PHILLIPS**

**TORONTO** – The Commission issued an Order in the above named matter which provides that the June 6, 2012 Order is extended until the conclusion of the hearing on the merits in the Phillips and Wilson proceeding.

A copy of the Order dated September 26, 2012 is available at **www.osc.gov.on.ca**.

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### 1.4.4 Children's Education Funds Inc.

**FOR IMMEDIATE RELEASE**
**September 27, 2012**

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

**AND**

**IN THE MATTER OF**
**CHILDREN'S EDUCATION FUNDS INC.**

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

1. the Temporary Order is extended until December 7, 2012 or until further order of the Commission; and

2. the hearing in this matter is adjourned to December 6, 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 CEFI.

A copy of the Order dated September 26, 2012 is available at **www.osc.gov.on.ca**.

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### 1.4.5 Marlon Gary Hibbert et al.

**FOR IMMEDIATE RELEASE**
**September 27, 2012**

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

**AND**
**IN THE MATTER OF**
**MARLON GARY HIBBERT, ASHANTI CORPORATE SERVICES INC., DOMINION INTERNATIONAL RESOURCE MANAGEMENT INC., KABASH RESOURCE MANAGEMENT, POWER TO CREATE WEALTH INC. AND POWER TO CREATE WEALTH INC. (PANAMA)**

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

A copy of the Reasons For Decision on Sanctions and Costs and the Order dated September 27, 2012 are available at **www.osc.gov.on.ca**.

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### 1.4.6 Moncasa Capital Corporation and John Frederick Collins

**FOR IMMEDIATE RELEASE**
**September 27, 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 this matter is adjourned to a confidential pre-hearing conference which shall take place on November 28, 2012 at 3:00 p.m.

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

A copy of the Order dated September 27, 2012 is available at **www.osc.gov.on.ca**.

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### 1.4.7 Axcess Automation LLC et al.

**FOR IMMEDIATE RELEASE**
**September 28, 2012**

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

**AND**

**IN THE MATTER OF**
**THE COMMODITY FUTURES ACT,**
**R.S.O. 1990, c. C.20, AS AMENDED**

**AND**

**IN THE MATTER OF**
**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**

**TORONTO** – Following the hearing on the merits in the above noted matter, the Commission issued its Reasons and Decision.

The Commission also issued an Order which provides that the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, Toronto, commencing on November 7, 2012 at 10:00 a.m.; and 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.

A copy of the Reasons and Decision and the Order dated September 27, 2012 are available at **www.osc.gov.on.ca**.

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### 1.4.8 Anna Pyasetsky

**FOR IMMEDIATE RELEASE**
**September 28, 2012**

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

**AND**

**IN THE MATTER OF**
**AN APPLICATION FOR A HEARING AND REVIEW**
**OF THE DECISION OF DIRECTOR**
**EREZ BLUMBERGER DATED FEBRUARY 28, 2012**

**AND**

**IN THE MATTER OF**
**THE APPLICATION FOR REGISTRATION BY**
**ANNA PYASETSKY**

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

(i) the Hearing and Review is adjourned to October 15, 2012 at 10:00 a.m.;

(ii) the Applicant shall provide the Office of the Secretary and Staff with the name and contact information of her proposed representative and submissions in support of her request for changing representation by September 28, 2012 at 5:00 p.m.; and

(iii) Staff shall serve and file submissions and materials in relation to the Applicant's representation, including submissions regarding the removal of Lipovetsky as the representative for the Applicant and submissions regarding the Applicant's proposed representative, if any, by October 5, 2012 at 5:00 p.m., 10 days before the Hearing and Review, in accordance with rule 3 of the Rules of Procedure.

A copy of the Order dated September 26, 2012 is available at **www.osc.gov.on.ca**.

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### 1.4.9 Sino-Forest Corporation et al.

**FOR IMMEDIATE RELEASE**
**September 28, 2012**

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

**AND**

**IN THE MATTER OF**
**SINO-FOREST CORPORATION, ALLEN CHAN, ALBERT IP, ALFRED C.T. HUNG, GEORGE HO AND SIMON YEUNG**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing today, which provides that, a hearing pursuant to subsections 127(7) and (8) of the Act will be held on October 26, 2012 at 10:00 a.m. to consider whether it is in the public interest for the Commission: (i) to vary the Temporary Order pursuant to section 144(1) of the Act to permit the Sino-Forest Trades upon implementation of the Plan; and (ii) to make such further orders as the Commission considers appropriate.

A copy of the Notice of Hearing dated September 28, 2012 is available at **www.osc.gov.on.ca**.

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### 1.4.10 Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

**FOR IMMEDIATE RELEASE**
**September 28, 2012**

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

**AND**

**IN THE MATTER OF**
**VINCENT CICCONE and CABO CATOCHE CORP. (a.k.a. MEDRA CORP. and MEDRA CORPORATION)**

**TORONTO** – The Commission issued an Order with certain provisions in the above named matter. The hearing on the merits is adjourned to October 5, 2012, at 11:00 a.m. at which time Staff will provide the Commission with a status update.

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

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### 1.4.11 Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

**FOR IMMEDIATE RELEASE**
**October 1, 2012**

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

**AND**

**IN THE MATTER OF**
**VINCENT CICCONE and CABO CATOCHE CORP.**
**(a.k.a. MEDRA CORP. and MEDRA CORPORATION)**

**TORONTO** – The Commission issued an Order in the above named matter which provides that the status hearing set for October 5, 2012, is vacated and the hearing on the merits is adjourned to October 9, 2012, at 2:30 p.m. at which time Staff will provide the Commission with a status update.

A copy of the Order dated September 28, 2012 is available at **www.osc.gov.on.ca**.

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### 1.4.12 North American Financial Group Inc. et al.

**FOR IMMEDIATE RELEASE**
**October 1, 2012**

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

**AND**

**IN THE MATTER OF**
**NORTH AMERICAN FINANCIAL GROUP INC.,**
**NORTH AMERICAN CAPITAL INC.,**
**ALEXANDER FLAVIO ARCONTI AND**
**LUIGINO ARCONTI**

**TORONTO** – The Commission issued an Order in the above named matter which provides that this matter is adjourned to a further confidential pre-hearing conference to be held on April 5, 2013 at 10:00 a.m.; and the day of February 25, 2013 is reserved for a potential motion to be brought by the Respondents commencing at 10:00 a.m. that day.

A copy of the Order dated September 28, 2012 is available at **www.osc.gov.on.ca**.

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### 1.4.13 M P Global Financial Ltd. and Joe Feng Deng

**FOR IMMEDIATE RELEASE**
**October 2, 2012**

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

**AND**

**IN THE MATTER OF**
**M P GLOBAL FINANCIAL LTD.,**
**AND JOE FENG DENG**

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

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated October 1, 2012 are available at **www.osc.gov.on.ca**.

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# Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Sprott Power Corp.

**Headnote**

NP 11-203 – Filer acquiring assets in arm's length transaction and subsequently transferring assets to limited partnership – related party's interest in limited partnership evidenced by equity securities resulting in Filer not qualifying for downstream transaction exemption – related party entitlement under equity securities akin to management fees paid under management services agreement – management services agreement not treated as related party transaction for the purposes of MI 61-101 – relief granted.

**Applicable Legislative Provisions**

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, ss. 1.1, 9.1, and Part 5.

**September 21, 2012**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**SPROTT POWER CORP.**
**(the Filer)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the requirements of Part 5 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) not apply with respect to the Transfers (defined below) (the **Exemptive Relief Sought**).

**Interpretation**

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

**Representations**

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

1. The Filer is a corporation existing under the *Canada Business Corporations Act*.

2. The Filer was incorporated on May 26, 2010.

3. The head and registered office of the Filer is located at Royal Bank Plaza, South Tower, Suite 2700, 200 Bay Street, Toronto, Ontario M5J 2J2.

4. The authorized capital of the Filer consists of an unlimited number of common shares (the **Common Shares**) and an unlimited number of preferred shares.

5. The Filer and Sprott Power Consulting Limited Partnership (the **Manager**) entered into a management services agreement on June 14, 2010 pursuant to which the Manager agreed to manage the undertaking and affairs of the Filer and to provide, or cause to be provided, management and administrative services and facilities to the Filer.

6. On January 31, 2011, the Filer amalgamated with a wholly-owned subsidiary of First Asset PowerGen Fund pursuant to a statutory plan of arrangement, and the resulting combined company acquired all of the outstanding units of First Asset PowerGen Fund.

7. The Common Shares are listed for trading on the Toronto Stock Exchange (the **TSX**) under the symbol "SPZ" and commenced trading on the TSX on February 3, 2011.

8. The Filer is a reporting issuer in every province in Canada (collectively, the **Jurisdictions**) and, to the best of its knowledge, is not in default of its obligations under securities law in any Jurisdiction.

9. As of September 11, 2012 the Filer has 68,204,970 Common Shares issued and outstanding and no preferred shares outstanding.

10. The Filer is a developer, owner and operator of renewable energy projects.

***The Partnerships***

11. The Filer holds all of the voting Class A limited partnership units (**Class A LP Units**) of SP Operating Limited Partnership (the **Operating LP**). The Operating LP was formed pursuant to the terms of a limited partnership agreement dated as of June 14, 2010 (the **Operating LPA**) while the Filer was a private issuer. The Operating LP was created to hold acquired operating assets of the Filer.

12. The Filer holds all of the Class A LP Units of SP Development Limited Partnership (the **Development LP**). The Development LP was formed pursuant to the terms of an amended and restated limited partnership agreement dated as of May 31, 2010 (the **Development LPA**) while the Filer was a private issuer. The Development LP was created to hold development assets and operating assets developed/built by the Filer.

13. The Operating LP and the Development LP are together referred to herein as the **Partnerships** and the Operating LPA and the Development LPA are together referred to herein as the **Partnership Agreements**.

***Interest of the Manager in the Partnerships***

14. The Manager is the general partner and the holder of non-voting Class B limited partnership units (**Class B LP Units**) of each of the Operating LP and the Development LP.

15. The Manager, as holder of the Class B LP Units, is entitled to distributions on the Class B LP Units that effectively represent management fees based on the performance of the Partnerships. The balance of the distributable net cash, if any, is distributed to Filer.

16. Upon the occurrence of a "buyout event" (as defined in the Partnership Agreements, and which includes the termination of the Management Services Agreement, a change in control of a Partnership or the dissolution and liquidation of a Partnership), the Manager shall sell its Class B LP Units to Filer for a price equal to either 110% or 90% of the then present value of the Class B LP Units, the exact percentage being dependent upon the cause of termination (the **Buyout Amount**). For this purpose, the present value of the Class B LP Units is an estimate of the aggregate of all payments to be made by the Partnership on all Class B LP Units based on the property and assets of the Partnership at that time.

17. In the event that a Partnership is dissolved, upon satisfaction of the debts and liabilities of the Partnership, the funds of the Partnership will (i) to the extent that such proceeds are a return of capital contribution, be returned to each partner in direct relation to each partner's capital account, (ii) be applied in satisfaction of the Buyout Amount to the Manager, and (iii) any remaining funds will be returned to Filer.

18. Although the Class B LP Units are a tax efficient manner of paying management fees that could otherwise be payable under a management services agreement, they also technically constitute "equity securities" of each Partnership, as defined in section 1.1 of MI 61-101.

***The Proposed Transaction***

19. On August 8, 2012, the Filer announced it had entered into an arrangement agreement (the Acquisition) with Wind Canada Investments Ltd. and Shear Wind Inc. (**Shear Wind**) pursuant to which the Filer will acquire all of the issued and outstanding shares of Shear Wind for an aggregate purchase price of approximately $33 million. Shear Wind owns a portfolio of operating and development assets in Canada.

20. Shear Wind is a reporting issuer in British Columbia, Alberta and Nova Scotia. The common shares of Shear Wind are listed for trading on the TSX Venture Exchange. Shear Wind is not a related party of the Filer, and the Acquisition was negotiated at arm's length.

21. Immediately following the Acquisition, the Filer will transfer (i) the shares of certain subsidiaries of Shear Wind, and (ii) certain of the assets of Shear Wind (together, the **Transferred Assets**) to Development LP or Operating LP, as applicable (the **Transfers**), in accordance with the Filer's internal corporate structure described above. The Transferred Assets will be transferred to Development LP or Operating LP, as the case may be, at the same aggregate value as they were purchased pursuant to the Acquisition.

22. The Transfers, including the value at which the Transferred Assets will be transferred to Development LP or Operating LP, will be approved by all of the directors of the Filer who are independent of both the Acquisition and of the Manager.

***Related Party Transaction***

23. As the Filer is a control person of each of Operating LP and Development LP, each of the Operating LP and Development LP is a "related party" of the Filer within the meaning of MI 61-101.

As such, the Transfers will constitute "related party transactions" within the meaning of MI 61-101.

24. The Transfers would constitute "downstream transactions" for the purposes of MI 61-101 but for the fact that the Manager owns 100% of the Class B LP Units of each of Operating LP and Development LP.

**Decision**

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

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted.

"Shannon O'Hearn"
Manager, Corporate Finance
Ontario Securities Commission

### 2.1.2 Nord Gold N.V.

**Headnote**

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer making securities exchange take-over bid – First trade of securities of the filer issued as consideration under the bid exempted from the prospectus requirement, subject to condition that the trade is not a control distribution – Filer is a reporting issuer in one jurisdiction as a result of filing take-over bid circular and first trades of Filer's securities that take place in that jurisdiction are not subject to prospectus requirement – Relief enables all securityholders who receive Filer's securities as consideration in the bid to also receive freely tradable securities.

**Applicable Legislative Provisions**

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

**September 14, 2012**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**NORD GOLD N.V.**
**(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the Legislation) for an exemption from the prospectus requirement (the First Trade Relief) in each of the Non-Reporting Issuer Jurisdictions (as defined below) as it relates to the first trade of global depositary receipts of the Filer (GDRs) to be distributed in connection with the Filer's proposed offer to acquire by way of take-over bid the issued and outstanding common shares (High River Shares) of High River Gold Mines Ltd. (High River) not already owned by the Filer and its affiliates in exchange for GDRs or cash, at the election of the tendering High River shareholders (the Offer), announced July 18, 2012.

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

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

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

**Interpretation**

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

**Representations**

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

1. The Filer was established in 2007 as the gold producing division of JSC Severstal and is incorporated under the laws of The Netherlands pursuant to articles of association dated December 1, 2011; in early 2012, the Filer was spun-off from JSC Severstal and commenced trading as an independent public company via a listing of GDRs on the London Stock Exchange; the Filer's head office, principal place of business and legal address is Luna Arena, Herikerbergweg 238, 1101 CM Amsterdam Zuidoost, The Netherlands; the Filer is a gold producer, with operations in Burkina Faso, Guinea, Kazakhstan and Russia;

2. The Filer's share capital is comprised of 358,794,180 ordinary shares (Nord Shares); the GDRs represent interests in Nord Shares, with each GDR representing an interest in one Nord Share; the GDRs are listed on the London Stock Exchange; the GDRs are issued by Deutsche Bank Trust Company Americas (the Depositary) against the deposit of Nord Shares pursuant to two deposit agreements, in each case, dated January 16, 2012 and entered into between the Depositary and the Filer;

3. The Filer is not currently a reporting issuer under the securities legislation in any jurisdiction of Canada;

4. As a result of the Offer, and by virtue of the definitions of reporting issuer contained in securities legislation in Canadian jurisdictions, the Filer will become a reporting issuer (i) in Québec and Newfoundland and Labrador (the Reporting Issuer Jurisdictions) upon the filing of the securities exchange take-over bid circular (the Circular) and (ii) in British Columbia, Saskatchewan and Manitoba (the Take Up and Pay Jurisdictions) upon first taking up and paying for High River Shares under the Offer; the Filer will not become a reporting issuer in the remaining Non-Reporting Issuer Jurisdictions as a result of filing the Circular or any subsequent take-up of and payment for High River Shares under the Offer;

5. High River is the corporation resulting from the amalgamation of High River Resources Ltd. and Nor-Acme Gold Mines Limited under the *Canada Business Corporations Act* by Certificate of Amalgamation dated December 5, 1988; the continuance of High River under the *Business Corporations Act* (Yukon) became effective February 2, 2011; High River's registered office is located at 204 Lambert Street, Suite 200, Whitehorse, Yukon Territory, Canada, Y1A 3T2 and its head office is located at Suite 1502, 67 Yonge Street, Toronto, Ontario, Canada, M5E 1J8; High River is a mining company, focused on gold, with mineral production and exploration projects in Russia and Burkina Faso;

6. High River's share capital consists of an unlimited number of common shares and an unlimited number of preference shares, issuable in series, of which there were 840,218,962 High River Shares and no preference shares issued and outstanding as at March 31, 2012;

7. The Filer currently owns 630,627,472 High River Shares, constituting approximately 75% of the issued and outstanding High River Shares;

8. The High River Shares are admitted for trading on the Toronto Stock Exchange (TSX);

9. High River is a reporting issuer in each of the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador;

10. On July 18, 2012, the Filer publicly announced its intention to make the Offer;

11. Minority shareholders of High River holding an aggregate of 59,900,206 High River Shares, representing approximately 29% of the High River Shares not already owned by the Filer and its affiliates, have entered into lock-up agreements with the Filer providing for the tender of their High River Shares to the Offer and their election to receive GDRs as consideration;

12. The Filer intends to commence the Offer by mailing the Circular, together with all related documents, to holders of High River Shares, which Circular will describe, among other things, the terms and conditions of the Offer; the Filer will also file the Circular on the System for Electronic

Document Analysis and Retrieval (SEDAR) under High River's profile;

13. The Offer will provide that each eligible shareholder of High River will be entitled to elect to receive either: (a) 0.285 GDRs, or (b) C$1.40 in cash, in exchange for each High River Share held by them;

14. Since the consideration that will be offered for the purchase of the High River Shares includes GDRs, the Circular will include prospectus-level disclosure regarding the Filer, as required under the Legislation;

15. The distribution of the GDRs will be exempt from the prospectus requirements in all Canadian jurisdictions pursuant to section 2.16 of National Instrument 45-106 – *Prospectus and Registration Exemptions*;

16. The first trade of GDRs issued to shareholders of High River in the jurisdictions of Canada will be subject to Section 2.6 of National Instrument 45-102 – *Resale of Securities* (NI 45-102), with the result that such GDRs will be subject to a four-month seasoning period following the Filer becoming a reporting issuer in a jurisdiction of Canada, unless an exemption from the requirements of that section is available;

17. Pursuant to Section 2.11 of NI 45-102, first trades that would otherwise be subject to Section 2.6 of NI 45-102 are exempt from the seasoning period provided that, among other things, a securities exchange take-over bid circular relating to the distribution of the security was filed by the offeror on SEDAR and the offeror was a reporting issuer in the local jurisdiction on the date the securities of the offeree issuer were first taken up under the bid;

18. Due to the differences between the definitions of "reporting issuer" in the jurisdictions of Canada and the operation of Section 2.11 of NI 45-102: (i) shareholders of High River in the Reporting Issuer Jurisdictions will receive GDRs that are freely-tradeable, (ii) shareholders of High River in the Take Up and Pay Jurisdictions will only receive GDRs that are freely-tradeable if the Filer pays for the High River Shares it first takes up under the Offer on the day of take-up, which is not expected to occur and (iii) shareholders of High River in the remaining Non-Reporting Issuer Jurisdictions will receive GDRs that are subject to a four month seasoning period;

19. Immediately following the completion of the Offer, based on the Filer's current understanding, following due inquiry, of the geographic breakdown of the holders of High River Shares and GDRs, and assuming that all minority shareholders of High River tender to the Offer and elect to receive GDRs as consideration, it is expected that Canadian residents would make up between 4.7% and 8.4% of the beneficial holders of Nord Shares (including indirectly through holdings of GDRs); and

20. Following the completion of the Offer, it is expected that the Filer will be a designated foreign issuer (as defined in National Instrument 71-102 – *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*) in the Reporting Issuer Jurisdictions and the Take Up and Pay Jurisdictions.

**Decisions**

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

The decision of the Decision Maker under the Legislation is that the First Trade Relief is granted provided that:

1. Such trades are not a control distribution as defined in the Legislation; and

2. The Offer is commenced within 60 days of this decision.

"Christopher Portner"
Commissioner

"Judith Roberston"
Commissioner

### 2.1.3 EnerVest Diversified Income Trust

**Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Closed-end investment fund exempt from prospectus requirements in connection with the sale of units repurchased from existing security holders pursuant to market purchase programs and by way of redemption of units by security holder subject to conditions.

**Ontario Statues Cited**

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

**National Instruments Cited**

National Instrument 45-102 Resale of Securities, s. 2.8(2).

**September 5, 2012**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ALBERTA AND ONTARIO (THE JURISDICTIONS)**

**AND**

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

**AND**

**IN THE MATTER OF**
**ENERVEST DIVERSIFIED INCOME TRUST**
**(the Filer)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from the requirement to file a prospectus (the **Prospectus Requirement**) in connection with the distribution of units of the Filer (the **Units**) that have been repurchased by the Filer pursuant to the Programs (as that term is defined below) or redeemed by the Filer pursuant to the Redemptions (as that term is defined below) (the **Exemption Sought**).

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

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

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

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

**Interpretation**

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

**Representations**

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

1. The Filer is an unincorporated closed-end investment trust established under the laws of Alberta.

2. The holders of Units (the **Unitholders**) are not entitled to receive on demand an amount computed by reference to the value of a proportionate interest in the whole or in part of the net assets of the Filer.

3. The Filer is a reporting issuer or equivalent in each of the provinces and territories of Canada and is not in default of any of the requirements of securities legislation applicable to it.

4. The Units of the Filer are listed and posted for trading on the Toronto Stock Exchange (the **TSX**).

5. Canoe Financial LP, which was formed as a limited partnership under the laws of Alberta, is the manager of the Filer.

*Discretionary Purchase Program*

6. The constating document of the Filer provides that the Filer, subject to applicable regulatory requirements and limitations, shall have the right, but not the obligation, exercisable in its sole discretion, at any time, to purchase outstanding Units (in the open market or by invitation for tenders) at a price per Unit not exceeding the most recently calculated net asset value per Unit prior to the offer to purchase such Units (the **Program**). Such discretionary purchases may be made through the facilities and under the rules of any exchange or market on which the Units are listed (including the TSX) or as otherwise permitted by applicable securities laws.

*Annual Redemptions*

7. In addition, the constating document of the Filer provides that the Filer, subject to its right to suspend redemptions, is obligated to redeem any Units tendered by a Unitholder pursuant to the Unitholder's annual redemption right (the **Redemptions**) for an amount, if any, equal to 95% of the average net asset value of such Units for the three trading days prior to the redemption date, less any expenses incurred by the Filer in order to fund such redemption payment.

*Resale of Repurchased or Redeemed Units*

8. Purchases of Units made by the Filer under the Program are exempt from the issuer bid requirements of the Legislation pursuant to exemptions contained therein.

9. The Filer wishes to resell, in its sole discretion and at its option, through one or more securities dealers and through the facilities of the TSX (or another exchange on which the Units are then listed), Units repurchased by the Filer pursuant to the Program (**Repurchased Units**) or redeemed pursuant to the Redemptions (**Redeemed Units**).

10. All Repurchased Units or Redeemed Units will be held by the Filer for a period of four months after the repurchase or redemption thereof by the Filer (the **Holding Period**), prior to any resale.

11. The resale of Repurchased Units or Redeemed Units will not have a significant impact on the market price of the Units.

12. Repurchased Units or Redeemed Units that the Filer does not resell within 12 months after the Holding Period (that is, within 16 months after the date of repurchase or redemption) will be cancelled by the Filer.

13. Prospective purchasers of Repurchased Units or Redeemed Units will have access to the Filer's continuous disclosure, which will be filed on SEDAR.

14. The Legislation provides that a trade by or on behalf of an issuer in previously issued securities of that issuer that have been redeemed or purchased by that issuer is a distribution and, as such, is subject to the Prospectus Requirement. In the absence of the Exemption Sought, any sale by the Filer of Repurchased Units or Redeemed Units would be a distribution that is subject to the Prospectus Requirement.

**Decision**

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

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

(a) the Repurchased Units and the Redeemed Units are sold by the Filer in compliance with the Legislation through the facilities of and in accordance with the regulations and policies of the TSX or of any other exchange on which the Units are then listed; and

(b) the Filer complies with the conditions of paragraphs 1 through 5 of subsection 2.8(2) of National Instrument 45-102 Resale of Securities with respect to the sale of the Repurchased Units and Redeemed Units.

**For the Commission:**

"Glenda Campbell"
Vice-Chair

"Stephen Murison"
Vice-Chair

### 2.1.4 Xceed Mortgage Trust – s. 1(10)(a)(ii)

**Headnote**

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

**Applicable Legislative Provisions**

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

September 27, 2012

Xceed Mortgage Corporation
As Financial Services Agent of Xceed Mortgage Trust
18 King Street E 10th Floor
Toronto, Ontario M5C 1C4

Dear Sirs/Mesdames:

**Re: Xceed Mortgage Trust (the Applicant) – application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward island and Newfoundland (the Jurisdictions) that the Applicant is not a reporting issuer**

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

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

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

"Lisa Enright"
Manager, Corporate Finance
Ontario Securities Commission

### 2.1.5 Cee Gee Financial Services Trust

**Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption granted from the requirement to file a prospectus in connection with distributions of promissory notes in the trust to qualified persons, subject to certain conditions.

**Applicable Legislative Provisions**

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

**September 25, 2012**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**CEE GEE FINANCIAL SERVICES TRUST**
**(the Filer)**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) that the proposed distribution, from time to time, by the Filer of promissory notes (the Trust Notes) to specified investors (as set out below) will not be subject to the Registration Requirement and the Prospectus Requirement (as defined in National Instrument 14-101 – *Definitions*) contained in the Legislation (the Exemption Sought).

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

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

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

**Interpretation**

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

**Representations**

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

1. The Filer was established under the laws of the Province of Ontario on December 19, 2001 by a partner of Ernst & Young LLP (EYLLP). There are three trustees of the Filer, each of whom is a partner of EYLLP or Ernst & Young L.P. (EYL.P.). The Filer is not, and it is not intended that the Filer become, a reporting issuer or its equivalent under the Legislation. The Filer is not in default of the Legislation.

2. EYLLP is a limited liability partnership established under the laws of Ontario with offices located in the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia and Newfoundland and Labrador. EYLLP may in the future have offices in the other provinces and territories of Canada in which this application is being made. EYLLP carries on a business as a chartered accountancy and related professional services practice. EYLLP also engages, through affiliated corporations and partnerships (each an Affiliate) which are wholly-owned, directly or indirectly, either by EYLLP or by one or more Partners (as defined below) in other businesses including, among others, an insolvency practice, a corporate finance, mergers & acquisitions services practice, and an electronic publishing practice.

3. As of August 21, 2012, the partners of EYLLP (EYLLP Partners) are approximately 293 chartered accountants or their professional corporations.

4. EYL.P. is a limited partnership established under the laws of Manitoba.

5. The general partner of EYL.P. is EYGP Inc., a wholly-owned subsidiary of EYLLP. The limited partners of EYL.P. (the EYL.P. Partners) are, as of August 21, 2012, approximately 68 professionals who do not require the chartered accountant designation to carry on their practices or their professional corporations or other holding corporations.

6. All:

   (a) EYLLP Partners and EYL.P. Partners who are individuals, and

   (b) in the case of the remainder of the EYLLP Partners and EYL.P. Partners that are corporations or professional corporations, their respective sole shareholders and sole directors,

   also comprise the partners (the EY Services Partners) of Ernst & Young Services (EY Services) a general partnership established under the laws of the Province of Ontario. EYLLP, EYL.P. and EY Services are collectively referred to as the Firm. EYLLP Partners, EYL.P. Partners and EY Services Partners are collectively referred to as the Partners.

7. A professional corporation is a corporation incorporated under the laws of one of the provinces of Canada, which holds, where required, a valid permit or license to practice its profession in such province and all of the shares of which are owned by and the only director of which is an EY Services Partner.

8. The securities regulatory authority or regulator in the Jurisdiction and in each of the Non-Principal Jurisdictions have previously granted relief to the Filer in respect of the issuance of Trust Notes pursuant to an MRRS decision document dated February 27, 2002 (the Previous Decision). The Filer proposes to make certain amendments to the categories of persons who can subscribe for Trust Notes.

9. The Filer will issue Trust Notes from time to time only to Qualified Persons. Qualified Persons consist of:

   (a) Partners;

   (b) a spouse of an individual named in (a);

   (c) adult children of an individual named in (a) or (b);

   (d) corporations controlled by Partners and/or individuals named in (b) or (c) above (each a Family Corporation), where at least one individual named in (a), (b) or (c) above is an officer and a director of the corporation and where all of the shares of the corporation are beneficially owned by one or more of the following (each a Permitted Holder):

      (i) a Partner;

      (ii) the spouse of an individual named in (i);

      (iii) the issue of an individual named in (i) or (ii);

      (iv) the spouse of an individual named in (iii);

      (v) the parents or grandparents of an individual named in (i) or (ii);

      (vi) the siblings and half-siblings of an individual named in (i) or (ii);

(vii) the spouses of the siblings and half-siblings of an individual named in (i) or (ii);

(viii) the nieces and nephews of an individual named in (i) or (ii);

(ix) the aunts and uncles of an individual named in (i) or (ii); and

(x) a trust or trusts, all of the beneficiaries of which are any one or more of the persons named in (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), or (ix) above; and

(e) a family trust (a Family Trust), the beneficiaries of which are limited to any one or more Permitted Holders and where one of the trustees of the trust is the relevant Partner.

10. No Qualified Person that holds Trust Notes (a Noteholder) may sell, transfer, assign, pledge, encumber or otherwise dispose of any Trust Notes held by such Noteholder, except:

(a) with the consent of the trustees of the Filer, between a Partner and other Qualified Persons connected with or related to such Partner;

(b) by way of pledge or other security by a Qualified Person to a lender for the purpose of giving collateral for indebtedness incurred for the purpose of acquiring one or more Trust Notes; or

(c) to the Filer for cancellation.

11. As the Trust Notes are not transferable, except as described above, no market has developed or will develop for the Trust Notes.

12. Substantially all of the proceeds from the Trust Notes will be loaned by the Filer to EYLLP and/or to one or more of the Affiliates, and may in turn be loaned among EYLLP, such Affiliates and one or more other Affiliates, for the purpose of funding the Firm and the Affiliates. Such loans will be evidenced by non-transferable promissory notes which will be payable upon demand. The primary activity of the Filer is making such loans.

13. Prior to a Qualified Person advancing monies to the Filer to purchase one or more Trust Notes, the Qualified Person will be provided with:

(a) the most recent financial statements of the Filer;

(b) for the most recent financial year of the Firm, a balance sheet dated as at the end of the financial year and related notes accompanied by calculations showing interest coverage for the financial year and asset coverage as at the end of the financial year, in each case for the Trust Notes, bank debt and long-term debt (the Financial Information) or, if the Financial Information for the most recent financial year of the Firm is not available and not more than 140 days have elapsed since the end of such financial year, for the previous financial year of the Firm; and

(c) a copy of this decision document.

14. Prior to or contemporaneous with the advancement of monies by a Qualified Person to the Filer to purchase one or more Trust Notes, the Qualified Person will provide an acknowledgement of the receipt of a copy of this decision and an acknowledgement that the protections of the applicable Legislation, including statutory rights of rescission and damages and continuous disclosure, will not be available in respect of the purchase of such promissory notes.

15. Within 140 days of the end of each financial year of the Firm, the Filer will provide to each holder of one or more Trust Notes a copy of the Financial Information for such financial year and a copy of the most recent financial statements of the Filer.

16. In the case of the investment in one or more Trust Notes by a Qualified Person that is a Family Corporation or a Family Trust, the Family Corporation or the Family Trust, as the case may be, will represent to the Filer that no shareholder of the Family Corporation or no beneficiary of the Family Trust, as the case may be, other than, in either case, the related Partner, the related Partner's spouse and/or the adult children of such Partner or spouse (i) has or will directly or indirectly contribute money or other assets to such Family Corporation or Family Trust, as the case may be, (ii) is or will be liable for any loan or other form of financing obtained by the Family Corporation or the Family Trust, as the case may be, or (iii) is or will be involved in making investment decisions by the Family Corporation or the Family Trust, as the case may be, except to the extent such shareholder or beneficiary is a director or trustee, as the case may be.

**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 Filer shall not rely on the Previous Decision with respect to any distribution of Trust Notes made after the date of this decision; and

(b) any subsequent trade in Trust Notes will be deemed to be a distribution or a distribution to the public under the legislation of the jurisdiction in which the trade takes place, unless such subsequent trade is one of the following:

(i) a transfer between a Partner and other Qualified Persons connected with or related to such Partner;

(ii) a transfer to the Filer for cancellation; or

(iii) a pledge to a financial institution for the purpose of giving collateral for indebtedness incurred for the purpose of acquiring one or more Trust Notes.

“Wesley Scott”
Commissioner
Ontario Securities Commission

“Vern Krishna”
Commissioner
Ontario Securities Commission

### 2.1.6 Extorre Gold Mines Limited – s. 1(10)(a)(ii)

**Headnote**

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

**Applicable Legislative Provisions**

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

September 28, 2012

Extorre Gold Mines Limited
c/o Angela Chu
Cassels Brock & Blackwell LLP
40 King Street West
Scotia Plaza, Suite 2100
Toronto, ON M5H 3C2

Dear Sirs/Mesdames:

**Re: Extorre Gold Mines Limited (the Applicant) – application for a decision under the securities legislation of Ontario, Alberta, Saskatchewan, Manitoba and New Brunswick (the Jurisdictions) that the Applicant is not a reporting issuer**

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

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

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

"Lisa Enright"
Manager, Corporate Finance
Ontario Securities Commission

### 2.1.7 Continental Nickel Limited – s. 1(10)

**Headnote**

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

**Ontario Statutes**

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

September 28, 2012

Continental Nickel Limited
20 Adelaide Street East, Suite 915
Toronto, Ontario M5C 2T6

Dear Sirs/Mesdames:

**Re: Continental Nickel Limited (the "Applicant") – Application for a decision under the securities legislation of Alberta and Ontario (collectively, the "Jurisdictions") that the Applicant is not a reporting issuer**

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

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

(a) the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

(b) no securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 Marketplace Operation or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

(c) the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions of Canada in which it is currently a reporting issuer; and

(d) the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

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

"Shannon O'Hearn"
Manager, Corporate Finance
Ontario Securities Commission

### 2.1.8 WestJet Airlines Ltd.

**Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from take-over bid and early warning requirements so that the applicable thresholds be triggered on a combined basis rather than on a per class basis – Relief to address foreign investment concerns – Dual class structure implemented solely for compliance with foreign ownership requirements in the airline industry – Both classes of securities are freely tradable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the holder's Canadian or non-Canadian status.

**Applicable Legislative Provisions**

National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues.
Multilateral Instrument 62-104 Take-Over Bids and Issuer Bids.
Securities Act (Ontario), Part XX.

**Citation:** WestJet Airlines Ltd., Re, 2012 ABASC 412

**September 21, 2012**

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

**AND**

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

**AND**

**IN THE MATTER OF**
**WESTJET AIRLINES LTD.**
**(the Filer)**

**DECISION**

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Make**r) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that:

(a) an offeror that makes an offer to acquire outstanding variable voting shares of the Filer (**Variable Voting Shares**) or outstanding common voting shares of the Filer (C**ommon Voting Shares**, and collectively with the Variable Voting Shares, the **Shares**), which would constitute a take-over bid under the Legislation as a result of the securities subject to the offer to acquire, together with the offeror's securities of that class, constituting in the aggregate 20% or more of the outstanding Variable Voting Shares or Common Voting Shares, as the case may be, at the date of the offer to acquire, be exempted from the take-over bid requirements contained in Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* (**MI 62-104**) and Part XX of the *Securities Act* (Ontario) (collectively, the **TOB Rules**) (the **TOB Relief**);

(b) an acquiror who acquires beneficial ownership of, or control or direction over, Variable Voting Shares or Common Voting Shares, or securities convertible into such shares, that, together with the acquiror's securities of that class, would constitute 10% or more of the outstanding Variable Voting Shares or Common Voting Shares, as the case may be (or 5% in the case of acquisitions during a take-over bid), be exempted from the early warning requirements contained in the Legislation (the **Early Warning Relief**); and

(c) an eligible institutional investor subject to the early-warning requirements of the Legislation be entitled to rely on alternative eligibility criteria from those set forth in section 4.5 of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (**NI 62-10**3) in order to benefit from the exemption contained in section 4.1 of NI 62-103 (the **Alternative Monthly Reporting Criteria** and, collectively with the TOB Relief and the Early Warning Relief, the **Decision Sought**).

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

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

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

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

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions*, NI 62-103, MI 62-104 or MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein. For the purpose of this decision, the following terms have the meaning ascribed to them hereinafter:

"**CTA**" means *Canada Transportation Act*; and

"**TSX**" means the Toronto Stock Exchange.

**Representations**

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

1. The Filer is a corporation governed by the *Business Corporations Act* (Alberta).

2. The Filer's head office is located in Calgary, Alberta.

3. The Filer is a reporting issuer in all of the provinces of Canada and is not in default of any requirement of the securities legislation in any of these jurisdictions.

4. The Filer is subject to the CTA, which requires that, as a licensed airline, it must be controlled in fact by Canadians (as defined in the CTA) and that non-Canadians not hold or control more than 25% of the voting interests in a licensed airline.

5. The Government of Canada's Bill C-10, the *Budget Implementation Act 2009*, contains provisions whereby the restrictions relating to voting securities in the CTA would be amended to provide the Governor in Council with flexibility to increase the foreign voting interest ownership limit from the existing 25% level to a maximum of 49%. These provisions would come into force on a date to be fixed by order of the Governor in Council.

6. The authorized share capital of WestJet is comprised of: an unlimited number of Variable Voting Shares; an unlimited number of Common Voting Shares; an unlimited number of non-voting shares; an unlimited number of first preferred shares; an unlimited number of second preferred shares and an unlimited number of third preferred shares. As of July 31, 2012, 7,893,039 Variable Voting Shares and 126,332,362 Common Voting Shares were outstanding. There are no non-voting shares and no preferred shares outstanding. In addition, as of July 31, 2012, WestJet had 5,186,487 options issued and outstanding, each entitling its holder to purchase one Variable Voting Share or one Common Voting Share.

7. The Common Voting Shares may only be held, beneficially owned and controlled, directly or indirectly, by Canadians (as defined in the CTA). An outstanding Common Voting Share is converted into one Variable Voting Share, automatically and without any further act of the Filer or the holder, if such Common Voting Share becomes held, beneficially owned or controlled, directly or indirectly, otherwise than by way of security only, by a person who is not a Canadian.

8. The Variable Voting Shares may only be held, beneficially owned or controlled, directly or indirectly, by persons who are not Canadians. An outstanding Variable Voting Share is converted into one Common Voting Share, automatically and without any further act of the Filer or the holder, if such Variable Voting Share becomes held, beneficially owned and controlled, directly or indirectly, otherwise than by way of security only, by a Canadian.

9. Each Common Voting Share confers the right to one vote. Each Variable Voting Share also confers the right to one vote unless: (i) the number of Variable Voting Shares outstanding, as a percentage of the total number of voting shares outstanding of the Filer, exceeds 25% (or any higher percentage that the Governor in Council may specify by regulation), or (ii) the total number of votes cast by or on behalf of holders of Variable Voting Shares at any meeting exceeds 25% (or any higher percentage that the Governor in Council may specify by regulation) of the total number of votes that may be cast at such meeting. If either of the above noted thresholds is surpassed at any time, the vote attached to each Variable Voting Share decreases proportionately such that: (i) the Variable Voting Shares as a class do not carry more than 25% (or any higher percentage that the Governor in Council may specify by regulation) of the aggregate votes attached to all outstanding voting shares of the Filer and (ii) the total number of votes cast by or on behalf of holders of Variable Voting Shares at any meeting does not exceed 25% (or any higher percentage that the Governor in Council may specify by regulation) of the votes that may be cast at such meeting.

10. Aside from the differences in voting rights stated above, the Variable Voting Shares and Common Voting Shares are similar in all other respects, including the right to receive dividends if any, and the right to receive the property and assets of the Filer in the event of dissolution, liquidation, or winding up of the Filer.

11. The articles of the Filer contain coattail provisions pursuant to which Variable Voting Shares may be converted into Common Voting Shares in the event an offer is made to purchase Common Voting Shares and the offer is one which is required to be made to all or substantially all the holders of Common Voting Shares. Similar coattail provisions are contained in the terms of the Common Voting Shares and provide for the conversion of Common Voting Shares into Variable Voting Shares in the event an offer is made to purchase Variable Voting Shares and the offer is one which is required to be made to all or substantially all the holders of Variable Voting Shares. Since these coattail provisions, in their existing form, do not specify the threshold at

which the offer is required to be made to all the holders of a class of Shares, they do not need to be amended as a result of the decision to grant the Decision Sought.

12. The Variable Voting Shares and the Common Voting Shares are listed on the TSX under separate ticker symbols ("WJA.A" for the Variable Voting Shares and "WJA" for the Common Voting Shares). Notwithstanding the foregoing, the Variable Voting Shares and the Common Voting Shares have historically traded at the same price or within a narrow price range, demonstrating that the market essentially assigns the same value to each class.

13. The Filer's dual class structure was implemented solely to ensure compliance with the requirements of the CTA.

14. An investor does not determine or choose which class of Shares it acquires and holds. There are no unique features of either class of Shares which an existing or potential investor can choose to acquire, exercise or dispose of. The class of Shares ultimately available to it is a function of the investor's Canadian or non-Canadian status only. Moreover, if after having acquired Shares, a holder's Canadian or non-Canadian status changes, the Shares will convert accordingly and automatically, without formality or regard to any other consideration.

15. The Variable Voting Shares are not considered "restricted voting securities" for the purposes of the Legislation.

16. The TOB Rules and early warning requirements apply to the acquisition of securities of a class. Because of the current significantly smaller public float of Variable Voting Shares (compared to the public float of Common Voting Shares), it is more difficult for non-Canadian investors to acquire shares in the ordinary course without the apprehension of inadvertently triggering the TOB Rules and early warning requirements, thus restricting the interest of non-Canadian investors in the Shares for reasons unrelated to their investment objectives. In fact, some non-Canadian investors have expressed their concern relating to the limited float of Variable Voting Shares and the risk of such float further decreasing over time. As a result, although the Filer has a flexible capital structure that is designed to permit non-Canadian investors to become shareholders of the Filer, the relatively small number of outstanding Variable Voting Shares appears to have limited the investment interest of non-Canadian investors. Therefore, aggregating Variable Voting Shares and Common Voting Shares for the purpose of the TOB Rules and early warning requirements would facilitate investment in Variable Voting Shares.

**Decision**

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

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

(a) the Filer shall publicly disclose the terms of the Decision Sought in a news release filed on SEDAR promptly following the issuance of this decision document;

(b) the Filer shall disclose the terms and conditions of the Decision Sought in all of its annual information forms and management proxy circulars filed on SEDAR following the issuance of this decision document;

(c) with respect only to the TOB Relief, the Variable Voting Shares or Common Voting Shares, as the case may be, subject to the offer to acquire of an offeror, together with the offeror's securities of that class of the Filer, would not constitute, at the date of the offer to acquire, in the aggregate 20% or more of the outstanding Variable Voting Shares and Common Voting Shares on a combined basis;

(d) with respect only to the Early Warning Relief, the Variable Voting Shares or Common Voting Shares, or securities convertible into such shares, as the case may be, over which the acquiror acquires beneficial ownership of, or control or direction over, together with the acquiror's securities of the Filer, would not constitute 10% or more of the outstanding Variable Voting Shares and Common Voting Shares on a combined basis (or 5% in the case of acquisitions during a take-over bid); and

(e) with respect only to the Alternative Monthly Reporting Criteria, the eligible institutional investor may meet any of the eligibility criteria contained in section 4.5 of NI 62-103 by calculating its securityholding percentage using (i) a denominator comprised of all of the outstanding Variable Voting Shares and Common Voting Shares on a combined basis, and (ii) a numerator including all of the Variable Voting Shares or Common Voting Shares, as the case may be, beneficially owned or over which control or direction is exercised by the eligible institutional investor.

**For the Commission:**

"Glenda Campbell, QC"
Vice-Chair

"Stephen Murison"
Vice-Chair

### 2.1.9 Caldwell Investment Management Ltd. et al.

**Headnote**

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund mergers – approval required because mergers do not meet the criteria for pre-approval – mergers have differences in investment objectives – mergers not a "qualifying exchange" or a tax-deferred transaction under Income Tax Act – discontinuing funds not winding up as soon as reasonably practical after the mergers - securityholders of discontinuing funds provided with timely and adequate disclosure regarding the mergers.

**Applicable Legislative Provisions**

National Instrument 81-102 Mutual Funds, ss. 5.5(1)(b), 5.5(3), 5.6.

**June 15, 2012**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**ONTARIO**
**(the "JURISDICTION")**

**AND**

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

**AND**

**IN THE MATTER OF**
**CALDWELL INVESTMENT MANAGEMENT LTD.**
**(the "FILER")**

**AND**

**IN THE MATTER OF**
**CALDWELL GLOBAL FINANCIAL SERVICES FUND**
**CALDWELL MEISELS CANADA FUND**
**(collectively, the "DISCONTINUING FUNDS")**

**AND**

**IN THE MATTER OF**
**CALDWELL BALANCED FUND**
**CALDWELL HIGH INCOME EQUITY FUND**
**(collectively, the "CONTINUING FUNDS")**

**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Discontinuing Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "Legislation") for approval of the proposed mergers of the Discontinuing Funds into the respective Continuing Funds (the "Mergers") pursuant to subsection 5.5(1)(b) of National Instrument 81-102 *Mutual Funds* ("NI 81-102") (the "Exemption Sought").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia,

Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon (together with Ontario, the "Jurisdictions").

**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless they are defined in this decision.

**Representations**

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

1. Caldwell Investment Management Ltd. ("Caldwell"), the Filer, is the manager and trustee of each of the Discontinuing Funds and Continuing Funds (collectively, the "Funds", individually, a "Fund"). Caldwell is not in default of securities legislation of the Jurisdictions.

2. Each Fund is a mutual fund trust established under the laws of Ontario by a declaration of trust pursuant to which the Filer is the manager and trustee of each Fund.

3. The units of the Funds are qualified for distribution pursuant to a simplified prospectus and an annual information form each dated June 21, 2011 as amended by Amendment No. 1 dated May 9, 2012.

4. Each of the Funds is a reporting issuer under the securities legislation of each Jurisdiction and is not in default of the applicable securities legislation.

5. The Mergers involve the mergers of (i) Caldwell Global Financial Services Fund into Caldwell Balanced Fund and (ii) Caldwell Meisels Canada Fund into Caldwell High Income Equity Fund.

6. Amendments to the simplified prospectus and annual information form of each of the Funds were filed to describe the Mergers on May 9, 2012.

7. A press release was issued and filed on SEDAR on behalf of the Discontinuing Funds with the securities commissions of all the Jurisdictions with respect to the Mergers on May 9, 2012.

8. Investors in the Discontinuing Funds were asked to approve the Mergers at special meetings of unitholders which were held on June 12, 2012 (the "Meetings").

9. The relevant notices of the Meetings, proxy forms and management information circulars were mailed to unitholders of the relevant Funds and filed on SEDAR in accordance with applicable securities legislation on May 11, 2012.

10. The materials sent to unitholders of the Discontinuing Funds in connection with the Meetings included a statement that unitholders may obtain a copy of the most recently filed prospectus, the most recently filed fund facts document, the most recent annual and interim financial statements, and the most recent management report of fund performance that have been made public for their Continuing Fund by contacting Caldwell at a specified address or telephone number.

11. Pursuant to NI 81-107 – *Independent Review Committee for Investment Funds*, the Independent Review Committee ("IRC") reviewed and made positive recommendations with respect to the Mergers and the process to be followed in connection with the Mergers, and advised Caldwell that in the IRC's opinion, having reviewed the Mergers as a potential conflict of interest matter, following the process proposed, each of the Mergers achieves a fair and reasonable result for each of the Discontinuing Funds.

12. In the management information circular dated May 11, 2012 (the "Information Circular"), the statement was made that the investment objective of the Caldwell Meisels Canada Fund is "substantially similar" to that of the Caldwell High Income Equity Fund and that the investment objective of the Caldwell Global Financial Services Fund is "substantially similar" to that of the Caldwell Balanced Fund.

13. Caldwell issued a press release on June 11, 2012 (the "June Press Release") which clarified that while there are similarities between the fundamental investment objectives of each of the respective pairs of mutual funds, there are also differences which make the fundamental investment objectives not substantially similar of which investors should be aware.

14. On June 11, 2012, Caldwell also

    (a) filed the June Press Release on SEDAR;

    (b) transmitted the June Press Release to any dealer shown on the records of the Discontinuing Funds as having clients invested in such Funds (the "Dealer Communication"); and

    (c) transmitted the June Press Release as well as a blank Form of Proxy to all unitholders of the Discontinuing Funds that had previously delivered a proxy and advised them that they may send in a new proxy should they wish to change their vote on the Merger (the "June Unitholder Communication").

15. The Meetings were held on June 12, 2012 and 100% of the unitholders who cast votes at the Meetings in person or by proxy voted to approve the Mergers.

16. The Filer was responsible for the costs associated with the Meetings.

17. It is proposed that each Merger will occur after the close of business on June 15, 2012 (the "Effective Date"), subject to regulatory approvals, where necessary. Caldwell may, in its discretion, postpone implementing any Merger until a later date (which shall be not later than June 29, 2012) and may elect to not proceed with any Merger.

18. The cost of effecting the Mergers will be borne by Caldwell.

19. The securities of each Continuing Fund received by a unitholder of the corresponding Discontinuing Fund will have the same fee structure as the securities of the Discontinuing Fund held by that unitholder.

20. The shares of the Continuing Funds acquired by the unitholders of the Discontinuing Funds upon the Mergers are subject to the same redemption charges and redemption charge schedule to which their shares of the Discontinuing Funds were subject to prior to the Mergers.

21. No sales charges will be payable in connection with the acquisition by the Continuing Funds of the investment portfolios of the Discontinuing Funds.

22. Unitholders of each Discontinuing Fund will continue to have the right to redeem securities of the Discontinuing Fund at any time up to the close of business immediately before the Effective Date of the Mergers.

23. Except as noted below, each of the Mergers would otherwise comply with all of the other conditions of section 5.6 of NI 81-102.

24. In the absence of approval or relief, the Mergers would be prohibited for the following reasons:

    (a) a reasonable person would consider the fundamental investment objectives of each Discontinuing Fund and its Continuing Fund to not be substantially similar;

    (b) the Discontinuing Funds will not merge into the Continuing Funds on a tax deferred basis; and

    (c) the Mergers do not contemplate the wind-up of the Discontinuing Funds as soon as reasonably possible following the Mergers.

25. The Filer submits that the Mergers are being proposed in order to rationalize the line-up of Caldwell mutual funds for the benefit of unitholders of the Funds. The anticipated benefits of the Mergers are as follows:

    (a) each Discontinuing Fund and its Continuing Fund are largely duplicative of one another and the Mergers will eliminate the duplicative costs of operating each Discontinuing Fund and its Continuing Fund as separate mutual funds;

    (b) unitholders of both the Discontinuing Funds and the Continuing Funds will enjoy increased economies of scale and potentially lower management expenses borne indirectly by unitholders as part of larger post-merger Continuing Funds;

    (c) unitholders of both the Discontinuing Funds and Continuing Funds will benefit from becoming investors in larger mutual funds which will be better able to maintain diversified, well-managed portfolios with a smaller proportion of assets set aside to fund redemptions; and

    (d) each Continuing Fund will benefit from its larger profile in the marketplace.

26. Neither Merger will be a "qualifying exchange" within the meaning of section 132.2 of the *Income Tax Act (*Canada) (the "Tax Act"). If a Discontinuing Fund and the relevant Continuing Fund were to elect to have a Merger treated as a "qualifying exchange", the tax losses of the Discontinuing Fund and of the Continuing Fund (the "Tax Losses") would be lost as a result of the Merger.

27. Given the accrued gains and losses on property held by each Discontinuing Fund, the transfer of property by a Discontinuing Fund to its Continuing Fund as part of its Merger will not give rise to any net income or net realized capital gains that would have to be included in computing the income of its unitholders. Substantially all of the unitholders of each Discontinuing Fund have an accrued capital loss on their units and effecting the Mergers on a taxable basis will allow them to realize that loss and use it against current capital gains or carry it back as permitted by the Tax Act.

28. Following the Effective Date of the Mergers:

    (a) the Discontinuing Funds will apply to cease to be reporting issuers;

    (b) Caldwell will not use the tax losses of the Discontinuing Funds for its proprietary benefit;

    (c) Caldwell may, at its discretion, take the necessary steps, in accordance with applicable securities legislation, for one or both Discontinuing Funds to be investment funds that are offered under a prospectus or pursuant to a prospectus exemption (the "Future Funds"); and

    (d) Caldwell will use the tax losses of the Discontinuing Funds for the benefit of the securityholders of the Future Funds when and if the Discontinuing Funds were offered as described in paragraph (c) immediately above.

29. The Filer submits that investors will not be prejudiced in connection with the Mergers as:

    (a) 100% of unitholders who cast votes at the June 12, 2012 Meetings in person or by proxy voted to approve the Mergers;

    (b) the Information Circular

        (i) together with the June Press Release, the Dealer Communication and the June Unitholder Communication provided sufficient information about the Mergers to permit unitholders to make an informed decision about the Mergers;

        (ii) prominently disclosed that unitholders may obtain a copy of the most recently filed prospectus, the most recently filed fund facts document, the most recent annual and interim financial statements, and the most recent management report of fund performance that have been made public for their Continuing Fund by contacting Caldwell at a specified address or telephone number;

        (iii) provided disclosure regarding the income tax considerations surrounding the Mergers; and

        (iv) described the differences between the Discontinuing Funds and their Continuing Funds;

    (c) an unqualified auditors' report was filed in respect of each Fund for the most recently completed financial year; and

    (d) the cost of effecting the Mergers will be borne by Caldwell.

**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 Caldwell will notify the principal regulator, in writing, in advance of any public or private offering, or any future use being made of the tax losses, of the Discontinuing Funds.

"Raymond Chan"
Manager, Investment Funds
Ontario Securities Commission

### 2.1.10 Pure Multi-Family REIT LP

**Headnote**

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – BAR – An issuer requires relief from the requirement to include certain financial statements in a business acquisition report – The issuer has acquired individual real estate properties from two private company vendors; the vendors have limited access to the financial information needed for the issuer to prepare all the financial statements in accordance with BAR requirements; the issuer included in its prospectus alternative financial information about the issuer and the proposed acquisition that was sufficient to enable an investor to make an informed investment decision; the BAR will contain substantially similar alternative financial information.

National Instrument 52-107 Acceptable Accounting Principles and Auditing Standards – An issuer wants relief from the requirement to prepare certain acquisition statements included in a BAR in accordance with prescribed accounting principles – The issuer has acquired individual real estate properties from two private company vendors; the vendors have limited access to the financial information needed for the issuer to prepare all the acquisition statements in accordance with prescribed accounting principles; the issuer included in its prospectus alternative financial information about the issuer and the proposed acquisition that was sufficient to enable an investor to make an informed investment decision; the BAR will contain substantially similar alternative financial information.

**Applicable Legislative Provisions**

National Instrument 51-102, ss. 8.4 and 13.1 Continuous Disclosure Obligations.
National Instrument 52-107 ss. 3.11 and 5.1 Acceptable Accounting Principles and Auditing Standards.

**August 23, 2012**

**IN THE MATTER OF**
**THE SECURITIES LEGISLATION OF**
**BRITISH COLUMBIA AND ONTARIO**
**(the Jurisdictions)**

**AND**

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

**AND**

**IN THE MATTER OF**
**PURE MULTI-FAMILY REIT LP**
**(the Filer)**

**DECISION**

**Background**

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer, under section 13.1 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), from the requirement in section 8.4 of NI 51-102 to include certain financial statements in a business acquisition report (BAR) and, under section 5.1 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standard*s (NI 52-107), the requirement in section 3.11 to prepare acquisition statements (as defined in NI 52-107) in accordance with prescribed accounting principles (the Exemption Sought);

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

(a) British Columbia is the principal regulator for this application;

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

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

**Interpretation**

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

**Representations**

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

1. Pure Multi-Family REIT LP is a limited partnership formed under the *Limited Partnerships Act* (Ontario);

2. the Filer's head office is located at Suite 910 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2;

3. the Filer's year end will be December 31;

4. under a pre-filing interpretation and waiver application letter submitted to the BCSC and the OSC on June 22, 2012, the Filer requested and was granted relief from items 32.2 and 32.3 of Form 41-101F1 as prescribed by National Instrument 41-101 *General Prospectus Requirements* in respect of financial statement disclosure for issuers, and section 3.2(1) of NI 52-107 in respect of the accounting principles used to prepare the financial statements included in the Prospectus (defined below); the relief was granted based on, among other things, the inclusion of the following alternative financial disclosure in the Prospectus:

   (a) a statement of financial position in respect of the Filer as at May 8, 2012, with an audit report thereon from the Filer's independent auditor;

   (b) an unaudited pro forma combined statement of financial position as at May 8, 2012, and an unaudited pro forma combined statement of operations for the year ended December 31, 2011, in respect of the Filer;

   (c) an unaudited pro forma combined statement of operations in respect of the Filer for the three months ended March 31, 2012;

   (d) a combined statement of operations for the years ended December 31, 2011 and 2010, prepared on a combined basis in accordance with the basis of presentation described in the notes thereto, in respect of the Initial Portfolio (defined below), which was under common management during the relevant periods, with an audit report thereon from the Filer's independent auditor;

   (e) an unaudited combined statement of operations for the three-month periods ended March 31, 2012 and 2011, prepared on a combined basis in accordance with the basis of presentation described in the notes thereto, in respect of the Initial Portfolio, which was under common management during the relevant period;

   (f) a combined schedule of assets to be acquired and liabilities to be assumed as at March 31, 2012, December 31, 2011, and December 31, 2010, with an audit report thereon from the Filer's independent auditor for the schedules as at December 31, 2011 and 2010; and

   (g) a financial forecast in respect of the Filer consisting of consolidated statements of forecasted net income and comprehensive income for each of the three-month periods ending June 30, 2012, September 30, 2012, December 31, 2012, March 31, 2013, and the twelve-month period ending March 31, 2013, prepared in accordance with the basis of presentation described in the notes thereto, with an audit report thereon from the Filer's independent auditor;

5. the Filer filed a prospectus (the Prospectus) in each of the provinces of Canada except Quebec on July 3, 2012, for which the BCSC and OSC issued a receipt on July 3, 2012, in respect of its initial public offering (the IPO) which closed on July 10, 2012;

6. on July 12, 2012, the Filer completed the indirect acquisition of (i) Windscape Apartment Homes (Windscape), and (ii) Oakchase Apartments (Oakchase, and together with Windscape, the Initial Portfolio), on July 12, 2012, for an aggregate purchase price of US$21,958,918; the Filer funded the acquisition with equity from its IPO and first mortgage loans in the aggregate amount of US$14,030,000;

7. the Filer is a venture issuer; the purchase price of the Initial Portfolio was US$21,958,918; the Filer's consolidated assets immediately prior to the acquisition of the Initial Portfolio were US$47,200,000, being the proceeds from the IPO less costs relating to the IPO; the Filer's interest in the Initial Portfolio exceeds 40% of its consolidated assets immediately prior to the acquisition of the Initial Portfolio; accordingly, the acquisition of the Initial Portfolio is a significant acquisition of the Filer under section 8.3(4)(a) of NI 51-102 requiring the Filer to file a BAR under section 8.2 of NI 51-102;

8. under section 8.4 of NI 51-102, the BAR must include:

   (a) annual financial statements for the significant acquisition for its two most recently completed fiscal years prior to the acquisition; the financial statements for the most recently completed financial year prior to the acquisition must be audited;

   (b) unaudited interim financial statements for the significant acquisition for its most recently completed interim period and the comparable period in the preceding year; and

   (c) pro forma financial statements of the Filer giving effect to the significant acquisition;

9. under section 3.11(1) of NI 52-107, the financial statements included in the BAR must be prepared in accordance with one of the following accounting principles:

   (a) Canadian GAAP applicable to publicly accountable enterprises;

   (b) IFRS;

   (c) U.S. GAAP;

   (d) accounting principles that meet the disclosure requirements for foreign private issuers, as that term is defined for the purposes of the 1934 Act, if certain conditions are met;

   (e) accounting principles that meet the foreign disclosure requirements of the designated foreign jurisdiction to which the issuer or the acquired business or business to be acquired is subject, if certain conditions are met; or

   (f) Canadian GAAP applicable to private enterprises if certain conditions are met;

10. despite making commercially reasonable good faith efforts to obtain the requisite financial information for each property comprising the Initial Portfolio in order to prepare the financial statements required under section 8.4 of NI 51-102, the Filer was not granted complete access to the financial records of the vendors of the Initial Portfolio; as a result, the Filer is unable to prepare the required financial statements;

11. in lieu of the financial statements required under section 8.4 of NI 51-102 and the accounting principles provided under section 3.11 of NI 52-107, the Filer will include in the BAR for the Initial Portfolio the following financial disclosure prepared in accordance with the accounting principles as described below (collectively, the Alternate Financial Disclosure), which is substantially similar to the financial disclosure included in the Prospectus (except for paragraph (c) below):

   (a) a combined statement of operations for the years ended December 31, 2011 and 2010, prepared on a combined basis in accordance with the basis of presentation described in the notes thereto (as indicated in the Prospectus), in respect of the Initial Portfolio, which was under common management during the relevant periods, with an audit report thereon from the Filer's independent auditor;

   (b) an unaudited combined statement of operations for the three-month periods ended March 31, 2012 and 2011, prepared on a combined basis in accordance with the basis of presentation described in the notes thereto (as indicated in the Prospectus), in respect of the Initial Portfolio, which was under common management during the relevant period;

(c) a statement of assets acquired and liabilities as at July 12, 2012, with an audit report thereon from the Filer's independent auditor;

(d) an unaudited pro forma combined statement of operations in respect of the Filer for the three months ended March 31, 2012; and

(e) an unaudited pro forma combined statement of financial position as at May 8, 2012, and an unaudited pro forma combined statement of operations for the year ended December 31, 2011, in respect of the Filer;

12. in addition, the Filer has conducted due diligence in respect of the properties comprising the Initial Portfolio to determine as follows:

(a) except as included in the statement of assets acquired and liabilities assumed as at July 12, 2012, referred to above, there are no liabilities, contingent liabilities or asset retirement obligations, other than standard permitted encumbrances in real estate transactions; and

(b) there are no liabilities present on the properties comprising the Initial Portfolio including confirmation by the Filer that there are no liens, charges, claims, encumbrances or legal notations registered against the Initial Portfolio, or any material non-compliance with environmental laws or any material remediation requirements at any properties comprising the Initial Portfolio, other than standard permitted encumbrances in real estate transactions;

13. apart from the requirement to include the financial statements required by section 8.4 of NI 51-102, which must be prepared in accordance with the accounting principles set forth in section 3.11 of NI 52-107, the Filer is otherwise able to prepare and file the BAR, which will include the Alternate Financial Disclosure described above, in accordance with NI 51-102; and

14. the Filer is, to the best of its knowledge, not in default of any requirement of Canadian securities laws.

**Decision**

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted with respect to the BAR for the Initial Portfolio, provided that the BAR includes the Alternate Financial Disclosure and otherwise complies with applicable requirements.

"Andrew S. Richardson, CA"
Acting Director, Corporate Finance
British Columbia Securities Commission

### 2.1.11 Loomis, Sayles & Company, L.P.

**Headnote**

MI 11-102 – relief granted from margin rate applicable to U.S. money market mutual funds in calculation of market risk in Form 31-103F1 – margin rate for funds qualified for distribution in Canada is 5%, while funds qualified for distribution in U.S. is 100% – similar regulation of money market funds – NI 31-103.

**Applicable Legislative Provisions**

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 12.1, 15.
Multilateral Instrument 11-102 Passport System, s. 4.7.

**October 1, 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**
**LOOMIS, SAYLES & COMPANY, L.P.**
**(the Filer)**

**DECISION**

**Background**

The Principal Regulator (as defined below) in the Jurisdiction has received an application from the Filer for a decision under section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) for relief from the requirement in section 12.1 of NI 31-103 that the Filer calculate its excess working capital using Form 31-103F1 (the **Form F1**) only to the extent that the Filer be permitted to apply the same margin rate to its investments in money market mutual funds qualified for sale by prospectus in the United States of America (the **U.S.**) as applies to investments in money market mutual funds qualified for sale by prospectus in a province or territory of Canada when calculating market risk pursuant to Line 9 of the Form F1 (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 (the **Principal Regulator**) for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in the provinces of Nova Scotia and Quebec (the Non-Principal Jurisdictions, and, together with the Jurisdiction, the **Passport Jurisdictions**).

**Interpretation**

Defined terms contained in NI 31-103 and MI 11-102 have the same meanings in this decision (the **Decision**) unless they are otherwise defined in this Decision.

**Representations**

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

1. The Filer is a limited liability partnership which was formed under the laws of the State of Delaware in the U.S. having its head office in Boston, Massachusetts.

2. The Filer is registered in each Passport Jurisdiction as an adviser in the category of portfolio manager (**PM**).

3. The Filer is not a reporting issuer in any jurisdiction of Canada.

4. Except for the requirement for the Filer to obtain the Exemption Sought so that its excess working capital remains above zero, the Filer is not, to its knowledge, in default of securities legislation in any Passport Jurisdiction.

5. The Filer is an investment adviser providing discretionary and non-discretionary securities advisory and sub-advisory services to clients located within, and outside of, the U.S., including pension plans, endowments, foundations, single and multi-family offices, U.S. and non-U.S. mutual funds, privately offered pooled investment vehicles or pooled accounts, and high net worth individuals. Less than 1% (approximately) of the Filer's revenues are received from clients in jurisdictions within Canada.

6. The Filer is registered with the U.S. Securities and Exchange Commission (the **SEC**) as an investment adviser under the U.S. *Investment Advisers Act of 1940*, as amended (the **1940 Act**).

7. The Filer invests certain of its cash balances in money market mutual funds qualified for sale by prospectus in the U.S., specifically money market mutual funds which are registered investment companies under the U.S. *Investment Company Act of 1940*, as amended (the **Investment Company Act**), and which comply with Rule 2a-7 thereunder (**Rule 2a-7**).

8. Under Schedule 1 of the Form F1, the margin rate required for an investment in the securities of a money market mutual fund qualified for sale by prospectus in a province or territory of Canada is 5% of the market value of such investment for the purposes of Line 9 of the Form F1.

9. Under Schedule 1 of the Form F1, the margin rate required for an investment in the securities of a money market mutual fund qualified for sale by prospectus only in the U.S. is 100% of the market value of such investment for the purposes of Line 9 of the Form F1.

10. From a cash management perspective, it would not be prudent for the Filer to invest its cash balances directly in U.S. money market instruments instead of investing in money market mutual funds qualified for sale by prospectus in the U.S. and, therefore, be subject to a lower margin rate on such investments because of the following reasons:

    (a) the Filer would have to invest in a multitude of U.S. money market instruments to achieve the diversity that the U.S. money market mutual funds in which it invests provides;

    (b) U.S. money market instruments have varying degrees of liquidity and penalties may be incurred if an instrument is disposed of before it matures; and

    (c) directly investing in U.S. money market instruments is more time consuming and most likely, more costly, than investing in U.S. money market mutual funds, without any meaningful benefit.

11. It would also not be prudent for the Filer to invest its cash balances in money market mutual funds qualified for sale by prospectus in a province or territory of Canada because of the following reasons:

    (a) there are only a limited number of U.S. money market mutual funds that are qualified for sale by prospectus in a province or territory of Canada;

    (b) the Filer is a U.S. entity and cannot access U.S. money market mutual funds that are qualified for sale by prospectus in a province or territory of Canada as directly and as easily as it can access U.S. money market mutual funds that are qualified for sale by prospectus only in the U.S.;

    (c) the Filer does not have the necessary relationships with Canadian money market mutual fund issuers;

    (d) investing in U.S. money market mutual funds that are qualified for sale by prospectus in a province or territory of Canada would be more costly than investing in U.S. money market mutual funds that are qualified for sale by prospectus only in the U.S; and

    (e) as a U.S. entity, the Filer could be subject to cross-border tax issues if it were to invest in U.S. money market mutual funds that are qualified for sale by prospectus in a province or territory of Canada.

12. Unless the Exemption Sought is granted, the Filer's excess working capital as calculated using the Form F1 will be less than zero, thereby precluding the Filer from satisfying its capital requirements under NI 31-103 as a registered PM.

13. The regulatory oversight and the quality of investments held by a money market mutual fund qualified for sale by prospectus in each of the U.S. and a province or territory of Canada is similar. In particular, Rule 2a-7 sets out requirements dealing with portfolio maturity, quality, diversification and liquidity, which are similar to requirements under National Instrument 81-102 *Mutual Funds* (**NI 81-102**).

**Decision**

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

The Decision of the Principal Regulator under the Legislation is that the Exemption Sought is granted so long as:

    (a) any money market mutual fund invested in by the Filer is qualified for sale by prospectus in the U.S. as a result of being a registered company under the Investment Company Act, and complies with Rule 2a-7;

    (b) the requirements for money market mutual funds under Rule 2a-7 or any successor rule or legislation are similar to the requirements for Canadian money market mutual funds qualified for sale by prospectus under NI 81-102 or any successor rule or legislation; and

    (c) the Filer is registered with the SEC as an investment adviser under the 1940 Act.

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

## 2.2 Orders

### 2.2.1 Oversea Chinese Fund Limited Partnership et al. – ss. 127(7), 127(8)

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

**AND**

**IN THE MATTER OF**
**OVERSEA CHINESE FUND LIMITED PARTNERSHIP,**
**WEIZHEN TANG AND ASSOCIATES INC.,**
**WEIZHEN TANG CORP. AND WEIZHEN TANG**

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

**WHEREAS** on March 17, 2009, pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), the Ontario Securities Commission (the "Commission") made the following temporary orders (the "Temporary Order") against Oversea Chinese Fund Limited Partnership ("Oversea"), Weizhen Tang and Associates Inc. ("Associates"), Weizhen Tang Corp. ("Corp.") and Weizhen Tang, (collectively, the "Respondents"):

1. that all trading in securities of Oversea, Associates and Corp. shall cease;

2. that all trading by the Respondents shall cease; and

3. that the exemptions contained in Ontario securities law do not apply to the Respondents;

**AND WHEREAS** on March 17, 2009, pursuant to subsection 127(6) of the Act, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

**AND WHEREAS** on March 18, 2009, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on April 1, 2009 at 2:00 p.m.;

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

**AND WHEREAS** prior to the April 1, 2009 hearing date, Staff of the Commission ("Staff") served the Respondents with copies of the Temporary Order, Notice of Hearing, and Staff's supporting materials;

**AND WHEREAS** on April 1, 2009, counsel for the Respondents advised the Commission that the Respondents did not oppose the extension of the Temporary Order;

**AND WHEREAS** on April 1, 2009, the Commission considered the evidence and submissions before it and the Commission was of the opinion that it was in the public interest to extend the Temporary Order until September 10, 2009;

**AND WHEREAS** on April 1, 2009, the Commission ordered that the Temporary Order be extended, pursuant to subsection 127(8) of the Act, to September 10, 2009 and the hearing be adjourned to September 9, 2009;

**AND WHEREAS** on September 8, 2009, the Commission ordered, on consent, that the Temporary Order be extended until September 26, 2009 and the hearing be adjourned until September 25, 2009 at 10:00 a.m.;

**AND WHEREAS** on September 24, 2009, the Commission ordered, on consent, that the Temporary Order be extended until October 23, 2009 and the hearing be adjourned until October 22, 2009 at 10:00 a.m.;

**AND WHEREAS** on October 22, 2009, the Commission ordered, on consent, that the Temporary Order be extended until November 16, 2009 and the hearing be adjourned until November 13, 2009 at 10:00 a.m.;

**AND WHEREAS** on November 13, 2009, the Respondents brought a motion before the Commission to have the Temporary Order varied to allow Weizhen Tang to trade (the "Tang Motion") and Staff opposed this motion;

**AND WHEREAS** on November 13, 2009, Staff sought an extension of the Temporary Order until after the conclusion of the charges before the Ontario Court of Justice against Oversea, Associates and Weizhen Tang;

**AND WHEREAS** on November 13, 2009, the Commission considered the materials filed by the parties, the evidence given by Weizhen Tang, and the submissions of counsel for Staff and counsel for the Respondents;

**AND WHEREAS** on November 13, 2009, the Commission was of the opinion that, pursuant to subsection 127(8) of the Act, satisfactory information had not been provided to the Commission by any of the Respondents; it was in the public interest to order that the Tang Motion be denied; the Temporary Order be extended until June 30, 2010; and the hearing be adjourned to June 29, 2010 at 10:00 a.m.;

**AND WHEREAS** on June 29, 2010, Staff sought an extension of the Temporary Order until after the conclusion of the charges before the Ontario Court of Justice against Oversea, Associates and Weizhen Tang;

**AND WHEREAS** on June 29, 2010, the Respondents and Staff filed materials, including the Affidavit of Jeff Thomson, sworn on June 23, 2010;

**AND WHEREAS** on June 29, 2010, the Commission considered the materials filed by the parties, the submissions of counsel for Staff and counsel for the Respondents, and the submissions of Weizhen Tang;

**AND WHEREAS** on June 29, 2010, the Commission ordered that the Temporary Order be extended until March 31, 2011, and the hearing be adjourned to March 30, 2011, at 10:00 a.m.;

**AND WHEREAS** on March 30, 2011, no one appeared on behalf of the Respondents despite being given notice of the appearance;

**AND WHEREAS** on March 30, 2011, the Commission ordered that the Temporary Order was extended until May 17, 2011, and the hearing was adjourned to May 16, 2011 at 10:00 a.m.;

**AND WHEREAS** on May 16, 2011, Staff made submissions and sought an extension of the Temporary Order and the Respondent Weizhen Tang appeared on behalf of all Respondents and made submissions opposing the extension of the Temporary Order;

**AND WHEREAS** on May 16, 2011, the Commission concluded pursuant to subsection 127(8) of the Act that satisfactory information had not been provided to the Commission by any of the Respondents;

**AND WHEREAS** on May 16, 2011, the Commission ordered that the Temporary Order be extended until November 1, 2011 and the hearing be adjourned to October 31, 2011 at 10:00 a.m.;

**AND WHEREAS** on October 31, 2011, Staff appeared before the Commission seeking an extension of the Temporary Order;

**AND WHEREAS** on October 31, 2011, Weizhen Tang appeared on behalf of all Respondents opposing the extension of the Temporary Order;

**AND WHEREAS** on October 31, 2011, Staff and the Respondents filed materials and made submissions before the Commission;

**AND WHEREAS** on October 31, 2011, the Commission considered the materials filed by the parties, the submissions of counsel for Staff and the submissions of Weizhen Tang;

**AND WHEREAS** on October 31, 2011, the Commission concluded pursuant to subsection 127(8) of the Act that satisfactory information was not provided by any of the Respondents;

**AND WHEREAS** on October 31, 2011, the Commission advised Weizhen Tang that the Respondents could bring a motion under section 144 of the Act to vary the Temporary Order prior to the next hearing date;

**AND WHEREAS** on October 31, 2011, the Commission ordered that the Temporary Order be extended to September 24, 2012 and that the hearing be adjourned to September 21, 2012, at 10:00 a.m.;

**AND WHEREAS** on September 21, 2012, Staff appeared before the Commission to request an extension of the Temporary Order and no-one appeared on behalf of the Respondents despite being given notice of this appearance;

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

**IT IS HEREBY ORDERED** that the Temporary Order is extended until January 21, 2013 and the hearing of this matter is adjourned to January 18, 2013 at 10:00 a.m.

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

"James E. A. Turner"

### 2.2.2 Rezwealth Financial Services 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**
**REZWEALTH FINANCIAL SERVICES INC.,**
**PAMELA RAMOUTAR, JUSTIN RAMOUTAR,**
**TIFFIN FINANCIAL CORPORATION, DANIEL TIFFIN,**
**2150129 ONTARIO INC., SYLVAN BLACKETT,**
**1778445 ONTARIO INC. AND WILLOUGHBY SMITH**

**ORDER**
**(Section 127)**

**WHEREAS** on January 24, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), accompanied by a Statement of Allegations dated January 24, 2011 issued by Staff of the Commission ("Staff"), with respect to Rezwealth Financial Services Inc. ("Rezwealth"), Pamela Ramoutar ("Ms. Ramoutar"), Justin Ramoutar ("Mr. Ramoutar"), Tiffin Financial Corporation ("Tiffin Financial"), Daniel Tiffin ("Tiffin"), 2150129 Ontario Inc. ("215 Inc."), Sylvan Blackett ("Blackett"), 1778445 Ontario Inc. ("177 Inc.") and Willoughby Smith ("Smith") (collectively, the "Respondents");

**AND WHEREAS** the Notice of Hearing set a hearing in this matter for March 16, 2011;

**AND WHEREAS** the Commission ordered on March 16, 2011 that the hearing of this matter be adjourned to June 16, 2011 for a pre-hearing conference and that the Amended Temporary Order in this matter be extended to the conclusion of the hearing on the merits;

**AND WHEREAS** the Commission ordered on June 16, 2011 that the hearing of this matter be adjourned to August 16, 2011 for a continued pre-hearing conference;

**AND WHEREAS** the Commission ordered on August 16, 2011 that the hearing of this matter be adjourned to March 30, 2012 for a continued pre-hearing conference, and that the hearing on the merits commence on April 30, 2012 and continue until May 25, 2012 inclusive, with the exception of May 8, May 21 and May 22, 2012 (the "Hearing Dates");

**AND WHEREAS** on January 24, 2012, the Commission issued an Amended Notice of Hearing pursuant to sections 127 and 127.1 of the Act, accompanied by an Amended Statement of Allegations dated January 24, 2012 issued by Staff, with respect to the Respondents;

**AND WHEREAS** the Commission ordered on March 30, 2012 that the pre-hearing conference be adjourned to April 5, 2012 to consider a request by Ms. Ramoutar for an adjournment of the Hearing Dates;

**AND WHEREAS** the Commission ordered on April 5, 2012 that the Hearing Dates be vacated and that the hearing on the merits commence on October 31, 2012, peremptory on the Respondents, and continue until November 9, 2012 inclusive, with the exception of November 6, 2012, and continue from December 3 to 19, 2012 inclusive, with the exception of December 4 and 18, 2012;

**AND WHEREAS** the Commission further ordered on April 5, 2012 that the pre-hearing conference be adjourned to September 25, 2012;

**AND WHEREAS** on September 25, 2012, the Commission heard submissions from counsel for Staff, counsel for Tiffin and Tiffin Financial, Ms. Ramoutar on her own behalf and on behalf Rezwealth, and Mr. Ramoutar on his own behalf;

**AND WHEREAS** no one appeared at the pre-hearing conference on behalf of Blackett, 215 Inc., Smith or 177 Inc.;

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

**IT IS ORDERED** that this proceeding shall continue to the hearing on the merits, which is scheduled to commence on October 31, 2012.

Dated at Toronto this 25th day of September, 2012.

"Christopher Portner"

### 2.2.3 David Charles Phillips – s. 127(1)

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

**AND**

**IN THE MATTER OF**
**DAVID CHARLES PHILLIPS**

**ORDER**
**(Subsection 127(1))**

**WHEREAS** on May 15, 2012 the Ontario Securities Commission (the "Commission") issued an 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") containing allegations against David Charles Phillips ("Phillips"), and ordering that:

1. Phillips shall cease trading in all securities;

2. any exemptions contained in Ontario securities law do not apply Phillips; and

3. the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

**AND WHEREAS** on May 16, 2012, the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on May 30, 2012;

**AND WHEREAS** counsel to Phillips advised Staff of the Commission ("Staff") that Phillips intended to challenge any extension of the Temporary Order;

**AND WHEREAS** on May 29, 2012, Staff filed its Factum and Brief of Authorities and certain evidence in support of an extension of the Temporary Order;

**AND WHEREAS** on May 30, 2012, Staff and counsel to Phillips appeared before the Commission to ask that the hearing be adjourned to June 6, 2012 and the Temporary Order extended;

**AND WHEREAS** on May 30, 2012, the Commission adjourned the hearing to June 6, 2012, and ordered the Temporary Order be extended to June 8, 2012, or until further Order of the Commission;

**AND WHEREAS** on June 4, 2012, the Commission issued a Notice of Hearing and Staff filed a Statement of Allegations in the related matter of *David Charles Phillips and John Russell Wilson* ("the Phillips and Wilson proceeding");

**AND WHEREAS** on June 6, 2012, the Commission heard evidence and submissions from Staff and counsel for Phillips on the issue of whether the Temporary Order should be extended for a further period of time;

**AND WHEREAS** the Commission was satisfied that Staff had provided sufficient evidence of conduct that may be harmful to the public interest and, accordingly, in the public interest, justified an extension of the restrictions set out in the Temporary Order;

**AND WHEREAS** at the conclusion of the hearing on June 6, 2012, the panel made an order (the "June 6, 2012 Order") that:

(a) The Temporary Order dated May 15, 2012, as varied by (b) below, is extended for a period ending Friday, September 28, 2012;

(b) During this extended period, Phillips shall cease trading in all securities, except for trades made through a registrant for his own account or for the account of his "registered retirement savings plans", "registered retirement income fund" or "tax free savings account" (as those terms are defined in the Income Tax Act (Canada)) in respect of (i) government debt securities within the scope of clause 1 of subsection 35(1) of the Act, and (ii) those securities that are listed and posted for trading on the Toronto Stock Exchange or the New York Stock Exchange (or their successor exchanges); and

(c) During this extended period, any exemptions contained in Ontario securities law do not apply to Phillips.

**AND WHEREAS** on August 28, 2012, the Commission ordered that the hearing of the merits in the Phillips and Wilson proceeding shall commence on February 11, 2013, and will continue on certain dates, if necessary, until March 6, 2013;

**AND WHEREAS** on September 19, 2012, Staff filed evidence in support of an extension of the June 6, 2012 Order;

**AND WHEREAS** counsel to Phillips advised Staff that Phillips does not oppose an extension of the June 6, 2012 Order;

**AND WHEREAS** the Commission is satisfied that it is in the public interest to extend the June 6, 2012 Order;

**IT IS ORDERED THAT:**

*The June 6, 2012 Order is extended until the conclusion of the hearing on the merits in the* Phillips and Wilson proceeding;

**DATED** at Toronto this 26th day of September 2012.

"Edward P. Kerwin"

**2.2.4 Children's 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
CHILDREN'S EDUCATION FUNDS INC.**

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

**WHEREAS** on September 14, 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 Children's Education Funds Inc. ("CEFI") (the "Temporary Order");

**AND WHEREAS** on September 14, 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 September 26, 2012 at 10:00 a.m.;

**AND WHEREAS** on September 20, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the Act in respect of a hearing to be held on 10:00 a.m. on September 26, 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 September 19, 2012, Staff served Respondent's counsel with the Affidavit of Maria Carelli sworn September 18, 2012 and filed the same affidavit with the Commission on September 26, 2012 in support of the extension of the Temporary Order;

**AND WHEREAS** on September 20, 2012, Staff served the Respondent's counsel with the Notice of Hearing;

**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 independent consultant and independent monitor have been approved and have started their work;

**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 December 7, 2012 or until further order of the Commission; and

2. the hearing in this matter is adjourned to December 6, 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 CEFI.

**DATED** at Toronto this 26th day of September, 2012.

"James E. A. Turner"

**2.2.5 Marlon Gary Hibbert 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**
**MARLON GARY HIBBERT, ASHANTI CORPORATE SERVICES INC., DOMINION INTERNATIONAL RESOURCE MANAGEMENT INC., KABASH RESOURCE MANAGEMENT, POWER TO CREATE WEALTH INC. AND POWER TO CREATE WEALTH INC. (PANAMA)**

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

**WHEREAS** the Commission found on April 4, 2012 that the respondents engaged in conduct which was contrary to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "***Act***") and contrary to the public interest;

**AND WHEREAS** on August 1 and 13, 2012, the Commission held a hearing with respect to the sanctions and costs to be imposed in this matter;

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

**IT IS ORDERED** that:

(a) pursuant to s. 127(1)2 of the *Act*, all trading by the Respondents shall cease permanently;

(b) pursuant to s. 127(1)2.1 of the *Act*, the acquisition of any securities by the Respondents is prohibited permanently;

(c) pursuant to s. 127(1)3 of the *Act*, any exemptions contained in Ontario securities law do not apply to the Respondents permanently;

(d) pursuant to s. 127(1)6 of the *Act*, I hereby reprimand Hibbert for his conduct;

(e) pursuant to s. 127(1)8 of the *Act*, Hibbert is prohibited from becoming or acting as a director or officer of any issuer permanently;

(f) pursuant to s. 127(1)8.2 of the *Act*, Hibbert is prohibited from becoming or acting as a director or officer of a registrant permanently;

(g) pursuant to s. 127(1)8.4 of the *Act*, Hibbert is prohibited from becoming or acting as a director or officer of an investment fund manager permanently;

(h) pursuant to s. 127(1)8.5 of the *Act*, Hibbert is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently;

(i) pursuant to s. 127(1)9 of the *Act*, Hibbert shall pay to the Commission an administrative penalty of $750,000, which is designated for allocation or for use by the Commission pursuant to section 3.4(2)(b) of the *Act*;

(j) pursuant to s. 127(1)10 of the *Act*, Hibbert shall disgorge to the Commission the amount of $4,672,779.98, which is designated for allocation or for use by the Commission pursuant to section 3.4(2)(b) of the *Act*; and

(k) pursuant to s. 127.1 of the *Act*, the respondents shall pay on a joint and several basis $200,000, representing partial costs and disbursements incurred by the Commission in the investigation and hearing.

Dated at Toronto this 27th day of September, 2012.

"James D. Carnwath"

### 2.2.6 Moncasa Capital Corporation and John Frederick Collins – s. 127

**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**
**(Section 127)**

**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** at the first appearance on April 4, 2012, Staff of the Commission ("Staff") and counsel for the Respondents agreed to attend a confidential pre-hearing conference on May 28, 2012 at 10:00 a.m.;

**AND WHEREAS** at the confidential pre-hearing conference on May, 28, 2012, Staff and counsel for the Respondents consented to an order that the hearing on the merits be scheduled for January 21, 2013 to February 1, 2013 (other than January 29, 2013) and that a confidential pre-hearing conference be held on August 9, 2012;

**AND WHEREAS** a confidential pre-hearing conference was held on August 9, 2012, at which Staff and counsel for the Respondents attended;

**AND WHEREAS** on August 9, 2012, the confidential pre-hearing conference was adjourned to September 27, 2012;

**AND WHEREAS** on August 22, 2012, counsel for the Respondents, Wardle Daley Bernstein LLP, was granted leave to withdraw as counsel for the Respondents;

**AND WHEREAS** Staff attended at the confidential pre-hearing conference on September 27, 2012, and no one appeared on behalf of the Respondents;

**AND WHEREAS** the Commission is satisfied that the Respondents were served with Staff's Pre-hearing Conference Submissions;

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

**IT IS HEREBY ORDERED** that this matter is adjourned to a confidential pre-hearing conference which shall take place on November 28, 2012 at 3:00 p.m.

**DATED** at Toronto this 27th day of September, 2012.

"Edward P. Kerwin"

**2.2.7 Axcess Automation LLC et al. – ss. 127, 127.1 of the Act and ss. 60, 60 of the CFA**

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

**AND**

**IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, c. C.20, AS AMENDED**

**AND**

**IN THE MATTER OF
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**

**ORDER
(Sections 127 and 127.1 of the Securities Act and Sections 60 and 60.1 of the Commodity Futures Act)**

**WHEREAS** on August 12, 2010, 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, and sections 60 and 60.1 of the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended, in relation to a Statement of Allegations of the same date filed by Staff of the Commission ("**Staff**") in respect of Axcess Automation LLC ("**Axcess Automation**"), Axcess Fund Management, LLC ("**Axcess Fund Management**"), Axcess Fund, L.P. ("**Axcess Fund**"), Gordon Alan Driver ("**Driver**"), David Rutledge ("**Rutledge**"), 6845941 Canada Inc. ("**6845941**") carrying on business as Anesis Investments ("**Anesis**"), Steven M. Taylor ("**Taylor**"), Berkshire Management Services Inc. ("**Berkshire**") carrying on business as International Communication Strategies ("**ICS**"), 1303066 Ontario Ltd. ("**1303066**") carrying on business as ACG Graphic Communications ("**ACG**"), Montecassino Management Corporation ("**Montecassino**"), Reynold Mainse ("Reynold"), World Class Communications Inc. ("**WCC**") and Ronald Mainse ("**Ronald**");

**AND WHEREAS** on August 13, 2010, the Commission approved settlement agreements between Staff and Ronald and between Staff and Rutledge and 68459541;

**AND WHEREAS** a hearing on the merits in this matter was held before the Commission on April 11, 13, 14,

15, 19 and 20, 2011 and May 25, 2011 with respect to the remaining respondents;

**AND WHEREAS** following the hearing on the merits, the Commission issued its Reasons and Decision with respect to the merits on September 27, 2012;

**IT IS ORDERED THAT** the hearing to determine sanctions and costs will be held at the offices of the Commission at 20 Queen Street West, Toronto, commencing on November 7, 2012 at 10:00 a.m.;

**IT IS FURTHER ORDERED 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 27th day of September, 2012.

"Christopher Portner"

"Paulette L. Kennedy"

### 2.2.8 Anna Pyasetsky – s. 8

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

**AND**

**IN THE MATTER OF**
**AN APPLICATION FOR A HEARING AND REVIEW**
**OF THE DECISION OF DIRECTOR**
**EREZ BLUMBERGER DATED FEBRUARY 28, 2012**

**AND**

**IN THE MATTER OF**
**THE APPLICATION FOR REGISTRATION BY**
**ANNA PYASETSKY**

**ORDER**
**(Hearing and Review of a Decision of the Director pursuant to s. 8 of the Securities Act)**

**WHEREAS** on February 28, 2012, the Acting Director of the Compliance and Registrant Regulation Branch (the "**Director**") of the Ontario Securities Commission (the "**Commission**") denied the application for registration as a dealing representative of a mutual fund dealer made by Anna Pyasetsky (the "**Director's Decision**"), following an opportunity to be heard held pursuant to section 31 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**");

**AND WHEREAS** on April 23, 2012, Anna Pyasetsky (the "**Applicant**") filed an application for a hearing and review of the Director's Decision (the "**Application**");

**AND WHEREAS** the hearing to consider the Application pursuant to section 8 of the Act (the "**Hearing and Review**") commenced on September 17, 2012 and continued on September 18 and 19, 2012;

**AND WHEREAS** on September 19, 2012, the Commission permitted Julia Lipovetsky ("**Lipovetsky**") to act as the Applicant's representative in accordance with rules 1.1 and 1.7.1 of the Commission *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "**Rules of Procedure**") and paragraph 5 of subsection 30(1) of By-Law 4 made pursuant to subsections 62(0.1) and (1) of the *Law Society Act*, R.S.O. 1990, c. L.8, as amended;

**AND WHEREAS** the final day of the Hearing and Review was scheduled to take place on September 26, 2012;

**AND WHEREAS** on September 26, 2012, the Applicant participated by teleconference in accordance with rule 10.2 of the *Rules of Procedure* and requested an adjournment of the Hearing and Review due to illness;

**AND WHEREAS** Staff of the Commission ("**Staff**") did not oppose the adjournment request;

**AND WHEREAS** the Applicant advised the Commission that she has requested Lipovetsky to not appear for the remainder of the Hearing and Review and that she plans to request the Commission to permit another individual to act as her representative;

**AND WHEREAS** Staff advised the Commission that, on the next hearing date, Staff will bring a motion to remove Lipovetsky as the representative for the Applicant and make submissions on such alternate representative as may be proposed by the Applicant;

**IT IS ORDERED THAT:**

(i) the Hearing and Review is adjourned to October 15, 2012 at 10:00 a.m.;

(ii) the Applicant shall provide the Office of the Secretary and Staff with the name and contact information of her proposed representative and submissions in support of her request for changing representation by September 28, 2012 at 5:00 p.m.; and

(iii) Staff shall serve and file submissions and materials in relation to the Applicant's representation, including submissions regarding the removal of Lipovetsky as the representative for the Applicant and submissions regarding the Applicant's proposed representative, if any, by October 5, 2012 at 5:00 p.m., 10 days before the Hearing and Review, in accordance with rule 3 of the Rules of Procedure.

**DATED** at Toronto this 26th day of September, 2012.

"Edward P. Kerwin"

### 2.2.9 Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

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

**AND**

**IN THE MATTER OF**
**VINCENT CICCONE and CABO CATOCHE CORP.**
**(a.k.a. MEDRA CORP. and MEDRA CORPORATION)**

**ORDER**

**WHEREAS** on October 3, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on September 30, 2011, with respect to Vincent Ciccone ("Ciccone") and Medra Corp.;

**AND WHEREAS** on March 7, 2012, the Commission ordered that the hearing on the merits in this matter take place on September 5, 2012, at 10:00 a.m. and continue on September 6, 7, 10, 12, 13, 14, 19, 20 and 21, 2012, each day commencing at 10:00 a.m.;

**AND WHEREAS** on May 3, 2012, the Commission issued an Amended Notice of Hearing in connection with an Amended Statement of Allegations filed by Staff on May 2, 2012, to amend the title of proceedings by replacing the name "Medra Corp." with "Cabo Catoche Corp. (a.k.a Medra Corp. and Medra Corporation)" (collectively, "Medra");

**AND WHEREAS** on August 23, 2012, the parties were advised by the Office of the Secretary that September 10, 2012, was no longer available for the hearing on the merits in this matter;

**AND WHEREAS** on September 5, 2012, the first day of the hearing on the merits, Staff appeared before the Commission, counsel for Ciccone did not appear and no one appeared on behalf of Medra;

**AND WHEREAS** on September 5, 2012, Staff advised the Commission that Staff and counsel for Ciccone requested that the hearing be adjourned to September 7, 2012, at 11:00 a.m. in view of the settlement negotiations between Staff and Ciccone;

**AND WHEREAS** on September 5, 2012, the Commission ordered that the matter be adjourned to September 7, 2012, at 11:00 a.m. and continue on September 12, 13, 14, 19, 20 and 21, 2012, each day commencing at 10:00 a.m.;

**AND WHEREAS** on September 7, 2012, another Panel of the Commission approved the Settlement Agreement between Staff and Ciccone;

**AND WHEREAS** on September 7, 2012, the second day of the hearing on the merits, no one appeared on behalf of Medra although the Commission was satisfied that Medra had been served with notice of the hearing;

**AND WHEREAS** the Office of the Secretary received an e-mail dated September 5, 2012, from a representative of Medra requesting Staff disclose all relevant documents in their possession by sending copies of said documents to Medra at their offices in Mexico:

**AND WHEREAS** on September 7, 2012, Staff made submissions in response to Medra's request, and further requested that the Panel proceed with the hearing of the merits of the allegations against Medra by means of a hearing in writing pursuant to Rule 11 of the Commission *Rules of Procedure* (2010), 33 O.S.C.B. 8017;

**AND WHEREAS** on September 7, 2012, the Panel adjourned the hearing to September 13, 2012, and directed Staff to make written submissions on its disclosure obligations with respect to Medra, including submissions on the law, policy, jurisprudence and its position on this issue;

**AND WHEREAS** on September 13, 2012, the third day of the hearing of the merits, Staff filed written submissions and the Affidavits of Allister Field, sworn September 7 and 13, 2012, and made oral submissions to the Commission in support of Staff's position that it has complied with its disclosure obligations with respect to Medra pursuant to Subrule 4.3(2) of the Commission *Rules of Procedure*;

**AND WHEREAS** on September 13, 2012, no one appeared on behalf of Medra although the Commission was satisfied that Medra had been served with notice of the hearing;

**AND WHEREAS** on September 13, 2012, the Commission reserved its decision on the disclosure issue and ordered that the hearing on the merits in this matter be adjourned to September 20, 2012 and that the hearing dates of September 14 and 19, 2012 be vacated;

**AND WHEREAS** on September 20, 2012, the Commission convened the hearing for the purposes of giving the Panel's ruling on the disclosure issue, at which Staff appeared but no one appeared on behalf of Medra;

**AND WHEREAS** on September 20, 2012, the Panel ruled that Staff had not met its disclosure obligations to Medra, such obligations requiring Staff to provide copies of the disclosure material to Medra in accordance with their written request for copies of the material;

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

**IT IS ORDERED THAT:**

(i) Subject to the receipt from Medra of a written undertaking to comply with the terms of this Order as described in subparagraph (iii)(e) below, Staff shall provide copies of all relevant materials in their possession ("the Material") to Medra, subject to redaction of personal information relating to third parties;

(ii) If Medra believes that any of the redacted information is necessary for the purpose of making full answer and defence to the allegations made against it in these proceedings, Medra may bring a motion pursuant to Rule 3 of the Commission *Rules of Procedure* for a determination as to whether the redacted information is relevant to said allegations;

(iii) The Material will be provided to Medra on the following conditions:

(a) Medra and its counsel shall not use the Material for any purposes other than for making full answer and defence to the allegations made against it in these proceedings;

(b) any use of the Material other than for the purpose of making full answer and defence to the allegations made against Medra in these proceedings will constitute a violation of this order;

(c) Medra and its counsel shall maintain custody and control over the Material, so that copies of the Material are not improperly disseminated;

(d) the Material shall not be used for a collateral or ulterior purpose, including for purposes of other proceedings; and

(e) Medra shall sign an undertaking accepting the conditions set out at subparagraphs (a) to (d) above prior to any Material being provided to Medra by Staff, which undertaking shall be signed and returned to Staff within 5 business days of receipt of this Order.

**IT IS FURTHER ORDERED THAT** the hearing on the merits is adjourned to October 5, 2012, at 11:00 a.m. at which time Staff will provide the Commission with a status update;

**IT IS FURTHER ORDERED THAT** the hearing date of September 21, 2012 is vacated.

**DATED** at Toronto this 20th day of September, 2012.

"Vern Krishna"

### 2.2.10 Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)

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

**AND**

**IN THE MATTER OF**
**VINCENT CICCONE and CABO CATOCHE CORP.**
**(a.k.a. MEDRA CORP. and MEDRA CORPORATION)**

**ORDER**

**WHEREAS** on September 20, 2012, the Ontario Securities Commission (the "Commission") issued an order adjourning the hearing on the merits to October 5, 2012, at 11:00 a.m. at which time Staff will provide the Commission with a status update;

**AND WHEREAS** the Commission's order directed Cabo Catoche Corp. (a.k.a Medra Corp. and Medra Corporation) (collectively, "Medra") to provide Staff of the Commission ("Staff") with a written undertaking within 5 business days from receipt of the order by Medra;

**AND WHEREAS** Medra should be given an adequate opportunity to provide the written undertaking prior to the date of the status hearing;

**IT IS ORDERED THAT** the status hearing set for October 5, 2012, is vacated and the hearing on the merits is adjourned to October 9, 2012, at 2:30 p.m. at which time Staff will provide the Commission with a status update.

**DATED** at Toronto this 28th day of September, 2012.

"Vern Krishna"

### 2.2.11 North American Financial Group Inc. et al. – Rule 6.7 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**
**NORTH AMERICAN FINANCIAL GROUP INC.,**
**NORTH AMERICAN CAPITAL INC.,**
**ALEXANDER FLAVIO ARCONTI AND**
**LUIGINO ARCONTI**

**ORDER**
**(Pre-hearing Conference – Rule 6.7 of the**
**Ontario Securities Commission Rules of Procedure)**

**WHEREAS** on December 28, 2011, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice of Hearing") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), accompanied by a Statement of Allegations dated December 28, 2011 filed by Staff of the Commission ("Staff") with respect to North American Financial Group Inc. ("NAFG"), North American Capital Inc. ("NAC"), Alexander Flavio Arconti ("Flavio") and Luigino Arconti ("Gino");

**AND WHEREAS** the Notice of Hearing set a hearing in this matter for January 16, 2012 at 10:00 a.m.;

**AND WHEREAS** on January 16, 2012, the Commission ordered that the hearing be adjourned to February 27, 2012 at 10:00 a.m.;

**AND WHEREAS** on February 27, 2012, the Commission ordered that the hearing be adjourned to March 29, 2012 at 11:00 a.m.;

**AND WHEREAS** on March 29, 2012, the Commission ordered that the hearing be adjourned to April 19, 2012 at 3:00 p.m.;

**AND WHEREAS** on April 19, 2012, the Commission ordered that a pre-hearing conference be held on July 5, 2012 at 10:30 a.m.;

**AND WHEREAS** on July 5, 2012, the Commission ordered that the pre-hearing conference be adjourned to September 28, 2012 at 10:00 a.m.;

**AND WHEREAS** on July 5, 2012, the Commission further ordered that the hearing on the merits in this matter shall take place on April 29, 2013 and shall continue on April 30, 2013 and May 1, 2, 3, 6, 8, 9, and 10, 2013;

**AND WHEREAS** a confidential pre-hearing conference was held on September 28, 2012;

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

**IT IS ORDERED** that this matter is adjourned to a further confidential pre-hearing conference to be held on April 5, 2013 at 10:00 a.m.;

**IT IS FURTHER ORDERED** that the day of February 25, 2013 is reserved for a potential motion to be brought by the Respondents commencing at 10:00 a.m. that day.

**DATED** at Toronto this 28th day of September, 2012.

"Mary G. Condon"

**2.2.12 M P Global Financial Ltd. and Joe Feng Deng – 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**
**M P GLOBAL FINANCIAL LTD.,**
**AND JOE FENG DENG**

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

**WHEREAS** on September 10, 2009, 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 M P Global Financial Ltd. ("MP") and Joe Feng Deng also known as Feng Deng and Yue Wen Deng ("Mr. Deng") (collectively referred to as the "Respondents");

**AND WHEREAS** the Commission conducted the hearing on the merits in this matter on February 17, 18, 19, 22, 23, 24, and 25, 2010, March 1, 2010, April 13, 14, 23, 26, 27, 28, 29, and 30, 2010, May 4, 2010 and June 2, 2010;

**AND WHEREAS** the Commission issued its Reasons and Decision on the merits in this matter on August 19, 2011 (the "Merits Decision");

**AND WHEREAS** the Commission concluded in the Merits Decision that all of the Respondents contravened Ontario securities law and have 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 June 21, 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, each of the Respondents shall cease trading in any securities for a period of fifteen years from the date of the Sanctions Decision, with the exception that Mr. Deng may trade on his own behalf in his own account, solely through a registered dealer (which dealer must be given a copy of this Order);

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by any of the Respondents is prohibited for a period of fifteen years from the date of the Sanctions Decision,

with the exception that Mr. Deng may acquire securities on his own behalf in his own account, solely through a registered dealer (which dealer must be given a copy of this Order);

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply to any of the Respondents for a period of fifteen years from the date of the Sanctions Decision;

(d) pursuant to clause 6 of subsection 127(1) of the Act, each of the Respondents are reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, Mr. Deng shall immediately resign all positions he may hold as a director or officer of any issuer;

(f) pursuant to clause 8 of subsection 127(1) of the Act, Mr. Deng shall be prohibited from becoming or acting as a director or officer of any issuer for a period of fifteen years from the date of the Sanctions Decision;

(g) pursuant to clause 8.1 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of any registrant;

(h) pursuant to clause 8.2 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of any registrant for a period of fifteen years from the date of the Sanctions Decision;

(i) pursuant to clause 8.3 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of an investment fund manager;

(j) pursuant to clause 8.4 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of an investment fund manager for a period of fifteen years from the date of the Sanctions Decision; and

(k) pursuant to clause 8.5 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of fifteen years from the date of the Sanctions Decision;

(l) pursuant to clause 9 of subsection 127(1) of the Act, each of MP and Mr. Deng shall pay an administrative penalty of $250,000 to the Commission, such amount to be allocated to or for the benefit of third parties;

(m) pursuant to clause 10 of subsection 127(1) of the Act, MP and Mr. Deng shall jointly and severally disgorge $2,193,873 to the Commission, such amount to be allocated to or for the benefit of third parties; and

(n) pursuant to section 127.1 of the Act, MP and Mr. Deng shall jointly and severally pay costs of $150,000 to the Commission.

**DATED** at Toronto, Ontario this 1st day of October, 2012.

“Margot C. Howard”

### 2.2.13 ICE Futures Canada Inc. – s. 147 of the OSA and ss. 38, 78, 60 and 80 of the CFA

**Headnote**

Section 147 of the Securities Act (OSA) and sections 38 and 80 of the Commodity Futures Act (CFA) -- exemption from: (1) the requirement to be recognized as an exchange under section 21 of the OSA; (2) the requirement to be registered as a commodity futures exchange under section 15 of the CFA; (3) the registration requirement of section 22 of the CFA with respect to trades in contracts on ICE Futures Canada by "hedgers", as defined in the CFA; and (4) the requirements of section 33 of the CFA for trades in contracts on ICE Futures Canada by registered futures commission merchants (FCMs) and any person or company who trades in a contract solely through an agent who is an FCM. Sections 60 and 78 of the CFA -- revocation of: (1) a recognition order recognising ICE Futures Canada as commodity futures exchange pursuant to section 34 of the CFA; (2) an order pursuant to section 36 of the CFA accepting the form of the commodity futures contracts and commodity futures options traded on ICE Futures Canada. An order pursuant to clause 37(1)(b) and subsection 40(2) of the CFA exempting ICE Futures Canada and registered dealers and advisers from making available certain documentation was revoked by the Director.

**Statutes Cited**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 147.
Commodity Futures Act, R.S.O. 1990, as am., ss. 15, 22, 33, 34, 36, 37 (1)(b), 38, 40(2), 60, 78, 80.

**Rules Cited**

Ontario Securities Commission Rule 91-503 Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario (1997) 20 OSCB 1739.

**IN THE MATTER OF**
**THE SECURITIES ACT,**
**R.S.O. 1990, CHAPTER S.5, AS AMENDED**
**("OSA")**

**AND**

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

**AND**

**IN THE MATTER OF**
**ICE FUTURES CANADA, INC.**

**ORDER**
**(Section 147 of the OSA and Sections 38, 78, 60 and 80 of the CFA)**

**WHEREAS** the Ontario Securities Commission (the "Commission") issued an order dated August 24, 1979 recognizing the Winnipeg Commodity Exchange Inc., the predecessor company to ICE Futures Canada, Inc. ("ICE Futures Canada"), as a commodity futures exchange pursuant to section 34 of the CFA ("Commission's Previous Order");

**AND WHEREAS** a Director of the Commission issued the following orders dated August 24, 1979 to Winnipeg Commodity Exchange Inc.:

(a) an order (the "Director's Exemption Order"), pursuant to clause 37(I)(b) and subsection 40(2) of the CFA, exempting

  (i) the Winnipeg Commodity Exchange Inc. from the requirement to make available copies of all current contract terms and conditions to registrants through an agent, and

  (ii) registered dealers and advisers from the requirement of furnishing a client with a copy of all current terms and conditions of any contract traded on the Winnipeg Commodity Exchange Inc.; and

(b) an order (the "Director's Acceptance Order"), pursuant to section 36 of the CFA, accepting the form of the commodity futures contracts and commodity futures options traded on the Winnipeg Commodity Exchange Inc.;

**AND WHEREAS** ICE Futures Canada has filed an application (the "Application") with the Commission and Director requesting:

(a) an order, pursuant to section 78 of the CFA, revoking the Commission's Previous Order;

(b) an order revoking the Director's Exemption Order**;**

(c) an order, pursuant to section 60 of the CFA, revoking the Director's Acceptance Order;

(d) an order, pursuant to section 147 of the OSA, exempting ICE Futures Canada from the requirement to be recognized as an exchange under section 21 of the OSA;

(e) an order, pursuant to section 80 of the CFA, exempting ICE Futures Canada from the requirement to be registered as a commodity futures exchange under section 15 of the CFA;

(f) an order, pursuant to section 38 of the CFA, exempting trades in contracts on ICE Futures Canada by registered futures commissions merchants ("FCMs"), and any person or company who trades in a contract solely through an agent who is an FCM, from the requirements of section 33 of the CFA; and

(g) an order, pursuant to section 38 of the CFA, exempting trades in contracts on ICE Futures Canada by "hedgers" from the registration requirement under section 22 of the CFA ("Hedger Relief");

(together, the "New Exemption Order")

**AND WHEREAS** the term "hedger" has the meaning ascribed to it in subsection 1(1) of the CFA ("Hedger");

**AND WHEREAS** Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* exempts trades of commodity futures contracts or commodity futures options made on commodity futures exchanges not registered with or recognized by the Commission under the CFA from sections 25 and 53 of the OSA;

**AND WHEREAS** ICE Futures Canada has represented to the Commission as follows:

1. ICE Futures Canada is a share capital corporation incorporated under the provisions of *The Corporations Act (Manitoba)* and situate in Winnipeg, Manitoba. Formerly known as Winnipeg Commodity Exchange Inc., it has been continuously operating since 1887.

2. ICE Futures Canada is an indirect and wholly-owned subsidiary of IntercontinentalExchange, Inc., ("ICE") a public company governed by the laws of the State of Delaware and listed on the New York Stock Exchange.

3. ICE Futures Canada facilitates trading in futures contracts and options on futures contracts in canola, western barley, milling wheat, durum wheat and barley (collectively, the "ICE Futures Canada Contracts") on an electronic trading platform (the "ICE Platform"), which is owned and operated by ICE.

4. ICE Futures Canada is recognized as a self-regulatory organization and a commodity futures exchange under sections 14(1) and 15(1) of *The Commodity Futures Act (Manitoba)* ("CFA Manitoba"), pursuant to Order No. 5718 of The Manitoba Securities Commission (MSC) ("MSC Order No. 5718" is set out in Schedule "C").

5. ICE Clear Canada, Inc. ("ICE Clear Canada") is a wholly-owned subsidiary of ICE Futures Canada and is designated as a recognized clearinghouse under section 16(1) of the CFA Manitoba pursuant to Order No. 5719 of the MSC ("MSC Order No. 5719"). ICE Clear Canada is exempted by the Commission from the requirement to be recognized as a clearing agency under subsection 21.2(0.l) of the OSA pursuant to an order issued February 1, 2011.

6. All ICE Futures Canada Contracts are cleared and settled by ICE Clear Canada which acts as the counterparty and financial guarantor to all cleared trades of ICE Futures Canada Contracts.

7. ICE Futures Canada seeks the revocation of the Commission's Previous Order, the Director's Exemption Order and the Director's Acceptance Order so that they can be replaced with the New Exemption Order.

8. As part of its regulatory oversight of ICE Futures Canada, the MSC reviews, assesses and enforces on-going compliance with the recognition requirements set out in MSC Order No. 5718 including financial resources, fitness and properness, systems and controls, maintenance of an orderly marketplace, rulemaking and other matters including ICE Futures Canada's rules, practices and procedures**.**

9. ICE Futures Canada is required to provide the MSC, on request, access to all records and to cooperate with any other regulatory authority, including making arrangements for information-sharing.

10. ICE Futures Canada maintains participant criteria that all applicants must satisfy before their applications are accepted, including fitness criteria, review of corporate constating documentation, operational standards and supervision policies and procedures, appropriate registration qualifications with applicable statutory regulatory authorities, and financial standards suitable for the category of registration and ICE Futures Canada applies a due diligence process to ensuring that all applicants meet the required criteria.

11. Participants resident in Ontario can register with ICE Futures Canada in one of four categories; Direct Access Trading Participant ("DATP"), Trading Participant, Merchant Participant or Ancillary Participant (collectively, "Ontario Participants").

12. ICE Futures Canada proposes to continue offering direct trading access on the ICE Platform for trading in ICE Futures Canada Contracts to Ontario Participants, by way of registration in the category of DATP. Only participants in the category of DATP are entitled to directly access the ICE Platform. DATPs will continue to be dealers in Ontario that are engaged in the business of trading commodity futures contracts and commodity futures options or will be non-market intermediary commercial enterprises such as grain companies, producers, and processors that are exposed to the risks attendant upon fluctuations in the price of commodities.

13. In order to directly access the ICE Platform, a DATP's application must be accepted by ICE Futures Canada and a DATP must be (i) a clearing participant of ICE Clear Canada; (ii) have a properly executed Clearing Authorization and Guaranty ("Guaranty") with a clearing participant of ICE Clear Canada who is a dealer engaged in the business of trading commodity futures contracts and commodity futures options ("Clearing Participant"); or (iii) be issued a systems managed account by a Clearing Participant. By providing either a Guaranty or a Systems Managed Account, the Clearing Participant is agreeing that it will guarantee all of the financial obligations of the DATP.

14. Participants in the categories of Trading Participant, Merchant Participant and Ancillary Participant who are the clients of a DATP who is a dealer engaged in the business of trading commodity futures contracts and commodity futures options are primarily (i) dealers that are engaged in the business of trading commodity futures contracts and commodity futures options in Ontario; (ii) grain companies, producers, and processors that are exposed to risks attendant upon fluctuations in the price of the commodities, and to the extent applicable (iii) institutional investors and proprietary trading firms.

15. With respect to order-routing access, ICE Futures Canada will provide a guidance that indicates that a DATP who is a dealer engaged in the business of trading commodity futures and commodity options is permitted to grant access to ICE Futures Canada to a client in Ontario provided that (i) the client is a registered FCM under the CFA; (ii) the DATP is a registered FCM under the CFA or (iii) the DATP is regulated as a dealer (or equivalent) in its home jurisdiction and the client is a Hedger or is able to rely on another exemption from registration under the CFA.

16. ICE Futures Canada Contracts fall under the definitions of "commodity futures contract" or "commodity futures option" as set out in section 1 of the CFA. ICE Futures Canada is therefore considered a "commodity futures exchange" as defined in section 1 of the CFA and is prohibited from carrying on business in Ontario unless it is registered or exempt from registration as an exchange under section 15 of the CFA.

17. ICE Futures Canada will not be recognized or registered with the Commission as a commodity futures exchange under the CFA and ICE Futures Canada Contracts will not be filed for acceptance by the Director (as defined in the OSA) under the CFA, therefore, ICE Futures Canada Contracts will be considered to be "securities" under clause(p) of the definition of "security" in subsection 1(1) of the OSA and ICE Futures Canada will be considered an "exchange" under the OSA requiring an exemption from recognition under section 21 of the OSA.

18. ICE Futures Canada seeks to continue to provide Ontario resident participants with direct access to trade in ICE Futures Canada Contracts and, as a result, is considered by the Commission to be "carrying on business as an exchange" and as a "commodity futures exchange".

19. The exemption from registration in clause 32(1)(a) of the CFA applies to trades "by hedger through a dealer". This exemption is available for trades in ICE Futures Canada Contracts by Hedgers resident in Ontario that route orders to ICE Futures Canada through DATPs that are dealers engaged in the business of trading commodity futures contracts and commodity futures options. However, this exemption will not be available for trades in ICE Futures Canada Contracts by Hedgers in Ontario that become DATPs since they will have direct trading access to ICE Futures Canada and will not execute trades through dealers.

**WHEREAS,** based on the Application and the representations ICE Futures Canada has made to the Commission**,** the Commission has determined that ICE Futures Canada satisfies the criteria set out in Schedule "A" and that the granting of exemptions from recognition and registration to ICE Futures Canada would not be prejudicial to the public interest;

**AND WHEREAS** the oversight of ICE Futures Canada will continue to follow the current regulatory process for the oversight of exchanges within Canada as set out in the *Memorandum of Understanding Respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems* entered into by the Commission, MSC, *Autorité des marches financiers*, the Alberta Securities Commission, the British Columbia Securities Commission, and the Saskatchewan Financial Services Commission with the MSC acting as the lead regulator for ICE Futures Canada.

**AND WHEREAS** the Commission's Previous Order, the Director's Exemption Order and the Director's Acceptance Order will be replaced by the New Exemption Order;

**AND WHEREAS** it is not prejudicial to the public interest to revoke the Commission's Previous Order;

**AND WHEREAS** it is in the public interest to revoke the Director's Acceptance Order;

**AND WHEREAS,** based on the Application and the representations ICE Futures Canada has made to the Director, the Director has agreed to revoke the Director's Exemption Order;

**IT IS ORDERED** by the Commission, that pursuant to section 147 of the OSA, ICE Futures Canada is exempt from recognition as an exchange under section 21 of the OSA, and pursuant to section 80 of the CFA, ICE Futures Canada is exempt from registration as a commodity futures exchange under section 15 of the CFA;

**AND IT IS ORDERED** by the Commission that, pursuant to section 38 of the CFA, trades in contracts on ICE Futures Canada by FCMs, and any person or company who trades in a contract solely through an agent who is an FCM, are exempt from the requirements of section 33 of the CFA; and

**AND IT IS ORDERED** by the Commission that, pursuant to section 38 of the CFA, trades in ICE Futures Canada Contracts by Hedgers who are DATPs are exempt from the registration requirement under section 22 of the CFA;

**PROVIDED THAT** ICE Futures Canada complies with the terms and conditions attached hereto as Schedule "B":

**AND IT IS ORDERED** by the Commission that, pursuant to section 78 of the CFA, the Commission's Previous Order is revoked;

**AND IT IS ORDERED** by the Commission that, pursuant to section 60 of the CFA, the Director's Acceptance Order is revoked; and

**AND IT IS ORDERED** by the Director that the Director's Exemption Order is revoked.

**DATED** at Toronto this 25 day of September, 2012.

"C. Wesley M. Scott"

"Vern Krishna"

"Susan Greenglass"

**SCHEDULE "A"**

**CRITERIA FOR EXEMPTION FROM RECOGNITION OF A DERIVATIVES EXCHANGE RECOGNIZED IN ANOTHER JURISDICTION OF THE CANADIAN SECURITIES ADMINISTRATORS**

## PART 1 REGULATION OF THE EXCHANGE

### 1.1 Regulation of the Exchange

The exchange is recognized or authorized by another securities commission or similar regulatory authority in Canada and, where applicable, is in compliance with National Instrument 21-101 – *Marketplace Operation* and National Instrument 23-101 – *Trading Rules*, each as amended from time to time.

## PART 2 GOVERNANCE

### 2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange,

(b) that business and regulatory decisions are in keeping with its public interest mandate,

(c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:

(i) appropriate representation of independent directors, and

(ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest, and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

### 2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

## PART 3 REGULATION OF PRODUCTS

### 3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are reviewed by the appropriate securities commission or similar regulatory authority, and are either approved by the appropriate authority or are subject to requirements established by the authority that must be met before implementation of a product or of changes to a product.

### 3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

### 3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

## PART 4 ACCESS

### 4.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure

(i) participants are appropriately registered as applicable under Ontario securities laws or Ontario commodity futures laws, or exempted from these requirements,

(ii) the competence, integrity and authority of systems users, and

(iii) systems users are adequately supervised.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

(c) The exchange does not

(i) permit unreasonable discrimination among participants, or

(ii) impose any burden on competition that is not reasonably necessary and appropriate.

## PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

### 5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation service provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

## PART 6 RULEMAKING

### 6.1 Purpose of Rules

(a) The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants.

(b) The Rules are not contrary to the public interest and are designed to

(i) ensure compliance with securities legislation and derivatives legislation, as applicable,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade,

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities or derivatives, as applicable,

(v) provide a framework for disciplinary and enforcement actions, and

(vi) ensure a fair and orderly market.

## PART 7 DUE PROCESS

### 7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

## PART 8 CLEARING AND SETTLEMENT

### 8.1 Clearing Arrangements

The exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing agency[1].

### 8.2 Regulation of the Clearing Agency

The clearing agency is subject to acceptable regulation.

### 8.3 Access to the Clearing Agency

(a) The clearing agency has established appropriate written standards for access to its services.

(b) The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

### 8.4 Sophistication of Technology of Clearing Agency

The exchange has assured itself that the information technology used by the clearing agency has been adequately reviewed and tested and provides at least the same level of safeguards as required of the exchange.

### 8.5 Risk Management of Clearing Agency

The exchange has assured itself that the clearing agency has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

## PART 9 SYSTEMS AND TECHNOLOGY

### 9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

(a) order entry,

(b) order routing,

(c) execution,

(d) trade reporting,

(e) trade comparison,

(f) data feeds,

(g) market surveillance,

(h) trade clearing, and

(i) financial reporting.

[1] For the purposes of these criteria, "clearing agency" also means a "clearing house".

### 9.2 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

## PART 10 FINANCIAL VIABILITY

### 10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

## PART 11 TRANSPARENCY

### 11.1 Transparency

The exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

## PART 12 RECORD KEEPING

### 12.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of Exchange requirements.

## PART 13 OUTSOURCING

### 13.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

## PART 14 FEES

### 14.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

## PART 15 INFORMATION SHARING AND REGULATORY COOPERATION

### 15.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

**SCHEDULE "B"**

**TERMS AND CONDITIONS**

**REGULATION OF ICE FUTURES CANADA**

1. ICE Futures Canada will maintain its recognition as a self-regulatory organization and a commodity futures exchange with the MSC and will continue to be subject to the regulatory oversight of the MSC.

2. ICE Futures Canada will continue to comply with its ongoing requirements set out in MSC Order No. 5718, as amended from time to time, or any successor to such order.

3. ICE Futures Canada will continue to meet the *Criteria for Exemption from Recognition of a Derivatives Exchange Recognized in Another Jurisdictio*n of the Canadian Securities Administrators as set out in Schedule "A".

**ACCESS**

4. ICE Futures Canada will not allow Ontario resident participants to become DATPs unless they are appropriately registered to trade in ICE Futures Canada Contracts or are Hedgers.

5. ICE Futures Canada will require each Ontario resident applicant for DATP status that intends to rely on the Hedger Relief as part of the application documentation, to:

   (a) represent that it is a Hedger;

   (b) acknowledge that ICE Futures Canada deems the Hedger representation to be repeated by the applicant each time it enters an order for an ICE Futures Canada Contract and that the applicant must be a Hedger for the purposes of each trade resulting from such an order;

   (c) agree to notify ICE Futures Canada if the applicant ceases to be a Hedger;

   (d) represent that it will only enter orders for its own account; and

   (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements.

6. ICE Futures Canada may reasonably rely on a written representation from each Ontario Participant in making the determination in paragraph 5 above.

7. ICE Futures Canada will require Ontario Participants to notify ICE Futures Canada if their registration or exemption from registration has been revoked, suspended or amended by the Commission and, following notice from the Ontario Participant or the Commission and subject to applicable laws, ICE Futures Canada will promptly restrict access to ICE Futures Canada if the Ontario Participant is no longer appropriately registered with or exempted by the Commission.

8. With respect to order-routing access, ICE Futures Canada will ensure that the guidance it provides indicates that a DATP who is a dealer engaged in the business of trading commodity futures and commodity options is permitted to grant access to ICE Futures Canada to a client in Ontario provided that (i) the client is a registered FCM under the CFA; (ii) the DATP is a registered FCM under the CFA or (iii) the DATP is regulated as a dealer (or equivalent) in its home jurisdiction and the client is a Hedger or is able to rely on another exemption from registration under the CFA.

**FILING REQUIREMENTS**

9. ICE Futures Canada will promptly notify staff of the Commission of any of the following:

   (a) any material change to the business or operations of ICE Futures Canada or the information provided in the Application;

   (b) any change or proposed change to the MSC Order No. 5718 or MSC Order No. 5719; and

   (c) any change to the regulatory oversight by the MSC.

10. ICE Futures Canada will maintain the following updated information and submit such information to the Commission on at least a quarterly basis, and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Participants;

(b) a list of all Ontario Participants against whom disciplinary action has been taken in the last quarter by ICE Futures Canada or the MSC with respect to activities on ICE Futures Canada;

(c) a list of all investigations commenced in the previous quarter by ICE Futures Canada relating to Ontario Participants;

(d) a list of all Ontario applicants who have been denied participant status in ICE Futures Canada; and

(e) for each ICE Futures Canada Contract, the total trading volume originating from Ontario Participants.

**RULE AND PRODUCT REVIEW**

11. ICE Futures Canada will concurrently provide the Commission with copies of all rules, policies, contract specifications and amended contract specifications (together, "Rules") that it files for review and receipt of non-disapproval with the MSC. Once the MSC has provided non-disapproval of the Rules, ICE Futures Canada will provide copies of all final Rules to the Commission within two weeks of receipt of non-disapproval by the MSC.

**FINANCIAL VIABILITY**

12. ICE Futures Canada will file with the Commission all annual financial statements required to be filed with the MSC, within the same timeframes as required by the MSC.

**INFORMATION SHARING**

13. ICE Futures Canada must promptly provide the Commission, upon request directly or through the MSC, as the case may be, any and all data, information, analyses in the custody and control of the ICE Futures Canada, including without limiting the generality of the following:

(a) data, information and analyses relating to all of its businesses; and

(b) data, information and analyses of third parties in its custody or control that relates to the operation of ICE Futures Canada.

**SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE**

14. For greater certainty, ICE Futures Canada submits to the non-exclusive jurisdiction of; (i) the courts and administrative tribunals of Ontario, and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of ICE Futures Canada in Ontario.

15. For greater certainty, ICE Futures Canada will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of ICE Futures Canada in Ontario.

**SCHEDULE "C"**

**The Manitoba Securities Commission**

| | | |
|---|---|---|
| **THE COMMODITY FUTURES ACT** | ) | **Order No. 5718** |
| | ) | |
| **Sections 14(1), 15(1)** | ) | **June 16, 2008** |

**ICE FUTURES CANADA, INC.**

**WHEREAS:**

**(A)** ICE Futures Canada, Inc. (the "Exchange") through its predecessor corporate organization, Winnipeg Commodity Exchange Inc. and WCE Holdings Inc. made application to the Manitoba Securities Commission (the **"Commission"**) for the following orders:

(i) Recognizing the Exchange as a self-regulatory organization pursuant to subsection 14(1) of the Act; and

(ii) Registering the Exchange as a commodity futures exchange in Manitoba pursuant to subsection 15(1) of the Act;

**(B)** Order No. 3784 was issued by the Commission to Winnipeg Commodity Exchange Inc. and WCE Holdings Inc. on June 11, 2002;

**(C)** It has been represented to the Commission by ICE Futures Canada, Inc. that:

1. The Exchange is a Manitoba corporation incorporated on November 1, 2001 carrying on business as a commodity futures exchange;

2. All of the shares of the then-parent company of the Exchange; WCE Holdings Inc., were purchased by 5509794 Manitoba Inc. on August 27, 2007;

3. The ultimate parent company of 5509794 Manitoba Inc. is IntercontinentalExchange, Inc. a corporation subsisting under the laws of the State of Delaware whose common stock is listed on the New York Stock Exchange and are widely held;

4. The Exchange and Holdings were part of a corporate reorganization and name change which became effective on January 1, 2008 whereby the Exchange was renamed ICE Futures Canada, Inc. and its direct parent became 5509794 Manitoba Inc.

5. The Exchange established, and maintains a separate division, the Regulatory Division, headed by a Special Regulatory Committee (SRC) with clearly defined market regulation and compliance responsibilities and a distinct governance structure, all in accordance with the purpose and objectives of the Act.

**(D)** The Commission is of the opinion that, pursuant to the criteria set out in the Act, that it is in the public interest to grant this order.

**IT IS ORDERED:**

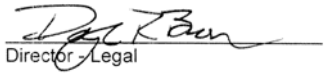
**1.** **THAT,** subject to the terms and conditions set out in Appendix "A" to this order:

(a) The Exchange is recognized as a self-regulatory organization pursuant to subsection 14(1) of the Act; and

(b) The Exchange is registered as a commodity futures exchange pursuant to subsection 15(1) of the Act.

**2.** **THAT** effective January 1, 2008 this Order replaces Commission Order number 3784 dated June 11, 2002.

**BY ORDER OF THE COMMISSION**



Director - Legal

Appendix "A" to Order Number 5718 effective January 1, 2008.

Terms and conditions

Notice of Share Ownership

1. In the event that the Exchange intends to amend its Articles of Incorporation, the Commission will be given notice prior to any amendments being approved by the shareholders.

2. The Exchange shall submit to the Commission a list of its shareholders and their respective shareholdings on an annual basis.

Corporate Governance

3. The governance structure of the Exchange shall provide for:

a. fair and meaningful representation on its governing body, in the context of the nature and structure of the Exchange, and any committee established by the Exchange;

b. the appointment of no less than two of its directors shall consist of individuals who are not associated with a participant, and in the event that at any time it fails to meet such requirement, it shall promptly remedy such;

c. appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of the Exchange.

4. The Exchange shall establish and maintain conflict of interest rules and/or policies for the Board, all committees, including the SRC, and Exchange staff. Such rules and/or policies shall extend to anyone in a position to affect the outcome of a decision and shall provide for all such persons to be required to declare their interests and to foresee the possibility that a person may withdraw from a matter.

Access

5. The requirements of the Exchange shall permit all registered dealers that satisfy the criteria of the Exchange, including a requirement for recognition by another organization, if applicable, to access the trading facilities.

6. The Exchange will maintain written rules and application forms for granting access to trading on its facilities.

7. The Exchange will not unreasonably prohibit or limit access by a person or company to the regulated services offered by it.

8. The Exchange will keep detailed records relating to all applications for access to the facilities of the Exchange that have been granted as well as requests for access that have been refused, including the reasons for denying or limiting access to any applicant.

Fees

9. Any and all fees imposed by the Exchange on its participants shall be reasonably allocated. Fees shall not have the effect of creating barriers to access; however they must take into consideration that the Exchange must have sufficient revenues to perform its duties and obligations as a commodity futures exchange and a self regulatory organization.

10. The process used by the Exchange to set fees shall be fair and appropriate.

Financial Viability

11. The Exchange shall maintain sufficient financial resources for the proper performance of its functions.

12. The Exchange shall provide to the Commission quarterly financial statements within 60 days of each quarter end and audited financial statements within 90 days of year-end. In addition, the Exchange will immediately provide the Commission with a written report advising of any circumstances that compromise or may potentially compromise the financial viability of the Exchange.

Regulatory Division and Special Regulatory Committee

13. The Exchange shall maintain a Regulatory Division which shall be responsible for all matters relating to compliance and market surveillance as set out in the Act or as further required by the Commission from time to time. As part of the Regulatory Division, the Exchange shall constitute and maintain a Special Regulatory Committee (SRC), which shall be a special committee appointed by the board of directors of the Exchange responsible for the Regulatory Division.

14. The operations of the Regulatory Division, including the investigation and compliance functions of the Exchange, shall be independent of the for-profit operations of the Exchange.

15. The Exchange shall ensure that the Regulatory Division has the necessary resources to fulfill its market and regulation functions.

16. Each SRC member shall be appointed by the board of directors of the Exchange for a term not less than two years. Appointments to SRC can be renewed.

17. The Exchange shall advise the Commission in writing of the names and background of each person proposed for appointment to the SRC.

18. In recognition that the SRC has been established to promote the protection of the public interest and protection of the integrity of markets, a reasonable number and proportion of members of the SRC shall not be associated with a participant registered with the Exchange.

19. SRC shall be autonomous in accomplishing its functions and in its decision-making process. The independence of the SRC shall be ensured and strict partition measures shall be established in order to prevent conflicts of interest with other activities of the Exchange.

20. Disciplinary decisions of the SRC, arising out of hearings, shall be subject to appeal to the Commission in accordance with the Act.

21. The SRC shall provide the Commission with a written report on the operations of the Regulatory Division on an annual basis. The report shall be in a form specified by the Commission and shall include:

a. description of the activities of the Regulatory Division,

b. financial information relating to all of the operations of the Regulatory Division, including all compliance and enforcement functions; and

c. such information as may be requested by the Commission from time to time.

22. The SRC shall promptly provide a written report to the Commission detailing any misconduct or fraud on the part of a participant or its representatives, or such other circumstance that may result in material loss or damage to the Exchange or its operations.

Systems

23. For each of its systems that support the operations of the Exchange, the Exchange shall, or in the case of systems that are owned by third parties the Exchange shall ensure that the third parties shall:

a. Make reasonable current and future capacity estimates;

b. Conduct necessary stress tests of critical systems on a reasonably frequent basis to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;

c. Develop and implement reasonable procedures to review and keep current the development and testing methodology of those systems;

d. Review the vulnerability of those systems and computer operations to internal and external threats including physical hazards and natural disasters;

e. Establish reasonable contingency and business continuity plans; and

f. Notify the Commission, in writing, of any material systems failures or changes that impact market operations.

Purpose of Rules

24. The Exchange shall, through the Regulatory Division and otherwise, establish such rules, regulations, policies, procedures, practices or other similar instruments as are necessary or appropriate to govern and regulate all aspects of its business and internal affairs and shall in so doing specifically govern and regulate so as to:

a. seek to ensure compliance with the Act

b. seek compliance with the terms and conditions of this order as well as any regulations, rules, policies or orders issued by the Commission;

c. seek to prevent fraudulent and manipulative acts and practices;

d. seek to promote just and equitable principles of trade;

e. seek to foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, trades in futures and options contracts and

f. seek to provide for appropriate discipline.

Due Process

25. The Exchange, including the Regulatory Division, shall ensure that the requirements of the Exchange relating to access to its facilities, the imposition of limitations or conditions on access and denial of access are fair and reasonable, including, but not limited to, proper notice, an opportunity to be heard and make representations, the keeping of records, the giving of written reasons for decision and the provisions for appeals.

Information Sharing

26. The Exchange shall cooperate by the sharing of necessary and reasonably relevant information, with the Canadian Investor Protection Fund and other Canadian exchanges, recognized self-regulatory organizations and regulatory authorities responsible for the supervision or regulation of contracts (as defined in the Act)fch, subject to the applicable laws concerning the sharing of information and the protection of personal information.

Additional Requirements

27. The Exchange shall notify the Commission prior to providing any regulatory duties or regulatory operations to other exchanges, self-regulatory organization, or other persons.

28. The Exchange shall obtain prior written approval from the Commission before subcontracting a portion of its regulatory duties or regulatory operations to other self-regulatory organizations.

29. The Exchange shall use all reasonable efforts to ensure that confidential information concerning its regulatory operations is maintained in confidence and not shared inappropriately with any for-profit operations of the Exchange.

30. The Exchange shall provide the Commission and its staff with such information as it may, from time to time, request.

ALL OF WHICH ARE INCORPORATED AS TERMS AND CONDITIONS OF THE ORDER ISSUED BY THE COMMISSION

# Chapter 3

# Reasons: Decisions, Orders and Rulings

**3.1 OSC Decisions, Orders and Rulings**

**3.1.1 Marlon Gary Hibbert 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**
**MARLON GARY HIBBERT, ASHANTI CORPORATE SERVICES INC.,**
**DOMINION INTERNATIONAL RESOURCE MANAGEMENT INC.,**
**KABASH RESOURCE MANAGEMENT, POWER TO CREATE WEALTH INC.**
**AND POWER TO CREATE WEALTH INC. (PANAMA)**

**REASONS FOR DECISION ON SANCTIONS AND COSTS**
**(Sections 127 and 127.1 of the Securities Act)**

| | | | |
|---|---|---|---|
| **Hearing:** | August 1 and 13, 2012 | | |
| **Decision:** | September 27, 2012 | | |
| **Panel:** | James D. Carnwath, Q.C. | – | Commissioner and Chair of the Panel |
| **Appearances:** | Swapna Chandra<br>Jennifer Lynch | – | For Staff of the Commission |
| | Paul Saguil | – | For Marlon Gary Hibbert |

**TABLE OF CONTENTS**

## I. OVERVIEW

### A. The Merits Decision

[1] The hearing on the merits in this matter took place over four days between December 5, 2011 and January 11, 2012 (*Re Marlon Gary Hibbert* (2012), 35 O.S.C.B. 8583 (the "**Merits Decision**")). The Ontario Securities Commission (the "**Commission**") found that the Respondents traded in securities without being registered where no exemptions were available contrary to subsection 25(1)(a) (pre-September 2009) and subsection 25(1) (post-September 2009) of the *Securities Act* R.S.O. 1990 c.S.5, as amended (the "***Act***") and contrary to the public interest; the Respondents acted as advisors without registration where no exemptions were available, contrary to subsection 25(1)(c) (pre-September 2009) and subsection 25(3) (post-September 2009) of the *Act* and contrary to the public interest; the Respondents engaged in the illegal distribution of securities, contrary to subsection 53(1) of the *Act* and contrary to the public interest; Marlon Hibbert ("**Hibbert**") perpetrated a fraud on investors contrary to subsection 126.1(b) of the *Act* and contrary to the public interest; and Hibbert misled Staff contrary to subsection 122(1)(a) of the *Act* and contrary to the public interest. Hibbert did not appear at the hearing on the merits.

### B. Summary of the Findings

[2] In the Merits Decision, I made the following findings in respect of the conduct of the Respondents:

(a) Hibbert caused the incorporation of the corporate respondents to assist in the investment scheme. He was the directing mind of the companies, solicited investments over the phone and paid referral fees to investors who referred new investors;

(b) The contracts, prepared, solicited and signed by Hibbert and investors are securities as defined in subsection 1(1) of the *Act*;

(c) The Respondents were not registered with the Commission at any time and no exemptions from registration applied to the Respondents;

(d) Hibbert accepted and deposited investors funds into the bank accounts of the corporate respondents located in Canada;

(e) In addition to advising investors to invest, Hibbert created and posted a video clip touting the benefits of investing in Power to Create Wealth Inc. and promising a rate of return of up to 79.4% a year;

(f) Hibbert misappropriated funds for the benefit of himself, his wife and his charities. In particular, Hibbert caused approximately $673,000 to be transferred for the use of himself and his wife;

(g) Hibbert lied to investors by telling them that he was successful in trading in foreign exchange. There is no evidence to suggest that Hibbert ever made a profit in foreign exchange;

(h) Hibbert was the directing mind of the corporate respondents and controlled the trading of investor funds in foreign exchange. As such, he had subjective awareness that he was acting dishonestly and putting investors' funds at risk as a result of his trading;

(i) Hibbert composed the letters used to deceive investors as to the true state of affairs of their investment and misled investors as to the amount he had retained of their principal investment; and

(j) Hibbert misled Staff on more than one occasion during his examinations under oath.

### C. Sanctions and Costs Hearing

[3] Following the Merits Decision, Staff and counsel for Hibbert appeared before me on August 1, 2012 with a joint recommendation for proposed sanctions. The agreement was predicated on Hibbert undertaking to transfer $650,000 of investor funds from a trading account in Panama to the Commission by way of a bank draft or a direct wire transfer. I observed that, based on my findings, Hibbert's undertaking to do anything was worth next to nothing. Both Staff and Hibbert's counsel, Mr. Saguil suggested an adjournment to give Mr. Hibbert sufficient time to effect such a transfer. I agreed and the matter was adjourned to August 13, 2012 at 2:30 p.m., peremptory to Hibbert.

[4] On the return date, Staff advised that no transfer had taken place and that Staff was prepared to make submissions on sanctions and costs. Not surprisingly, Staff sought more severe sanctions and a higher costs award than those agreed to in the earlier proposed joint submission.

[5] I have ignored the terms of the joint recommendation in my approach to sanctions. Also, I have not considered Hibbert's failure to transfer funds as an aggravating factor, nor have I considered his expressed intention to reimburse investors as a mitigating factor.

## II. THE APPLICABLE LAW

### A. Approach to the Imposition of Sanctions

[6] The Commission must ensure that the sanctions imposed in each case are proportionate to the circumstances and conduct of the particular respondent. The factors the Commission should consider include:

(a) the seriousness of the allegations;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been a recognition of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets;

(f) any mitigating factors;

(g) whether the violations are isolated or recurrent;

(h) the size of any profit made or loss avoided from the illegal conduct;

(i) the size of any financial sanctions or voluntary payment when considering other factors;

(j) the effect any financial sanction might have on the livelihood of a respondent;

(k) the restraint any sanction might have on the ability of a respondent to participate without check in the capital markets;

(l) the reputation and prestige of the respondent;

(m) the shame or financial pain that any sanction would reasonable cause the respondent; and

(n) the remorse of the respondent.

(*Re Belteco Holdings Inc.* (1998), 21 O.S.C.B. 7743 at paras. 23-26; *Re M.C.J.C. Holdings Inc.* (2002), 25 O.S.C.B. 1133 at paras. 10, 16-19 and 26)

[7] The Commission may also consider general and specific deterrence in crafting appropriate sanctions. The weight given to general deterrence will vary from case to case and is a matter within the discretion of the Commission (*Re Cartaway Resources Corp.*, [2004] 1 S.C.R. 672 at paras. 60 and 64; *Re Momentas Corp.* (2007), 30 O.S.C.B. 6475 at paras. 51-52).

### B. Application of Factors

[8] I find the factors noted below to be particularly relevant in considering the appropriate sanctions to be applied.

#### i) The Seriousness of the Allegations

[9] The findings in the Merits Decision established serious contraventions of the *Act*, particularly fraud. The Commission has previously held that fraud is "one of the most egregious securities regulatory violations," both "an affront to the individual investors directly targeted" and something that "decreases confidence in the fairness and efficacy of the entire capital market system." (*Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B 5535 at para. 214).

[10] The Respondents committed a series of acts including illegal distribution, unregistered advising and unregistered trading of securities. Hibbert engaged in an ongoing course of deceitful and fraudulent conduct designed to personally enrich Hibbert at the expense of innocent investors.

[11] In the Merits Decisions, paras. 97-99, I made the following findings.

> [97] Hibbert deceived investors by misappropriating their funds to his own use and the use of his wife and charities. He caused payments of approximately $673,000 to be transferred to himself and his wife, including payments for leased vehicles. He caused payments of $483,848 to be paid to his ministries and charities and other charities founded and run by family members. He caused payments of $67,017 for other personal expenses, including VISA payments, school fees, hotels and gym memberships. The payments for personal expenses were made after payments to investors had stopped.
>
> [98] Hibbert lied to investors by telling them he was successful in trading in foreign exchange. There is no evidence to suggest that he ever made a profit in doing so. He lied to investors by providing monthly statements as to the success of their investments which did not reflect actual trading results. The statements showed growth of investors' funds when in fact losses were sustained. Investors believed their funds to be safe and earning returns. He lied to investors when he tried to explain why the payments of principal could not be made and provided a litany of excuses, which were untrue, as to why repayments of principal were not possible.
>
> [99] By virtue of Hibbert's deceptions and untruths, many investors lost their entire investment. To date, they are owed more than $8.2 million in principal, to say nothing of the promised returns of more than $13 million […].
>
> (*Re Marlon Gary Hibbert et al.* (2012), 35 O.S.C.B. 8583, at paras. 97-99)

**ii) The Level of the Respondents' Activity in the Marketplace**

[12] The Respondents' activity took place over at least a four and one-half year period between January 2006 and May 2010. Violations of Ontario securities law in that period were widespread and repeated in the case of many of the 200 investors that Hibbert defrauded. This activity required multiple bank accounts, multiple companies, and transfer of investor funds to Panama from where information on trading or bank records was inaccessible to investors and Staff. Hibbert's fraudulent conduct raised $8.2 million from investors.

**iii) The Respondents' Recognition of the Seriousness of the Breaches of Securities Law**

[13] Hibbert did not appear at the merits hearing or the sanctions hearing. He made misleading or untrue statements in respect of the funds that had been transferred to Panama. He continued to mislead investors throughout the material time in respect of both his ability and intention to repay the funds or, at the very least, the principal invested. Hibbert had to recognize the seriousness of his actions and had to understand the effect he had on the many investors whom he left in desperate financial circumstances. This knowledge did not deter him from the course of conduct he pursued.

**iv) The Profit Made from Illegal Conduct**

[14] Hibbert collected approximately $8,411,528, from more than 200 investors by way of the investment scheme. Of these funds, Hibbert disbursed $673,000 for his personal use. A further $483,848 was given in donations to charities controlled by Hibbert or his family members, and $67,017 was used to pay other personal expenses of Hibbert. Hibbert repaid approximately $3,738,748.02 in principal and interest to investors during the material time.

**v) The Restraint Any Sanctions May Have on the Ability of a Respondent to Participate Without Check in the Capital Markets**

[15] Counsel for Hibbert submits Hibbert had little experience in capital markets and was not a registrant. Hibbert's only experience in the capital markets is limited to defrauding investors. He must be permanently banned from trading in securities.

**vi) Specific and General Deterrence**

[16] Staff submit that Hibbert abused a position of trust within his congregation and the larger community in order to continue to obtain investor funds over a number of years. Investors testified that they believed Hibbert because he was a "Man of God". Hibbert continued to deceive investors long after he knew that there was no reasonable prospect that he would ever be in a position to return investor funds. Hibbert's actions demonstrate a clear desire to deceive investors and use the monies, at least in part, to substantially improve the financial position of himself and his family.

[17] Staff accordingly submit that there is a need to send a strong message of specific deterrence to the Respondents.

[18] In 32 years of adjudication I have never encountered a more vile, more heinous fraud than that perpetrated by Hibbert on his unsuspecting parishioners. Investors who testified stressed the implicit trust they had in Hibbert because he was a "Man of God". Any sanctions imposed must dissuade him from ever repeating his conduct in this matter. Equally important is the requirement to dissuade persons like Hibbert who are tempted to take advantage of the trust reposed in them.

[19] The ease with which Hibbert raised over $8.4 million demonstrates a particular need to convey to any like minded individuals that any profits they make will be taken from them should they engage in fraudulent activity.

**(C) Permanent Bans**

[20] Given their conduct, the Respondents should be permanently banned from trading in securities, acquiring securities and having exempt status. Likewise, Hibbert should be permanently prohibited from acting as an officer or director in the securities industry.

**(D) Disgorgement**

[21] Pursuant to clause 10 of section 127(1) of the *Act*, the Commission has the power to order disgorgement of "any amounts obtained as a result of the non-compliance" with Ontario securities law. The Commission has previously held that "all money illegally obtained from investors can be ordered to be disgorged, not just the 'profit' made as a result of the activity." (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 12030 ("***Limelight***") at para. 49).

[22] In *Limelight*, the Commission held it should consider the following factors when contemplating a disgorgement order, in addition to the general factors for sanctioning listed at paragraph 6 above:

(a) whether an amount was obtained by a respondent as a result of non-compliance with the *Act*;

(b) the seriousness of the misconduct and the breaches of the *Act* and whether investors were seriously harmed;

(c) whether the amount that a respondent obtained as a result of non-compliance with the *Act* is reasonably ascertainable;

(d) whether the individuals who suffered losses are likely to be able to obtain redress; and

(e) the deterrent effect of a disgorgement order on the respondents and market participants.

(*Limelight*, above at para. 52)

[23] The total amount obtained as a result of the Respondents' non-compliance with Ontario's securities law is approximately $4,672,779.98. As directing mind of the corporate respondents, Hibbert must be ordered to disgorge the amount obtained.

**(E) Administrative Penalties**

[24] Staff seek an order for the payment of an administrative penalty in the amount of $1,000,000 against Hibbert. Counsel for Hibbert submits a more appropriate range is between $250,000 and $500,000, but certainly not more than $750,000.

[25] In cases involving the illegal distribution of securities, unregistered trading, misrepresentations, and particularly in cases involving fraud, the Commission has awarded significant administrative penalties.

[26] The Commission has held that an administrative penalty should be of a magnitude sufficient to ensure effective specific and general deterrence. Factors to be considered in determining an appropriate administrative penalty include: the scope and seriousness of a respondent's misconduct; whether there were multiple and/or repeated breaches of the *Act*; whether the respondent realized any profit as a result of his or her misconduct; the amount of money raised from investors; the harm caused to investors; and the level of administrative penalties imposed in other cases (*Re Rowan* (2009), 33 O.S.C.B. 91, paras. 67, 70 and 73; *Limelight*, above at paras. 67, 71 and 78).

[27] Persons like Hibbert who enjoy the trust and confidence of others must be deterred from acting as Hibbert has. Having regard to the cases cited by Staff and counsel for Hibbert, I find an appropriate amount to reflect the principal of general deterrence is the imposition of an administrative penalty of $750,000.

**(F) Costs**

[28] A costs order pursuant to section 127.1 of the *Act* is not a penalty. An order of costs is a way of recovering the costs of a hearing or investigation from persons or companies who have breached Ontario securities law or acted contrary to the public interest. It is recognized that a costs order will not necessarily recover the entirety of the costs incurred by the Commission but it is appropriate that a respondent pay some portion of the costs of a hearing where a respondent is found to have contravened securities law. In assessing the quantum of costs, the panel is entitled to take into consideration whether the respondent's conduct has contributed to the efficient hearing of the matter.

[29] I accept the submissions of counsel for Hibbert to the effect that this was neither a prolonged nor a complex hearing. Hibbert did not appear. In all the circumstances, I find that Hibbert should pay a costs award of $200,000.

**(G) Reprimand**

[30] I hereby reprimand Hibbert.

**III. CONCLUSION**

[31] It is ordered that:

(a) pursuant to s. 127(1)2 of the *Act*, all trading by the Respondents shall cease permanently;

(b) pursuant to s. 127(1)2.1 of the *Act*, the acquisition of any securities by the Respondents is prohibited permanently;

(c) pursuant to s. 127(1)3 of the *Act*, any exemptions contained in Ontario securities law do not apply to the Respondents permanently;

(d) pursuant to s. 127(1)6 of the *Act*, I hereby reprimand Hibbert for his conduct;

(e) pursuant to s. 127(1)8 of the *Act*, Hibbert is prohibited from becoming or acting as a director or officer of any issuer permanently;

(f) pursuant to s. 127(1)8.2 of the *Act*, Hibbert is prohibited from becoming or acting as a director or officer of a registrant permanently;

(g) pursuant to s. 127(1)8.4 of the *Act*, Hibbert is prohibited from becoming or acting as a director or officer of an investment fund manager permanently;

(h) pursuant to s. 127(1)8.5 of the *Act*, Hibbert is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently;

(i) pursuant to s. 127(1)9 of the *Act*, Hibbert shall pay to the Commission an administrative penalty of $750,000, which is designated for allocation or for use by the Commission pursuant to section 3.4(2)(b) of the *Act*;

(j) pursuant to s. 127(1)10 of the *Act*, Hibbert shall disgorge to the Commission the amount of $4,672,779.98, which is designated for allocation or for use by the Commission pursuant to section 3.4(2)(b) of the *Act*; and

(k) pursuant to s. 127.1 of the *Act*, the respondents shall pay on a joint and several basis $200,000, representing partial costs and disbursements incurred by the Commission in the investigation and hearing.

Dated at Toronto this 27th day of September, 2012.

"James D. Carnwath"

### 3.1.2 Axcess Automation LLC et al.

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

**AND**

**IN THE MATTER OF**
**THE COMMODITY FUTURES ACT,**
**R.S.O. 1990, c. C.20, AS AMENDED**

**AND**

**IN THE MATTER OF**
**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**

**REASONS AND DECISION**

| | | | |
|---|---|---|---|
| **Hearing:** | April 11, 13, 14, 15, 19 and 20, 2011<br>May 25, 2011 | | |
| **Decision:** | September 27, 2012 | | |
| **Panel:** | Christopher Portner<br>Paulette L. Kennedy | –<br>– | Commissioner and Chair of the Panel<br>Commissioner |
| **Counsel:** | Yvonne Chisholm<br>Sylvia Schumacher | – | For the Ontario Securities Commission |
| | Alistair Crawley<br>Anna Markiewicz | – | For Reynold Mainse and World Class Communications Inc. |
| | Gordon Alan Driver | – | Represented himself |
| | Steven M. Taylor | | Represented himself, Berkshire Management Services Inc., 1303066 Ontario Ltd. and Montecassino Management Corporation |
| | No one appeared for the following respondents | | Axcess Automation LLC, Axcess Fund Management, LLC and Axcess Fund, L.P. |

**TABLE OF CONTENTS**

**REASONS AND DECISION**

## I. BACKGROUND

### A. Overview

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**OSA**") and section 60 of the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended (the "**CFA**") to consider whether Axcess Automation LLC ("**Axcess Automation**"), Axcess Fund Management, LLC ("**Axcess Fund Management**"), Axcess Fund, L.P. ("**Axcess Fund**"), Gordon Alan Driver ("**Driver**"), Steven M. Taylor ("**Taylor**"), Berkshire Management Services Inc. ("**Berkshire**") carrying on business as International Communication Strategies ("**ICS**"), 1303066 Ontario Ltd. ("**1303066**") carrying on business as ACG Graphic Communications ("**ACG**"), Montecassino Management Corporation ("**Montecassino**"), Reynold Mainse ("**Reynold**") and World Class Communications Inc. ("**WCC**") (collectively, the "**Respondents**") breached the OSA and the CFA and acted contrary to the public interest.

[2] Prior to the hearing on the merits in this matter, Ronald Mainse ("**Ronald**"), David Rutledge ("**Rutledge**") and 6845941 Canada Inc. ("**6845941**") carrying on business as Anesis Investments ("**Anesis**" and, together with Ronald and Rutledge, the "Settling Respondents") entered into settlement agreements with Staff of the Commission ("**Staff**") which were approved by the Commission on August 13, 2010 (*Re Axcess Automation LLC* (2010), 33 O.S.C.B. 7384 (settlement with respect to Ronald) and *Re Axcess Automation LLC* (2010), 33 O.S.C.B. 7376 (settlement with respect to 6845941 and Rutledge)).

[3] A Statement of Allegations was filed by Staff on August 12, 2010 and a Notice of Hearing was issued by the Commission on the same day. Staff alleges that the Respondents engaged in unregistered trading and a distribution of securities without a prospectus and committed fraud.

[4] The alleged misconduct relates to two investment schemes which together will be referred to in these Reasons and Decision as the "**Axcess Investments**" and, individually, the "**Axcess Automation Investment**" and the "**Axcess Fund Investment**". Staff alleges that, during the period from February 2006 to March 2009 (the "**Material Time**"), more than US$15.0 million was raised from approximately 200 investors, who were primarily Ontario residents, through trading in the Axcess Investments, both of which purportedly generated investment returns through Driver's use of proprietary trading software.

[5] Staff alleges that, through Axcess Automation, Axcess Fund Management and Axcess Fund (collectively, the "**Axcess Companies**"), Driver (i) engaged in fraudulent conduct by using investors' funds to trade E-mini S&P 500 futures[1] and, having incurred substantial losses doing so, he then misrepresented the losses and misled investors about the state of their investments; (ii) used investors' funds to pay new or other investors; and (iii) misappropriated approximately US$1.1 million for his personal use.

[6] Staff alleges that Taylor, through Berkshire, 1303066 and Montecassino (collectively, the "**Taylor Companies**"), worked with Driver from the inception of the scheme relating to the Axcess Investments. Staff alleges that Taylor and the Taylor Companies knew, or ought to have known, that a fraud was being perpetrated on the investors.

[7] Staff alleges that Rutledge, 6845941, Ronald, Reynold and WCC engaged in the trading of securities without being registered to do so, but were not party to the fraud.

### B. History of the Proceedings

[8] On April 15, 2009, the Commission issued a temporary cease trade order (the "**Temporary Order**") against the Axcess Companies, Driver and Rutledge. On October 2, 2009, Taylor and ICS (which is referred to as Berkshire in subsequent orders) became subject to the Temporary Order and, on August 13, 2010, 1303066 and Montecassino were also subjected to the

[1] E-mini futures are electronically-traded futures contracts on the Chicago Mercantile Exchange that represent a portion of the normal futures contracts. The E-mini S&P 500 futures contract is one-fifth the size of the standard S&P 500 futures contract.

Temporary Order. The Temporary Order was extended from time to time and now continues until "this matter is disposed of by a hearing on the merits, and if necessary, a hearing on sanctions, or settlement, as the case may be, or until further order of the Commission".

[9] Reynold was never a subject of the Temporary Order. On April 15, 2009, he undertook to Staff that, among other things, he would not engage in any trading activities, including soliciting investors and receiving commissions or payments in relation to Driver and the Axcess Companies.

[10] The hearing on the merits commenced on April 11, 2011 and continued on April 13, 14, 15, 19 and 20, 2011.

[11] Reynold and WCC, who were represented by counsel, admitted all of the allegations relevant to them. As Reynold admitted the allegations against him in this matter and was not contesting the evidence presented by Staff, he and his counsel only attended certain portions of the hearing. Reynold appeared on April 11, 15, 19 and 20, 2011, and his counsel appeared on April 11, 13, 15, 19 and 20, 2011.

[12] Driver represented himself and, at the outset of the hearing, made a request to participate in the hearing by telephone, which Staff did not oppose. Rule 10.2 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "**Commission Rules**") and sections 1(1), 5.2 and 5.2.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended (the "**SPPA**") permit electronic hearings including participation by telephone. We allowed Driver to participate by telephone as he stated that he was in Las Vegas and was unable to attend in person. Driver did not testify and called one witness.

[13] No one appeared on behalf of the Axcess Companies.

[14] Taylor represented himself and the Taylor Companies. He attended in person on April 11 and 13, 2011. At 10:23 a.m. on April 14, 2011, Taylor left the hearing room without explanation and re-attended on April 20 and May 25, 2011. Taylor did not testify and did not call any witnesses.

[15] On May 25, 2011, we heard closing submissions from Staff, Driver and Taylor on behalf of himself and the Taylor Companies. We received from Staff written submissions dated May 6, 2011, a two-volume Compendium of Key Documents, and a three-volume Book of Authorities. None of the Respondents provided written submissions.

[16] The following are our Reasons and Decision on the merits in this matter.

**C. The Respondents**

**1. The Corporate Respondents**

[17] Axcess Automation was registered as a limited liability company in Nevada in October 2007. A Private Placement Memorandum[2] of Axcess Fund dated on or about November 11, 2008 (the "**PPM**") describes Axcess Automation as having been established as a sole proprietorship in Nevada in 1987 and later converted to a limited liability company.

[18] Axcess Fund Management, a limited liability company, was incorporated in Nevada in June 2008. Axcess Fund Management was registered with the United States Commodity Futures Trading Commission (the "**CFTC**") as a commodity pool operator in July 2008. As it is the subject of a CFTC proceeding, Axcess Fund Management's CFTC registration has been under suspension since May 2009.

[19] Axcess Fund was registered in Nevada in June 2008 as a limited partnership of which Axcess Fund Management was the general partner and the purchasers of limited partnership interests were the limited partners. Axcess Fund Management is described in the PPM as the general partner, investment or trading advisor and commodity pool operator of Axcess Fund.

[20] Berkshire was incorporated in Alberta in February 2007. In January 2009, Berkshire registered ICS as a trade name in Alberta.

[21] 1303066 was incorporated in Ontario in June 1998. 1303066 carried on business as ACG.

[22] Montecassino was incorporated in Alberta in 2007.

[23] WCC was incorporated in Ontario in September 1998. According to Reynold, he stopped doing business through WCC in 2000 or 2001, but later re-activated WCC which contracted with a Christian non-profit charitable organization to lead and

[2] Also described as a Private Offering Memorandum.

promote international humanitarian aid missions. In December 2008, WCC's registration was cancelled for failure to comply with the *Corporations Tax Act*, R.S.O. 1990, c. C.40, as amended.

[24] None of the Axcess Companies, the Taylor Companies and WCC have ever been reporting issuers in Ontario and none of them have ever been registered to trade securities or contracts in Ontario.

**2. The Individual Respondents**

[25] Driver is a Canadian citizen who resided in both Ontario and Nevada during the Material Time. Driver is the founder and owner of Axcess Automation and Axcess Fund Management and created Axcess Fund. Driver was registered with the CFTC in September 2008 as an associated person and principal of Axcess Fund Management. As he is the subject of a CFTC proceeding, Driver's CFTC registration has been under suspension since May 2009.

[26] Taylor, who is a resident of Ontario, is the sole voting shareholder and sole director of Berkshire, the President and a director of 1303066 and the President of Montecassino.

[27] Reynold is a resident of Ontario and was the President and sole director of WCC.

[28] None of Driver, Taylor and Reynold have ever been registered to trade securities or contracts in Ontario.

**3. The Settling Respondents**

[29] While these Reasons and Decision deal with findings against the Respondents, we describe the Settling Respondents below to provide additional background information with respect to this matter.

[30] 6845941 was incorporated federally in Canada in September 2007, and since early 2009, has carried on business as Anesis.

[31] Rutledge is an Ontario resident and an ordained minister who was employed by a Christian non-profit charitable organization from 2003 to 2008. Rutledge incorporated 6845941 and was its sole officer.

[32] Ronald is an Ontario resident and was the President of the same Christian non-profit charitable organization as Rutledge by which he continues to be employed in a senior capacity. Reynold and Ronald are brothers and Rutledge is their cousin.

[33] None of the Settling Respondents have ever been registered to trade securities or contracts in Ontario.

**II. PRELIMINARY ISSUES**

**A. Driver's Adjournment Requests**

**1. The First Adjournment Request**

[34] At the commencement of the hearing on April 11, 2011, Driver requested an adjournment of the hearing on the merits. An individual named Jack Steven Lambert ("**Lambert**") appeared on Driver's behalf to provide submissions regarding the adjournment request after explaining that he was acting as an agent for Irving Solnik ("**Solnik**") whom Driver had recently retained to represent him. At a later point in his submissions, Lambert mentioned that Driver had not "completely" retained Solnik. Neither Lambert nor Solnik represented Driver for any part of the merits hearing.

[35] The adjournment was requested on the grounds that Driver (i) was heavily involved with proceedings in the United States (the "**U.S.**") before the Securities Exchange Commission (the "**SEC**") and the CFTC; (ii) was looking for new counsel to represent him before the SEC and needed time for the retainer to be finalized before he could finalize his retainer with counsel in Ontario; (iii) would prefer that the matter before the SEC and the CFTC proceed prior to the Commission proceeding because issues would arise with respect to the use of his Commission testimony to incriminate him in the SEC and CFTC proceedings; and that (iv) Driver's new counsel needed time to review the disclosure in this matter and to speak to the witnesses.

[36] Staff opposed Driver's request for an adjournment on the following basis:

(a) The dates for the hearing on the merits were set down in October 2010 and that Driver had been aware of the hearing dates since that time.

(b) Staff was informed of the adjournment request for the first time on April 8, 2011, just three days before the commencement of the hearing on the merits.

(c) Staff's case was ready to proceed, all of the witnesses had been prepared and were ready and rescheduling the hearing would inconvenience witnesses, one of whom was traveling from the U.S.

(d) The hearing had been booked on the Commission's hearing schedule since October 2010, time and resources of the Commission had been blocked-off for this hearing, and, accordingly, rescheduling at such a late date would impact the Commission's resources.

(e) Driver had waited until the last possible moment to retain counsel and had a history of changing counsel. Specifically, Solnik was previously on the record for Driver from April 2009 to April 2010. Staff was only informed during the weekend of April 8 to 10, 2011 that Solnik was back on the file representing Driver. In addition, for a certain period of time after April 2010, Staff understood that Driver had retained Mark Geragos ("**Geragos**") as his U.S. counsel, but the status of this retainer was never made clear to Staff. Although Geragos never communicated with Staff or appeared before the Commission on behalf of Driver, both he and Driver were served with disclosure by Staff. On Friday April 8, 2011, another lawyer, Jonathan Schwartz, contacted Staff and informed Staff that he would be requesting an adjournment but that he would not appear as he was travelling until April 12, 2011.

(f) The proceedings in the U.S. before the SEC and the CFTC were not new or at the trial/merits stage and each of the SEC and the CFTC had issued either permanent or preliminary injunctions against Driver, Axcess Automation and Axcess Fund Management.

(g) With respect to the issue of prejudice arising from Driver's testimony before the Commission being used to incriminate him in the U.S., Staff emphasized that a formal motion had not been made with respect to this issue, Staff had only been notified of the issue by Lambert on April 11, 2011 and, accordingly, Staff had not had the time to prepare proper legal submissions on the issue. Staff also pointed out that Driver was not obliged to testify before the Commission.

[37] Counsel for Reynold and WCC did not take any position with respect to Driver's adjournment request, but did mention that they were ready to proceed with the hearing on the merits.

[38] Taylor on behalf of himself and the Taylor Companies took the following position:

> I also don't really have a position.
>
> I'm without counsel, without means for counsel. It's been grossly inconvenient and frustrating to have a cloud hanging over your head this long. It would [be] nice on one side to be able to move along, but, you know, after my last appearance two days later I had a stroke as a result of the stress and the pressure of, you know, this entire thing, but I don't have counsel to proceed, so I probably would not oppose an adjournment but sure would like the cloud lifted.
>
> (Hearing Transcript dated April 11, 2011 at pp. 23 and 24)

[39] Rule 9.2 of the Commission Rules sets out a list of relevant, but non-exhaustive, factors to be considered when deciding whether to grant an adjournment:

> **9.2 Factors Considered** – In deciding whether to grant an adjournment, the Panel shall consider all relevant factors, including, but not restricted to, the following:
>
> (a) whether an adjournment would be in the public interest;
>
> (b) whether all parties consent to the request;
>
> (c) whether granting or denying the adjournment would prejudice any party;
>
> (d) the amount of notice of the hearing date that the requesting party received;
>
> (e) the number of any previous adjournment requests made and by whom;
>
> (f) the reasons provided to support the adjournment request;
>
> (g) the cost to the Commission and to the other parties for rescheduling the hearing;

(h) evidence that the party made reasonable efforts to avoid the need for the adjournment; and

(i) whether the adjournment is necessary to provide an opportunity for a fair hearing.

[40] We decided to dismiss Driver's adjournment request after considering the factors set out in rule 9.2 enumerated above, including, in particular, the factors set out in subrules 9.2(b), (c), (d), (g) and (h) of the Commission Rules. Specifically, (i) Staff contested the adjournment; (ii) granting the adjournment would prejudice all of the other parties who appeared on April 11, 2011 and were ready to proceed with the hearing on the merits; (iii) although denying the adjournment would prejudice Driver to the extent that he had to proceed without counsel, he had ample opportunity to retain counsel, had a history of changing counsel and did not retain counsel until the last possible moment; (iv) we were not provided with any evidence or legal submissions that Driver would be prejudiced in the SEC and the CFTC proceedings if the hearing on the merits proceeded on April 11, 2011; (v) Driver had notice of the dates of the hearing on the merits since October 2010 and had received all relevant materials from Staff; (vi) rescheduling the hearing on the merits would cause the Commission, the other parties and witnesses major inconvenience and unnecessary costs; and (vii) Driver's request for the adjournment was made at the eleventh hour and he made no effort to avoid a delay by communicating with Staff on a timely basis, if in fact he had a legitimate reason to request an adjournment. In light of the foregoing, we were of the view that an adjournment was not necessary to provide an opportunity for a fair hearing and that it was in the public interest to proceed.

[41] We did, however, take into account that Driver was also involved in an SEC proceeding in the U.S. and accommodated Driver's request that the Panel not sit on April 18, 2011 so that he could attend an SEC hearing on that day.

**2. The Second Adjournment Request**

[42] On the second day of the hearing, April 13, 2011, Driver brought another request for an adjournment on the grounds that:

(a) He had spoken with a new lawyer on April 12, 2011 about representing him in this proceeding and that lawyer would be prejudiced and unable to prepare for the hearing appropriately unless there was a two-week adjournment.

(b) He had only received a few e-mail messages ("**e-mails**") from the Commission, and did not have any documents physically served on him by the Commission as they were delivered to a Niagara Falls address that had not been in service for two years.

(c) There would be no financial loss if an adjournment were to be granted.

(d) An adjournment would benefit the Commission as it would permit Driver time to find representation and have a lawyer prepare his case and present it before the Commission.

[43] Taylor did not object to Driver's adjournment request and counsel for Reynold took no position with respect to the request.

[44] Staff opposed the adjournment request and provided affidavits of service (Affidavits of Service of Lee Crann, sworn April 23, 2009 and April 7, 2011) detailing Staff's service efforts on Driver throughout the proceeding. In addition, Staff filed e-mail correspondence between Staff and Driver for the months of September and October 2010 showing that Staff had informed Driver of the availability of disclosure and the dates for the hearing on the merits and that Driver responded informing Staff that he was represented and that Staff should contact his lawyer. Having reviewed these materials, we found that Staff had taken all reasonable efforts to serve Driver and his counsel with all relevant materials and that Driver had knowledge of the dates of the hearing on the merits since October 2010.

[45] After considering the matter, we dismissed Driver's second adjournment request as we had not been provided with any further information or arguments that would cause us to vary the initial adjournment decision that we made on the first day of the hearing on the merits. Staff demonstrated that Driver and/or his counsel were at all times served with materials and apprised of the hearing dates. Driver waited until the eleventh hour to find representation for the hearing on the merits. Driver was represented by different counsel at various times, he knew the merits hearing dates were set by order in October 2010 for April 2011 and he had ample time to find counsel to represent him and to prepare his case.

**3. The Third Adjournment Request**

[46] At the commencement of his closing submissions on May 25, 2011, Driver requested another adjournment on the grounds that:

(a) He had produced a limited amount of evidence in this matter;

(b) He had two other cases in the U.S. that were ongoing;

(c) He required a lawyer to represent him in order to maintain his Fifth Amendment privilege in the U.S. proceedings; and

(d) He had identified a lawyer and was in the process of making arrangements to retain the lawyer who had just returned from a three-week vacation.

[47] Taylor made the following submissions with respect to Driver's adjournment request:

> I want to state that, you know, I object to the fact that an adjournment was denied for Mr. Driver … but that the adjournment request was denied I do object to that and at the same time I object to the fact that he's not even here for me to be able to speak to him, look him in the eye, ask him the questions, the hard questions that he alone could answer as capably and as competently as any.
>
> (Hearing Transcript dated May 25, 2011 at pp. 80 and 81)

[48] Neither Reynold nor his counsel attended the closing submissions or made submissions on this issue.

[49] Staff opposed the adjournment on the basis that they had not been informed of the adjournment request and that Driver made two prior adjournment requests, both of which had been denied by the Panel. Staff emphasized that the U.S. proceedings had been ongoing since May 2009 and Driver had ample notice of those proceedings and the proceeding before the Commission. In Staff's view, Driver's arguments about the U.S. proceedings should not be given much weight as Driver had been previously accommodated to attend an SEC hearing on April 18, 2011, and the evidence revealed that he did not in fact attend. Further, Staff submitted that Driver's involvement in the U.S. proceedings did not impair his ability to participate in closing submissions.

[50] We agreed with Staff's position and denied Driver's third adjournment request. From the outset of the hearing on the merits, Driver had raised the issue of representation and his U.S. proceedings, including his Fifth Amendment privilege in those proceedings. Once again, Driver did not present us with any further information or arguments that would warrant an adjournment. In fact, we are troubled by the evidence that Driver did not attend the SEC hearing on April 18, 2011 given that the Panel decided not to sit on that day to accommodate his request that he be able to attend that hearing. In addition, Driver had been provided with a month from the close of evidence on April 20, 2011 to the date of the closing submissions on May 25, 2011 in which to prepare. Although Driver claimed that he was then in a position to retain counsel, we concluded we could not, and should not, delay this proceeding any further. We find it troubling that, while Driver had a month since the close of evidence to retain counsel, he selected counsel who had just returned from vacation on May 23, 2011, two days before the date of the closing submissions. In our view, Driver had ample opportunity to appoint counsel who would be available when required and, accordingly, we dismissed Driver's request to adjourn the closing submissions.

**B. Request to Summons Witnesses**

[51] Driver and Taylor did not provide a witness list or witness summary as required by the Commission Rules. Rule 4.5 states as follows:

> **4.5 Witness Lists and Summaries – (1) Provision of a Witness List** – A party to a proceeding shall serve every other party and file with the Secretary a list of the witnesses the party intends to call to testify on the party's behalf at the hearing, at least 10 days before the commencement of the hearing.
>
> **(2) Provision of Witness Summaries** – If material matters to which a witness is to testify have not otherwise been disclosed, a party to a proceeding shall provide to every other party a summary of the evidence that the witness is expected to give at the hearing, at least 10 days before the commencement of the hearing.
>
> …
>
> **(4) Failure to Provide a Witness List or a Summary** – A party who does not include a witness in the witness list or provide a summary of the evidence a witness is expected to give in accordance with subrules 4.5(1), 4.5(2) and 4.5(3), may not call that person as a witness without leave of the Panel, which may be on any conditions as the Panel considers just.

…

[52] On April 13, 2011, the second day of the hearing on the merits, both Taylor and Driver requested that the Commission issue a summons to each of the witnesses on their behalf. Section 12 of the SPPA provides that a tribunal such as the Commission has the power to issue a summons to a witness:

> **Summonses**
>
> 12. (1) A tribunal may require any person, including a party, by summons,
>
> (a) to give evidence on oath or affirmation at an oral or electronic hearing; and
>
> (b) to produce in evidence at an oral or electronic hearing documents and things specified by the tribunal,
>
> relevant to the subject-matter of the proceeding and admissible at a hearing.

[53] We agreed to accommodate Taylor's and Driver's requests for assistance and asked each of them to provide us with a list of their proposed witnesses, their locations, witness summaries and submissions regarding the relevance of the proposed witnesses to assist us in determining whether to grant leave to permit certain witnesses to testify pursuant to subrule 4.5(4) of the Commission Rules. We also directed Taylor and Driver to consider whether any of their proposed witnesses would provide duplicative or similar testimony and to consider whether their witness lists could be narrowed.

[54] We explained to Taylor and Driver that the Commission only has the jurisdiction to summon witnesses residing in Ontario and such witnesses would be required to testify in person before the Commission. Should Taylor and Driver have witnesses willing to testify voluntarily from outside the jurisdiction, they would be required to either come and testify in person, or testify by means of a video-conference. We explained the process under section 152 of the OSA for issuing a summons to a witness residing outside Ontario, which requires an order of the Superior Court of Justice, but as the hearing on the merits was already underway, the Commission could not guarantee that there would be sufficient time to obtain such an order prior to the conclusion of the hearing on the merits.

[55] We explained to Taylor and Driver that the Commission would do its best to facilitate the process for issuing a summons to each of their witnesses, however, the witnesses granted leave to testify and issued a summons would have to testify during the hearing time already allotted and we would not permit any further delay in the hearing on the merits.

[56] Driver requested that two individuals residing in Ontario, R.M. and D.H., be permitted to testify. He explained that these witnesses would testify about their meetings and relationship with him and Taylor and that they would give evidence about e-mails that are included in hearing briefs filed by Staff.

[57] Taylor did not provide us with a list of witnesses or witness summaries.

[58] We were prepared to allow R.M. and D.H. to appear as witnesses at the hearing on the basis that (i) they constituted a reasonable number of witnesses and scheduling them to appear would not cause undue prejudice or delay; and (ii) their anticipated evidence appeared to be relevant to the hearing. Although it is normally the responsibility of a party to serve a summons on its witnesses, we requested that Staff make the necessary arrangements for service as Driver was unrepresented and out of the country, to facilitate the process and to limit the risk of delays. Staff succeeded in serving R.M. personally and he appeared to testify at the hearing on the merits. Staff made all reasonable efforts to serve D.H., however, he was in Florida, would not provide any contact information to Staff to allow Staff to effect service of the summons and informed Staff that he would not be back in Canada prior to the conclusion of the hearing on the merits. As a result, D.H. did not testify.

**C. Taylor's Representation Status**

[59] On April 14, 2011, we were informed that Taylor had contacted an individual to represent him. Taylor informed us that the individual had resigned as a member of the Law Society of Upper Canada ("**LSUC**") and was seeking reinstatement. Staff objected to Taylor's proposed representative on the basis that the individual was not qualified to act in these proceedings based on his status with the LSUC. Staff submitted that, pursuant to rule 1.1 and subrule 1.7.1(1) of the Commission Rules, a party may only be represented by a representative licensed by the LSUC.

[60] Once Taylor informed his proposed representative of Staff's objection, he declined to represent Taylor. As a result, Taylor represented himself for the duration of the hearing on the merits.

### D. Taylor's Failure to Appear on Certain Days of the Hearing

[61] As stated above, Taylor only attended portions of the hearing on the merits.

[62] Subsection 7(1) of the SPPA provides that a tribunal may proceed in the absence of a party when that party has been given adequate notice:

> **Effect of non-attendance at hearing after due notice**
>
> **7.**(1)Where notice of an oral hearing has been given to a party to a proceeding in accordance with this Act and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

[63] Taylor was aware of the hearing dates in this matter. He attended the hearing on April 11 and 13, 2011. He attended on April 14, 2011 and left the hearing room at 10:23 a.m. without explanation.

[64] After Taylor left the hearing room, we requested that Staff contact Taylor to keep him apprised of the status of the hearing and that Staff inform Taylor that he could, and was encouraged to, return and attend the hearing. Staff also advised us that Taylor had been informed that he was free to request transcripts of the hearing on the merits from the court reporter. Taylor returned to the hearing on April 20, 2011.

[65] We were satisfied that Taylor was aware of the hearing dates and that the proceeding could continue in his absence in accordance with subsection 7(1) of the SPPA.

## III. POSITIONS OF THE PARTIES

### A. Staff's Allegations

[66] Staff alleges that the conduct of the Respondents was in contravention of the OSA and/or the CFA. The specific allegations of breaches of the OSA and the CFA are set out in Staff's Statement of Allegations in paragraphs 38 to 46 which are reproduced below:

> Para. 38: The respondents' activities in respect of the Axcess Automation Investment constituted trading in contracts without registration in respect of which no exemption was available, contrary to section 22 of the *Commodity Futures Act*.
>
> Para. 39: The respondents' activities in respect of the Axcess Automation Investment constituted trading in securities without registration in respect of which no exemption was available, contrary to section 25 of the *Securities Act*.
>
> Para. 40: The respondents, except Ronald Mainse, undertook activities in respect of the Axcess Fund Investment which constituted trading in securities without registration in respect of which no exemption was available, contrary to section 25 of the *Securities Act*.
>
> Para. 41: The respondents, except Ronald Mainse, undertook activities in respect of the Axcess Fund Investment which constituted trades in securities which were distributions for which no preliminary prospectus or prospectus was filed or receipted by the Director, contrary to section 53 of the *Securities Act*.
>
> Para. 42: Driver, the Axcess Companies, Taylor and the Taylor Companies directly or indirectly engaged in or participated in an act, practice or course of conduct in respect of the Axcess Automation Investment relating to commodities or contracts which he or it knew, or reasonably ought to have known, perpetrated a fraud on investors, contrary to section 59.1(b) of the *Commodity Futures Act*.
>
> Para. 43: Driver, the Axcess Companies, Taylor and the Taylor Companies directly or indirectly engaged in or participated in an act, practice or course of conduct in respect of the Axcess Automation and Axcess Fund Investments relating to securities which he or it knew, or reasonably ought to have known, perpetrated a fraud on investors, contrary to section 126.1(b) of the *Securities Act*.

Para. 44: Each of the individuals who are directors and officers of the corporate respondents, including *de facto* directors and officers of the corporate respondents, authorized, permitted or acquiesced in the corporate respondents' non-compliance with Ontario commodity futures law and accordingly, failed to comply with Ontario commodity futures law contrary to section 60.5 of the *Commodity Futures Act*.

Para. 45: Each of the individuals who are directors and officers of the corporate respondents, including *de facto* directors and officers of the corporate respondents, authorized, permitted or acquiesced in the corporate respondents' non-compliance with Ontario securities law and accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the *Securities Act*.

Para. 46: The respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets.

**B. The Respondents**

[67] On the first day of the hearing on the merits, counsel for Reynold informed the Panel that Reynold admitted Staff's allegations set out in the Statement of Allegations that pertain to him. In particular, he admitted the breaches of the registration requirements, whether under the OSA or the CFA, and the prospectus requirements, and acknowledged his liability as a director and/or officer of WCC.

[68] Although Driver and Taylor did not testify, they made closing submissions on May 25, 2011.

[69] We set out the positions of the Respondents below.

**1. Driver's Submissions**

[70] n his oral submissions, Driver took issue with Staff's investigation. He submitted that many Canadian investors were not interviewed by Staff. Further, he submitted that Staff refused to accept statements that he produced which show that one of his trading accounts generated at least 68% profit in three months, and that Staff had tampered with the evidence to create the appearance that his trading activities resulted in a loss. He argued that "the public interest is not being protected because the OSC has not done a complete job with their investigation" (Hearing Transcript dated May 25, 2011 at p. 78).

[71] Driver also submitted that he was not aware that ICS was a corporation of 50 investors and that he "was liable to see through to all their additional investors" (Hearing Transcript dated May 25, 2011 at p. 77).

[72] It was Driver's submission that Taylor misappropriated $400,000 of investor funds and that he never received those funds from investors. He also submitted that Taylor and R.M., Taylor's business partner and a witness called by Driver, threatened to go to law enforcement authorities unless he paid them a large sum of money.

[73] Driver submitted that he was "anxious to protect the innocent investors" and that his "intent was to provide this protection under a regulated hedge fund and get rid of the greed" (Hearing Transcript dated May 25, 2011 at p. 78). He submitted that he had "no desire for personal gain until all this was sorted out" (Hearing Transcript dated May 25, 2011 at p. 78).

**2. Taylor's Submissions**

[74] Taylor also took issue with Staff's investigation. He submitted that Staff did not speak to many of the investors, the mediators who were retained by Taylor in an attempt to resolve the communication problems between him and Driver, or the staff at Taylor's office who were familiar with the situation.

[75] Taylor challenged Staff's flow of funds analysis and argued that "those numbers are inaccurate, duplicates, missing, misapplied" (Hearing Transcript dated May 25, 2011 at p. 128).

[76] I n his submissions, Taylor described that his role was to "receive copies of the wires and agreements which they had sent to Mr. Driver so that we could compare their transactions with the spreadsheets which were supplied by Mr. Driver when they arrived … If we found discrepancies in the spreadsheet … we had copies of the records and were sent by the participants to Mr. Driver on their behalf to get the spreadsheet fixed or adjusted" (Hearing Transcript dated May 25, 2011 at p. 102). He submitted that "We were not administrators of the program in any real way … We didn't handle the money. We didn't have access to anything except Mr. Driver, which became sporadic" (Hearing Transcript dated May 25, 2011 at p. 103).

[77] Taylor disputed that he acted fraudulently. He maintained that he was "dealing with communication and logistical issues in the process" and this was not hidden from investors (Hearing Transcript dated May 25, 2011 at p. 84). He stated "[the Axcess Automation Investment] seemed to be working and generating the results. I had [no] reason to deny the results as they were coming. The problem always was the details, the administration …" (Hearing Transcript dated May 25, 2011 at p. 109). He expressed that he did not understand how communicating what he knew with respect to the spreadsheets amounted to fraud or deception, or how he was being "align[ed] … as a co-mastermind" (Hearing Transcript dated May 25, 2011 at p. 119). He submitted that "I did not have criminally wrong, as best as I can tell, mind or actions. I got caught in something that after the fact started coming out. I realized that this friend seemed to have used me" (Hearing Transcript dated May 25, 2011 at pp. 115 and 116).

[78] Taylor submitted that he had no relevant education or experience in the capital markets or computer software. In his submissions, he referred to his friendship with Driver and described Driver as "somebody that had a big, generous heart and I trusted him in virtually every area. He had never shown me reason to not trust him" (Hearing Transcript dated May 25, 2011 at p. 93).

[79] He further submitted that when he came to realize "Mr. Driver was over the maximum number that he could trade for privately we immediately began to encourage him to get on the right side of regulation" (Hearing Transcript dated May 25, 2011 at pp. 104 and 105). According to Taylor, he retained mediators when there was a communication breakdown between him and Driver and offered to pay for someone to assist Driver with administrative work. As well, he submitted that he stopped soliciting new investors in 2007.

[80] Taylor submitted that he "focused on protecting as best I knew how the participants that were involved. I did everything I knew to do" (Hearing Transcript dated May 25, 2011 at p. 81).

**3. Reynold's Admissions**

[81] Reynold admitted his conduct described in the following paragraphs of the Statement of Allegations:

| | |
|---|---|
| Para. 4: | "… Reynold Mainse, World Class Communications Inc. ("WCC") … traded to investors, but were not party to the fraud". It was explained that Reynold had no prior investment experience and was not aware of the securities law implications until he spoke to a lawyer in or around October 2008. Reynold now understands that his conduct, which essentially entailed facilitating communications between Driver and investors and assisting Driver to encourage prospective investors, constituted acts in furtherance of a trade. Reynold does not dispute that he traded in securities or engaged in acts in furtherance of a trade. |
| Para. 12: | "WCC was incorporated in Ontario in September 1998. In December 2008, WCC's registration was cancelled for failure to comply with the *Corporations Tax Act*, R.S.O. 1990, c. C. 40, as amended". |
| Para. 13: | "… WCC [has] never been [a] reporting [issuer] in Ontario and [has] never been registered to trade securities … in Ontario". |
| Para. 17: | "Reynold Mainse is an Ontario resident. Reynold Mainse was the President and sole director of WCC, which had contracts with the Christian non-profit charitable organization to lead and promote international humanitarian aid missions". It was explained that WCC's connection to this proceeding arose as a result of its receipt of funds from Driver. |
| Para. 20: | "… Reynold Mainse … [has] never been registered to trade securities … in Ontario". |
| Para. 33: | "Between July 2007 and March 2009, Reynold Mainse's trading in the Axcess Automation Investment resulted in investments by about 22 investors of about USD 4,100,000.00. Of this amount, Driver paid back about USD 2,875,054.00 to these investors, which Driver characterized as returns on investments". There is no dispute that Reynold played a role in introducing prospective investors to Driver. Counsel for Reynold explained that, while Reynold introduced investors to Driver, some of them, particularly the larger investors, subsequently dealt with Driver directly. As a result, although Reynold could not testify about the exact amounts invested by those investors with whom he had been involved, he did not contest the amounts calculated by Staff. |

Para. 34: "Reynold Mainse identified and corresponded with prospective investors and provided them with copies of the Private Offering Memorandum which described the Axcess Fund Investment".

Para. 35: "Reynold Mainse received commissions directly, and through WCC, of about CAD 210,219.50".

Para. 39: "[Reynold's] activities in respect of the Axcess Automation Investment constituted trading in securities without registration in respect of which no exemption was available, contrary to section 25 of the *Securities Act*".

Para. 40 "[Reynold] undertook activities in respect of the Axcess Fund Investment which constituted trading in securities without registration in respect of which no exemption was available, contrary to section 25 of the *Securities Act*".

Para. 41 "[Reynold] undertook activities in respect of the Axcess Fund Investment which constituted trades in securities which were distributions for which no preliminary prospectus or prospectus was filed or receipted by the Director, contrary to section 53 of the *Securities Act*". Specifically, Reynold's counsel explained that:

> There's also no dispute that the – that in effect the investment scheme as offered by Mr. Driver when analyzed through the lens of securities laws would constitute a distribution of securities. In this case the securities – we agree with the analysis of OSC staff that the agreements that were entered into with respect to the first phase of the investment scheme, being the Axcess Automation phase, the – that that letter agreement between the investor and Axcess Automation would constitute an investment contract and therefore qualify as a security under the *Securities Act*. That by acting to assist in the distribution of those securities, there is therefore at the same time as a breach of the registration requirements there's a breach of the prospectus requirements of the [OSA] and as is often the case, those two breaches go hand in hand and the same conduct results in a breach of both sections and that is why it has occurred here and Mr. Reynold Mainse admits that.

(Hearing Transcript dated April 11, 2011 at pp. 58 and 59)

Para. 45 "Each of the individuals who are directors and officers of the corporate respondents, including *de facto* directors and officers of the corporate respondents, authorized, permitted or acquiesced in the corporate respondents' non-compliance with Ontario securities law and accordingly, failed to comply with Ontario securities law contrary to section 129.2 of the *Securities Act*".

Para. 46 "The respondents' conduct was contrary to the public interest and harmful to the integrity of the Ontario capital markets". Reynold's counsel explained that:

> … Reynold Mainse's participation in this and his actions that assisted Mr. Driver in obtaining investor funds was harmful to the public interest and Reynold Mainse's failure to be engaged within the securities regulatory regime, which may well have stopped this at an earlier stage, that his failure to do that has been contrary to the public interest and harmed the integrity of the Ontario capital markets. So Mr. Mainse makes that admission as well.

(Hearing Transcript dated April 11, 2011 at pp. 59 and 60)

## IV. TESTIMONY

### A. Overview

[82] Staff called the following six witnesses at the hearing on the merits:

(a) Daniella Kozovski ("**Kozovski**") is an investigative counsel in the Enforcement Branch of the Commission. She testified about the investigative steps taken in this matter, including Staff's cooperation with the SEC and the CFTC, the compelled examinations of Driver and Taylor, and the documents obtained by Staff. She also testified about the funds raised from investors and the commissions received by the Respondents.

(b) Ramy Kassabgui ("**Kassabgui**") is an Internet Surveillance Specialist from the Los Angeles Regional Office of the SEC. His evidence pertained to the use of investor funds by Driver and his trading activities.

(c) A.T. worked for Taylor in 2007 as an event coordinator and assistant. She testified about her contractual relationship with Taylor, Taylor's office, the other employees who worked for Taylor, the work that she did for Taylor relating to the Axcess Automation Investment, her interaction with investors and her investment in Axcess Automation.

(d) P.A. was an investor in the Axcess Automation Investment through Taylor. He gave evidence about his investment and his interaction with Taylor.

(e) Rutledge, one of the Settling Respondents, testified about his involvement in the Axcess Investments.

(f) Ronald, another of the Settling Respondents, also testified about his involvement in the Axcess Investments.

[83] Reynold, who was interviewed voluntarily by Staff and voluntarily provided Staff with documents relating to the Axcess Investments, made admissions on the first day of the hearing on the merits. His counsel explained that, but for Reynold's personal financial situation, he would have settled with the Commission. His counsel further explained that Reynold does not have the means to disgorge to the Commission the funds he received through his and WCC's involvement in the Axcess Investments given the nature of his career and the dedication of his time and resources, including the money that he received from Driver, to Christian not-for-profit charitable organizations. As a result, he elected to participate in the hearing on the merits and testified to provide a full factual record to the Commission.

[84] Driver did not testify. He called one witness, R.M., who was an investor in the Axcess Automation Investment and a business partner of Taylor, so that he could "testify to [his] meetings and relationship to Gordon Driver and Steve Taylor. [He would] be questioned about e-mails received or sent by [him]" (Hearing Transcript dated April 14, 2011 at p. 103).

[85] None of the remaining Respondents testified or called any evidence.

[86] Staff introduced into evidence a number of documents which are hearsay evidence and admissible pursuant to subsection 15(1) of the SPPA. They include e-mails from Driver and Taylor regarding the Axcess Investments, such as e-mails between Driver and Taylor and e-mails between Taylor and investors. The e-mails were obtained pursuant to a summons that Staff served on Taylor and subpoenas that the SEC and the CFTC served on Driver.

[87] Staff also relies on client files maintained by Taylor which Staff also obtained pursuant to the summons described in paragraph [86] above. Each such client file typically included banking documents showing the investments made by the investor, the funds paid to the investor and a spreadsheet maintained by Taylor in relation to the investments made by the investor.

[88] Although not evidence, Staff presented us with an analysis showing the funds raised from investors and the funds received by Rutledge and Taylor. Staff prepared the analysis on the basis of banking records obtained by Staff, the SEC and the CFTC directly from financial institutions as well as client files maintained by Taylor. We also received an analysis of the use of investor funds by Driver and his trading activities in three trading accounts located in the U.S., prepared by the SEC on the basis of the trading records obtained by the SEC.

### B. Admissibility of Compelled Testimony

[89] Driver gave evidence in the U.S. under oath on April 23 and 24, 2009 pursuant to subpoenas issued by the SEC and the CFTC. Driver's counsel was present throughout the compelled interview and Staff participated by telephone. Taylor gave evidence in this matter under oath on August 6 and 26, 2009 pursuant to a summons issued under section 13 of the OSA. Taylor was made aware of his right to be represented by counsel during his examination but chose not to exercise that right.

[90] Staff sought to have the transcripts of the compelled examinations of Driver and Taylor admitted for the truth of their contents. Staff submitted that statements made by a respondent would only be used as evidence against that particular respondent.

[91] On April 19, 2011, we made the following oral ruling with reasons to follow:

> … we've considered the submissions of staff and the proposal to employ the compelled testimony of each of Mr. Taylor and Mr. Driver and the Panel has concluded that we will permit the use of the compelled testimony for the reasons that will be set out in our decision relating to the matter.
>
> The Panel would, however, make two observations. Number one, that the materials provided in evidence should meet the purpose set out in paragraph 10 of your submission, as stated is already your intention. And, secondly, that they should – and we were somewhat unclear about your comment in that regard, but that they should be submitted with a reasonable level of specificity that supports both staff's submissions and the statement of allegation, so that we can tie those submissions and the statement of allegations to specific references in the compelled testimony and support.
>
> If I understood you correctly, you proposed to provide more than that to give a context for the statement that was made, but the Panel does not wish to read the entire compelled testimony in order to find them.
>
> (Hearing Transcript dated April 19, 2011 at pp. 187 and 188)

[92] In his closing arguments, Taylor objected to the use of his compelled evidence.

[93] As mentioned in paragraph [86] above, subsection 15(1) of the SPPA gives the Panel discretion to admit relevant evidence that might not be admissible as evidence in a court, including hearsay evidence:

> **What is admissible in evidence at a hearing**
>
> **15.**(1)Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,
>
> (a) any oral testimony; and
>
> (b) any document or other thing,
>
> relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[94] The Commission has held that "Staff is entitled to use the information and materials of its investigation (i.e. compelled testimony gathered pursuant to sections 11 and 13 of the [OSA]) in this merits hearing which is directly related to the investigation" (*Re Al-Tar Energy Corp.* (2010), 33 O.S.C.B. 5535 ("***Al-Tar***") at para. 40). The compelled testimony before us is hearsay evidence that is admissible under the SPPA, subject to the weight to be accorded to the evidence by the Panel. As Driver and Taylor did not testify, we accept the transcripts of their compelled examinations as the best evidence in the limited circumstances to which they relate. We also agree with Staff's position set out in paragraph [90] that the compelled testimony made by a respondent would only be used as evidence against that particular respondent.

## V. THE INVESTMENT SCHEMES

### A. The Axcess Investments

[95] We were presented with evidence that Driver operated two investment schemes during the Material Time, namely, the Axcess Automation Investment and its successor, the Axcess Fund Investment. Staff's flow of funds analysis shows that approximately 252 investors, most of whom were Ontario residents, invested a total of US$15,169,160.72 in the Axcess Investments. Almost all of the foregoing amount can be attributed to the Axcess Automation Investment. Staff's analysis also shows that US$10,356,704.72 was returned to investors.

#### 1. The Axcess Automation Investment

[96] The Axcess Automation Investment, also known to some investors as the "test", was an investment scheme operated by Driver from February 2006 to the end of 2008. The Axcess Automation Investment was premised on Driver's trading in E-mini

S&P 500 futures on the Chicago Mercantile Exchange using his proprietary software which would purportedly generate superior returns by monitoring and capitalizing on market volatility.

[97] An investor's participation in the Axcess Automation Investment was evidenced by a letter of agreement that set out the terms of the investment. There are various versions of the letter of agreement in evidence. For example, some letters of agreement identify Driver as the party to the agreement and an "attorney-in-fact" of the investor's funds while others identify Axcess Automation as the party to the agreement and the "trader". In addition, there is an agreement entitled "letter of loan agreement for a test" which will be discussed in further detail in paragraph [119] below. The versions of the letter of agreement in evidence all provide that:

(a) The investor's funds will be used for the purpose of trading E-mini S&P 500 futures;

(b) The investor understands and accepts the risk of the investment and will not hold Driver liable for any losses; and

(c) The investor will receive the principal amount of his or her investment and 20% to 25% of the profit generated by Driver.

In some versions of the letter of agreement, the investment is stated to be on a "best efforts basis".

[98] At the hearing, we heard evidence from witnesses who invested in the Axcess Automation Investment. The evidence shows that (i) A.T. invested US$10,000 in April 2007; (ii) P.A. made an initial investment of US$1,000 in May 2006 and a subsequent investment of US$1,566.08 in June 2006; (iii) Rutledge made an initial investment of $10,000 in July 2007 and a subsequent investment of $16,000 in April 2008; (iv) Ronald invested US$31,200 in July 2007; (v) Reynold invested US$5,000 in July 2007; and (vi) R.M. invested US$1,000 in May 2006, US$3,566.08 in June 2006, US$5,000 in August 2006 and US$6,617.83 in November 2006. A company controlled by R.M. invested US$34,990 in March 2007.

[99] The foregoing witnesses testified about their understanding of the Axcess Automation Investment. For example, witnesses such as P.A. and Rutledge confirmed that the terms of the letter of agreement were consistent with their understanding of the Axcess Automation Investment.

[100] The witnesses were led to believe that Driver's proprietary software would generate "a superior return" by capitalizing on market volatility (Hearing Transcript dated April 14, 2011 at p. 111). In other words, investors would be able to realize returns based on price movement in the market and it did not matter whether the market went up or down. At the hearing, P.A. confirmed his understanding as follows: "whether the market went up or down, Mr. Driver's automated computer system would make money" (Hearing Transcript dated April 14, 2011 at p. 145). Rutledge also testified that "But when a trading index is just flat-lining, your opportunity to make money is minimized. It's the volatile swings where you have your greatest opportunity to make money" (Hearing Transcript dated April 15, 2011 at pp. 99 and 100).

[101] According to the witnesses, the proprietary software designed by Driver would "trade in an automated fashion" (Hearing Transcript dated April 14, 2011 at p. 111). On this point, Rutledge, Ronald and Reynold further elaborated that the computer software was purportedly able to "track the movement of the markets" (Hearing Transcript dated April 15, 2011 at p. 109). The program would indicate when it was a good time to buy and sell, and it was up to Driver to determine whether to execute a trade.

[102] Consistent with the terms set out in the letter of agreement, P.A., Rutledge, Ronald and Reynold understood that investors would receive 25% of the profits generated by Driver's trading activities as a return on their investment. They explained that the remaining 75% of the profits would be retained by Driver, some of which was purportedly used to satisfy his tax obligations with respect to the profits generated.

[103] Witnesses testified that it was conveyed to them that the Axcess Automation Investment was meant to be a short-term investment. According to P.A., he was told that Driver "did not want to commit to a long-term situation where he would be investing other people's funds" and it was "with some convincing that Gordon [Driver] was agreeing to use investors' funds to essentially test out his program" (Hearing Transcript dated April 14, 2011 at p. 125). Rutledge also testified about his understanding, one shared by Ronald and Reynold, that Driver "had no long-term goal or plan to be a day trader, that this was something that was a means to an end. His heart, his passion was in the film industry" (Hearing Transcript dated April 15, 2011 at p. 61). Accordingly, it was the understanding of some investors, such as P.A., Ronald and Reynold, that the continuing participation in the Axcess Automation Investment was subject to Driver's willingness to trade at the end of the terms set out in their respective letters of agreement.

[104] We were presented with evidence that, at its inception, the Axcess Automation Investment had a term of 30 days. At the end of the term, investors had the option of remaining in the program, adding funds to their existing investments or having some or all of their investments returned, subject to Driver's decision as to whether or not he intended to continue trading for

investors. Subsequently, the terms of the investments became 90 days. As investors were given the option to renew their investments at the end of each term, most of the investments continued beyond the 30 or 90-day period stipulated in the various letters of agreement.

[105] As discussed above, investors were given the option to withdraw some or all of their investments. Rutledge and Reynold testified that withdrawal requests made by investors in the Rutledge-Ronald Group and the Reynold Group (as such terms are defined in paragraph [113] below) during the period that the Axcess Investments were still in operation were honored for the most part. We heard further evidence that investors in the Taylor Group (as such term is defined in paragraph [113] below) were also given the option to withdraw funds from their investments. P.A. testified that he confirmed with Driver in e-mail exchanges dated October 10, 2006 that it was open to investors to withdraw their funds. He withdrew US$3,000 in February 2007 and US$10,000 in October 2007.

**2. The Axcess Fund Investment**

[106] The Axcess Fund Investment, also known as the "hedge fund", was the successor to the Axcess Automation Investment and some of the funds invested in the Axcess Automation Investment were purportedly to be transferred to the Axcess Fund Investment. Although it is unclear from the evidence when the Axcess Fund Investment commenced, it appears that the Axcess Fund Investment was mentioned to investors as a possibility in 2008 and first came into existence some time in late 2008 while its predecessor, the Axcess Automation Investment, was still in operation. On April 15, 2009, the Commission issued the Temporary Order against Driver and the Axcess Companies which resulted in the cessation of the operations of the Axcess Investments.

[107] The Axcess Fund Investment was also premised on the use of investors' funds by Driver to trade in E-mini S&P 500 futures, as well as other futures contracts or options. The PPM states: "The business of the Partnership includes, but is not limited to, buying and selling futures contracts, futures options, and any rights pertaining thereto". At the hearing, P.A. and Rutledge confirmed their understanding that the core profit-generating activity would remain Driver's trading activities. Reynold also believed that he would obtain similar returns on the Axcess Fund Investment "because [Driver's] performance would not have changed" (Hearing Transcript dated April 20, 2011 at p. 29).

[108] The structure of the investment scheme, however, was altered purportedly on the advice of Driver's legal counsel to enable Driver to trade on a larger scale. In a teleconference with investors on March 31, 2009, Driver stated:

> ... and when [the Axcess Automation Investment] became successful my concern was that okay so is this you know are we legally having a problem here because of the success? So and at that time that I start to visit the options of getting fully registered into a hedge fund and getting my license and to be able to proceed forward to get people taken care of and to carry on into something that's a, a commercial [*sic*] viable product.
>
> (Transcript of Teleconference on March 31, 2009 at p. 7)

[109] According to the PPM, Axcess Fund was a limited partnership of which Axcess Fund Management was to be the general partner and the purchasers of limited partnership interests were to be the limited partners. Investors had an opportunity to become a limited partner by purchasing limited partnership units at a minimum price of US$250,000.

[110] The PPM further stipulates that "Accredited Investors and a limited number of non-accredited investors will be permitted to make investments in the Partnership pursuant to this offering". The PPM defined "accredited investor" as (i) "Any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase exceeds $1,000,000"; and (ii) "Any natural person who had an individual income in excess of $200,000 in each of the most recent years or joint income with that person's spouse in excess of $300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year".

[111] We heard evidence from witnesses that investors were provided with the PPM and a subscription agreement and that an investor could only participate in the Axcess Fund Investment if he or she was deemed eligible by the general partner. In their evidence, the witnesses described the eligibility requirements as requiring "A million dollars [of] assets", "a net worth of … a million dollars", "an annual income of $200,000 U.S.", or being qualified as an "accredited investor" or "sophisticated investor" (Hearing Transcript dated April 14, 2011 at p. 198; and Hearing Transcript dated April 15, 2011 at pp. 129 and 135). P.A.'s testimony, supported by an e-mail from Taylor to another investor dated September 18, 2008 which was introduced into evidence by Staff, suggests that another requirement to participate in the Axcess Fund Investment was to "give back" or to donate to a faith-based charity.

### B. The Investor Groups

[112] The evidence shows that Driver had limited contact with the investors and that many investors learned about and participated in the Axcess Investments through Taylor, Reynold or the Settling Respondents who became known as the "point persons".

[113] The evidence also shows that each of Taylor and Reynold independently operated his own investor groups and that the Settling Respondents together operated another independent investor group. These investor groups will be referred to as the "**Taylor Group**", the "**Reynold Group**" and the "**Rutledge-Ronald Group**", respectively.

#### 1. The Taylor Group

[114] An e-mail from Driver to Taylor dated April 26, 2006 in evidence describes the formation of the arrangement between Driver and Taylor. In the e-mail, Driver and Taylor discussed the prospects of Taylor introducing investors to Driver's "investment opportunity".

[115] Taylor acted as a point person for the Taylor Group throughout the Material Time. He established a scheme that facilitated the participation of two groups of investors in the Axcess Automation Investment that were described as (i) the "direct investors"; and (ii) the "piggyback investors".

[116] The direct investors were investors in the Taylor Group who met the minimum investment requirement of US$25,000 and participated in what was known as the "test", that is, the Axcess Automation Investment. The letter of agreement signed by a direct investor was an agreement between the direct investor and Driver, and included a statement that Driver would not be held liable for the investor's losses. Direct investors were instructed to wire their funds directly to Driver pursuant to wiring instructions provided by Taylor. The investments of the direct investors were administered by Taylor and various versions of the letter of agreement signed by direct investors identify Taylor as having "organized" the agreement or as having coordinated the paperwork for the investment.

[117] P.A., an investor discussed in paragraph [82] above, was a direct investor. Although his principal investment was less than the minimum investment requirement of US$25,000, he was classified as a direct investor because he invested directly with Driver prior to the implementation of a minimum investment requirement, wired funds directly to Driver and entered into a letter of agreement with Driver.

[118] The piggyback investors, including, for example, R.M. and A.T., were investors who wished to invest in the Axcess Automation Investment but were unable to meet the minimum investment requirement of US$25,000. Taylor provided the piggyback investors with the opportunity to invest in the Axcess Automation Investment by pooling their funds and investing the pooled funds with Driver.

[119] The letters of agreement that evidence the investments by piggyback investors were in a different form than the agreements signed by the direct investors. The letter of agreement signed by a piggyback investor was called the "letter of loan agreement for a test". Staff's evidence indicates that a letter of loan agreement for a test was a loan agreement between the piggyback investor and Taylor, rather than Driver, and it is "Taylor or any other person" who would not be held liable for investors' losses under these agreements.

[120] To participate in the Axcess Automation Investment, the piggyback investors would first forward their funds to accounts in the name of Taylor or 1303066 by either wire or cheque. Taylor would, in turn, send the funds to Driver through ICS.

[121] Staff's analysis shows that the Taylor Group was comprised of approximately 130 investors who invested a total of US$2,126,085.48. Of this amount, US$1,337,836 could be attributed to the direct investors and US$788,249.48 could be attributed to the piggyback investors. The Taylor Group collectively received payments from Driver totaling US$4,098,564.91, of which US$2,913,145.54 was received by the direct investors and US$1,185,419.37 was received by the piggyback investors.

#### 2. The Reynold Group

[122] Reynold testified at the hearing and admitted that he acted as a point person for the Reynold Group.

[123] Reynold testified that he first met Driver as a teenager at Crossroads Christian Communications, a Christian media ministry, and did not have any further contact with Driver until he moved into the neighborhood in which Reynold's brother, Ronald, resided.

[124] Reynold knew Driver to be a "computer expert" (Hearing Transcript dated April 19, 2011 at p. 118). In 2007, he visited Driver at his home in Freelton, Ontario to purchase a computer from him. During the visit, he noticed charts on Driver's computer screen and inquired about them. Driver explained that he was trading E-mini S&P 500 futures. Driver further explained that he

helped develop software to trade which would purportedly "give him the edge" (Hearing Transcript dated April 19, 2011 at p. 123). As a result, Driver "decided to do some paper trading … and it worked really well for [him] and then he started to trade real money once he felt he proved the software is really working" (Hearing Transcript dated April 19, 2011 at p. 122). Driver told Reynold that he was "batting 700 or batting 800", meaning "7 or 8 out of ten trades were favourable for him" (Hearing Transcript dated April 19, 2011 at p. 123). Driver also gave Reynold a brief demonstration during which purportedly "in just a couple of minutes he made about 300 for so, [$]3 or $400" (Hearing Transcript dated April 19, 2011 at p. 122).

[125] At the hearing, Reynold testified that he was very impressed with the results of the demonstration, the technical equipment and the professional setup with "three large monitors in front of him with a lot of information on it" (Hearing Transcript dated April 19, 2011 at p. 121). He thought that the investment was a "fabulous" opportunity and asked Driver if he would trade on his behalf (Hearing Transcript dated April 19, 2011 at p. 124).

[126] Reynold described Driver as being reluctant to trade for Reynold initially, however, when Reynold asked approximately a week later whether Driver would be willing to trade for him if he "gave [Driver] a thousand dollars", Driver agreed to trade for Reynold provided that he was able to "pull together a few of your family or friends and you pull together $25,000" (Hearing Transcript dated April 19, 2011 at p. 124). Reynold testified that Driver "made it clear very early on that he wants to be busy with his trading. He didn't want to deal with a lot of people, so that's when he asked me if I could communicate for him, keep people informed and communicate for him" (Hearing Transcript dated April 19, 2011 at p. 146).

[127] From July 2007 to the end of 2008, Reynold acted as a point person between Driver and investors who were identified by Reynold at the hearing as being his family and friends. The Reynold Group, comprised of 23 people, invested a total of US$4,131,400.96 and subsequently received payments from Driver totaling US$2,875,054.87.

### 3. The Rutledge-Ronald Group

[128] The Settling Respondents testified that they acted as point persons for the Rutledge-Ronald Group.

[129] Ronald also testified that he had been acquainted with Driver in his teenage years, and they only renewed their friendship when Driver moved into the same neighbourhood as Ronald in 2005.

[130] Ronald testified that, in 2007, he learned from his brother, Reynold, that Driver was conducting trading using his computer program. According to Ronald, when he mentioned this to Driver, Driver explained that he did not tell Ronald about his trading activities "because of [their] friendship…Didn't want to have anything come between it" (Hearing Transcript dated April 19, 2011 at p. 53). Nonetheless, having presented Reynold with the opportunity to act as a point person, Driver asked Ronald whether he would like to do the same and "[get] a group of people together to invest" (Hearing Transcript dated April 19, 2011 at p. 55).

[131] Ronald indicated that he did not want to be a point person and asked Driver whether another person could act as a liaison between Driver and investors and Driver indicated that he would be content with that arrangement. Rutledge subsequently became the point person for the Ronald-Rutledge Group.

[132] Rutledge testified that, while Driver had never given him or Ronald a script or asked them to solicit investors, Driver was aware that Rutledge was acting as a point person and was introducing investors to the Axcess Automation Investment.

[133] The Rutledge-Ronald Group was comprised of 45 investors who invested a total of US$2,051,199.39 and subsequently received payments from Driver totaling US$746,507.

### 4. Other Investors

[134] Staff's flow of funds analysis shows 54 investors unrelated to the investor groups discussed above. The 54 investors invested a total of US$6,860,474.89 and subsequently received payments from Driver totaling US$2,636,577.94.

## VI. ISSUES

[135] Staff has made allegations with respect to the Axcess Automation Investment under identical provisions of the OSA and CFA (specifically, sections 25, 126.1(b) and 129.2 of the OSA and sections 22, 59.1(b) and 60.5 of the CFA), in each case relating to the same underlying conduct. In paragraph 23 of the Statement of Allegations, Staff alleges that the Axcess Automation Investment can be defined as a "security" within the meaning of the OSA and/or a "contract" within the meaning of the CFA, which is why the OSA and/or the CFA may be triggered:

> The Axcess Automation Investment was a "security" as defined in clauses (n) and/or (p) of section 1(1) of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the "*Securities Act*") and/or a "contract"

> as defined in section 1(1) of the *Commodity Futures Act*, R.S.O. 1990, c. C.20, as amended (the "*Commodity Futures Act*").
>
> [Emphasis added.]

[136] For the reasons set out below, we find that the Axcess Automation Investment is an investment contract and falls in the category of a security and, accordingly, the OSA is applicable. To avoid the unnecessary duplication of allegations and in keeping with the principle articulated in *R. v. Kienapple*, [1975] 1 S.C.R. 729, it is unnecessary to apply the CFA in this matter as the conduct establishing breaches of the CFA is essentially the same conduct that establishes breaches under the identical provisions of the OSA.

[137] Accordingly, this matter raises the following issues for our consideration:

(a) Did the Respondents trade in securities of Axcess Automation Investment and/or the Axcess Fund Investment contrary to subsection 25(1)(a) of the OSA?

(b) Did the Respondents engage in a distribution with respect to the Axcess Fund Investment without a prospectus contrary to subsection 53(1) of the OSA?

(c) Did Driver, the Axcess Companies, Taylor and the Taylor Companies, directly or indirectly, engage or participate in acts, practices or a course of conduct in relation to the Axcess Investments that they knew or reasonably ought to have known would perpetrate a fraud contrary to subsection 126.1(b) of the OSA?

(d) Was Driver responsible for the breaches of the Axcess Companies, was Taylor responsible for the breaches of the Taylor Companies and was Reynold responsible for the breaches of WCC pursuant to section 129.2 of the OSA?

(e) Was the Respondents' conduct contrary to the public interest and harmful to the integrity of the Ontario capital markets?

[138] We will assess each of these issues by considering the evidence in this matter, including the evidence summarized below, and by determining whether, on a balance of probabilities, "… it is more likely than not that the event occurred" (*F.H. v. McDougall*, [2008] 3 S.C.R. 41 ("***McDougall***") at para. 44). As stated by the Supreme Court, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test (*McDougall*, *supra*, at para. 46).

## VII. EVIDENCE AND ANALYSIS

### A. Did the Respondents trade in the securities of the Axcess Automation Investment and/or the Axcess Fund Investment contrary to subsection 25(1)(a) of the OSA?

#### 1. The Applicable Law

#### (a) Securities and Investment Contracts

[139] Subsection 1(1) of the OSA defines a "security" to include:

> (a) any document, instrument or writing commonly known as a security,
>
> …
>
> (e) any bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription…,
>
> …
>
> (n) any investment contract,
>
> …
>
> whether any of the foregoing relate to an issuer or proposed issuer;

[140] The definition of a "security" includes an "investment contract" and, although, the OSA does not define that term, an investment contract has been defined by the Supreme Court as an investment of money in a common enterprise with profits to come from the efforts of others (*Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 S.C.R. 112 ("***Pacific Coast Coin***") at p. 128). According to the Supreme Court, a "common enterprise" describes a situation in which investors' fortunes are interwoven with and dependent upon the efforts and success of those seeking the investment of third parties (*Pacific Coast Coin*, *supra*, at p. 129).

[141] The elements of an investment contract that constitute a security can be summarized as follows:

(a) The advancement of money by an investor,

(b) with an intention or expectation of profit,

(c) in a common enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those who solicit the capital or third parties, and

(d) where the efforts made by those other than the investors are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.

(See *Pacific Coast Coin*, *supra*, at pp. 128 to 132; R*e Sabourin* (2009), 32 O.S.C.B. 2707 ("***Sabourin***") at para. 35; and *Re Borealis International Inc.* (2011), 34 O.S.C.B. 777 ("***Borealis***") at para. 60)

**(b) Trading and Acts in Furtherance of Trades**

[142] Under subsection 1(1) of the OSA, a "trade" in securities includes:

(a) any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in clause (d), a transfer, pledge or encumbrance of securities for the purpose of giving collateral for a debt made in good faith,

(b) any participation as a trader in any transaction in a security through the facilities of any stock exchange or quotation and trade reporting system,

…

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[143] The Commission has established that trading is a broad concept that includes any sale or disposition of a security for valuable consideration, including any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of such a sale or disposition. This interpretation has also been confirmed by the Ontario courts in their acknowledgement that "[r]egarding 'trade', the legislature has chosen to define the term and they have chosen to define it broadly in order to encompass almost every conceivable transaction in securities" (*R v. Sussman* (1993), 16 O.S.C.B. 1209 (Ont. Ct.) at p. 1230).

[144] The Commission has found that a variety of activities constitute acts in furtherance of a trade in securities. For example, the Commission has found that accepting money from investors and depositing investor cheques for the purchase of shares in a bank account constitute acts in furtherance of trades (*Re Limelight Entertainment Inc.* (2008), 31 O.S.C.B. 1727 ("***Limelight***") at para. 133). Other examples of activities that have been considered acts in furtherance of trades by the Commission include, but are not limited to:

(a) Providing potential investors with subscription agreements to execute;

(b) Distributing promotional materials concerning potential investments;

(c) Issuing and signing share certificates;

(d) Preparing and disseminating materials describing investment programs;

(e) Preparing and disseminating forms of agreements for signature by investors;

(f) Conducting information sessions with groups of investors; and

(g) Meeting with individual investors.

(*Re Momentas Corp.* (2006), 29 O.S.C.B. 7408 ("***Momentas***") at para. 80)

[145] The inclusion of the word "indirectly" in the description of acts in furtherance of trades reflects the intention by the legislature to capture conduct which seeks to avoid registration requirements by doing indirectly that which is prohibited directly (*Momentas*, *supra*, at para. 79).

[146] Whether an act is in furtherance of a trade in securities is a question of fact, to be determined in each case, based on whether there is a sufficiently proximate connection to the trade (*Re Costello* (2003), 26 O.S.C.B. 1617 at para. 47).

**(c) Registration**

[147] Subsection 25(1)(a) of the OSA prohibits persons or companies from trading in securities without being registered:

> No person or company shall,
>
> (a) trade in a security or act as an underwriter unless the person or company is registered as a dealer, or is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer;
>
> …
>
> and the registration has been made in accordance with Ontario securities law and the person or company has received written notice of the registration from the Director and, where the registration is subject to terms and conditions, the person or company complies with such terms and conditions.

[148] Registration requirements play a key role in Ontario securities law. They impose requirements of proficiency, good character and ethical standards on those people and companies trading in and advising on securities. As the Commission stated in *Limelight*:

> Registration serves an important gate-keeping mechanism ensuring that only properly qualified and suitable individuals are permitted to be registrants and to trade with or on behalf of the public. Through the registration process, the Commission attempts to ensure that those who trade in securities meet the applicable proficiency requirements, are of good character, satisfy the appropriate ethical standards and comply with the [OSA].
>
> (*Limelight*, *supra*, at para. 135)

[149] In order for there to be fairness and confidence in Ontario's capital markets, it is critical that brokers, dealers and other market participants who are in the business of selling or promoting securities meet the minimum registration, qualification and conduct requirements of the OSA (*Momentas*, *supra*, at para. 46).

[150] Accordingly, the requirement that individuals and companies be registered to trade in securities is an essential element of the regulatory framework established to achieve the purposes of the OSA (*Limelight*, *supra*, at para. 135).

**2. Analysis**

**(a) Registration**

[151] Based on the testimony of Kozovski and the section 139 certificates introduced into evidence by Staff, it is clear that none of the Respondents was registered in any capacity under the OSA.

**(b) Investment Contracts**

[152] For the following reasons, the letters of agreement relating to the Axcess Automation Investment satisfy the requirements for an investment contract set out in *Pacific Coast Coin* and are therefore "securities" within the meaning of the OSA:

(a) Investors provided money to be invested in the Axcess Automation Investment. As set out in paragraphs [95] and [98] above, we heard from a number of witnesses who invested in the Axcess Automation Investment. We

accept Staff's analysis that approximately 252 investors invested a total of US$15,169,160.72 in the Axcess Investments and that most of the funds raised could be attributed to the Axcess Automation Investment.

(b) Investors had expectations of profit based on the terms of the letters of agreement and the representations made to them. They expected that they would receive 20% to 25% of the total trading profits generated by Driver.

(c) The investors and Driver were in a common enterprise in which the investors' fortunes were interwoven and dependent on Driver's successful trading of E-mini S&P 500 futures using his proprietary software. This is well illustrated by P.A.'s testimony with respect to an e-mail he received from Taylor dated June 16, 2006 stating that "The Test's gain as of today, June 16 is $22,100". P.A. explained his understanding that a pool of funds, including his own investment, was being used by Driver to trade in E-mini S&P 500 futures and that the gain of US$22,100 as of June 16, 2006 was shared by all of the investors, including himself.

(d) As P.A. and Ronald testified, the investors themselves had no role in the Axcess Automation Investment beyond the provision of funds. Driver's efforts with respect to his trading activities determined the failure or success of the enterprise.

[153] A limited partnership unit of the Axcess Fund is clearly a "bond, debenture, note or other evidence of indebtedness, share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription" as set out in paragraph (e) of the definition of "security" in subsection 1(1) of the OSA. The limited partnership units also satisfy the requirements for an investment contract as described in *Pacific Coast Coin* for the reasons set out in paragraph [152] above.

[154] We find that the agreements underlying the Axcess Automation Investment and the limited partnership units underlying the Axcess Fund Investment constituted securities within the meaning of the OSA.

**(c) Trading and Acts in Furtherance of Trades**

**(i) Driver and the Axcess Companies**

[155] Driver was the creator of the Axcess Investments. With respect to the Axcess Automation Investment, Driver and Axcess Automation entered into investment contracts which provided for their receipt of investors' funds in exchange for the investors' right to receive a return of the principal amounts they invested and a share of the purported gains derived from Driver's trading in E-mini S&P 500 futures.

[156] With respect to the Axcess Fund Investment, Driver created Axcess Fund and Axcess Fund Management and established Axcess Fund Management as the general partner of Axcess Fund. The limited partnership units issued by Axcess Fund were to be sold for valuable consideration in the amount of US$250,000 each.

[157] In paragraph [152](a) above, we accept Staff's analysis that Driver received a total of US$15,169,160.72 from investors in the Axcess Investments.

[158] The evidence shows that Driver had occasionally met or directly communicated with investors about the Axcess Investments. Ronald and Rutledge gave consistent and credible testimony that they facilitated meetings between small groups of investors and Driver. According to Ronald, two such meetings took place in Burlington, the first in early to mid-July 2007 and, the second, at Ronald's home in late July 2007. Rutledge testified that he arranged for investors to meet Driver at Ronald's house in July 2007 and in Las Vegas in February 2009 and personally attended these meetings. Reynold also testified that he arranged meetings between Driver and investors and that he attended some of these meetings.

[159] In their testimony, Ronald and Rutledge were consistent in their descriptions of what happened during the meetings with Driver. They testified that Driver demonstrated his computer program, explained how the software was able to generate returns and discussed the percentage returns he would be able to realize. For example, Rutledge described the meeting in Las Vegas in February 2009 as follows:

> … [Driver] had a laptop and he utilized the laptop to show the software. He logged in and showed it monitoring the indices, although with the time change, it was coming very close to the end of trading day, so we weren't on long, but we saw how the software operated.
>
> And then essentially we just had a question-and-answer time fielding questions from these men, went into his background, his computer development, the development of the software, his own experience with the trading of the program in its initial test phase, the returns that he had been getting.

> …
>
> He described, as we have been stating, that when he went into his test phase and then on into the real money, that he was typically getting close to 25 percent a month for an investor.
>
> (Hearing Transcript dated April 15, 2011 at p. 151)

[160] We were also presented with a recording of a teleconference held on March 31, 2009 involving Driver, Taylor and the Taylor Group. Although the link to the recording was provided by an anonymous source, it was verified independently by a Staff investigator and corroborated by the records that Staff obtained from the Respondents. It is also consistent with A.T.'s testimony that Taylor held telephone conferences every month to answer questions from investors. Accordingly, we accept that the recording evidences Driver and Taylor's participation in a teleconference on March 31, 2009. The recording indicated that, during the teleconference, Driver discussed the Axcess Investments, including his trading activities of the day, the 100% return that he was able to achieve over the span of one week, the transition from the Axcess Automation Investment to the Axcess Fund Investment and the eligibility requirements for the Axcess Fund Investment.

[161] The evidence nonetheless shows that, while Driver sold securities to investors, he had little or no direct contact with many of them. Instead, as set out in paragraphs [112] to [133] above, he entered into informal arrangements with point persons who would communicate with investors and perform administrative tasks on his behalf for which they were paid commissions.

[162] For example, Rutledge and Ronald understood that they would receive 5% of "[Driver's] company's growth" as commissions which were to be shared between them (Hearing Transcript dated April 15, 2011 at p. 44). Reynold also understood that he would be paid "five percent of the money that [he brought] to [Driver]" (Hearing Transcript dated April 19, 2011 at p. 125). More specifically, Reynold explained that the commissions would be 5% of the trading profits that Driver retained, or 3.75% of the total profits generated by Driver's trading activities.

[163] We accept Staff's flow of funds analysis which shows that both Taylor and Reynold received funds from Driver. Driver transferred US$1,430,216 to Taylor and the Taylor Companies, and $210,219.50 to Reynold and WCC. Although Reynold testified that there was no clear distinction as to whether the funds he received were a return on his investment or commissions, we find that Taylor and Reynold received payments as a result of acting as point persons for Driver.

[164] As part of the arrangement with the point persons, Driver provided them with documents and information to be conveyed to investors. For example, each of Ronald, Rutledge and Reynold testified that they provided letters of agreement to friends and family who wished to invest in the Axcess Automation Investment. An e-mail from Driver to Taylor dated May 8, 2006, introduced into evidence through Kozovski, shows that Driver attached to the e-mail a form of a letter of agreement for Taylor to provide to investors in the Taylor Group.

[165] The form of letter of agreement that Driver provided to the point persons set out wiring instructions directing investors to wire funds to Driver's bank accounts, and Driver also provided wiring instructions to point persons to be given to investors. For example, A.T. testified that Taylor received wiring instructions from Driver. Reynold, Ronald and Rutledge testified that Driver provided them with wiring information and instructed them to inform investors that any funds were to be transferred directly to Driver's bank accounts.

[166] Further, Driver communicated the return on or value of the investments to the point persons with the expectation that the information would be conveyed to investors. Rutledge testified that Driver initially provided him with investor statements that included the investors' names and the value of their investments, and subsequently with percentage returns, to be provided to investors. Rutledge explained that, as the number of investors increased, Driver suggested "why don't I just send you the percentage … I'll just provide you the percentage return each week and then you put that into your Excel spreadsheet and you can fire off your reports to your investors" (Hearing Transcript dated April 15, 2011 at p. 70). Rutledge's testimony was corroborated by the e-mail correspondence in evidence.

[167] Similarly, Ronald testified that, during one of the meetings discussed in paragraph [158] above, Driver said to investors "here's what you can expect and I'll send you regular e-mails through the point person that would let you know how I'm doing" (Hearing Transcript dated April 19, 2011 at p. 72).

[168] Reynold also testified that he received updates from Driver with trading results. During the hearing, Reynold was asked about a statement on the letter of agreement that "the trader will send reports by electronic mail to the investor on a weekly basis". Reynold responded that the statement meant he would receive percentage returns from Driver and relay them to investors.

[169] In the case of the Taylor Group, A.T. testified that Driver sent spreadsheets to Taylor with information about the investors and the value of their investments, and that she overheard discussions between Taylor and Driver on the telephone

about the spreadsheets. This is supported by the evidence of Kozovski that she conducted a metadata examination of the spreadsheets obtained from both Driver and Taylor and found that Driver was the creator of the spreadsheets.

[170] In addition to the value of or return on the investments, we were presented with evidence that Driver sent the point persons screenshots of purported trading on Driver's computer to be passed on to investors. Rutledge, Ronald and Reynold described these screenshots as comparable to the contents of the screen they saw during Driver's demonstrations of his trading activities.

[171] In 2008, Driver began communicating information to the point persons about his progress in obtaining a "Series 3" license in the U.S. and in establishing the hedge fund, which information was forwarded to investors by the point persons. According to Rutledge, Driver "made it very clear that it was his intent to get his Series 3 exam because that would be required by law to manage a hedge fund" (Hearing Transcript dated April 15, 2011 at p. 122). Similarly, Reynold testified that, on the basis of information provided to him by Driver, he sent an email to some investors in the Reynold Group dated September 6, 2008 in which he stated that Driver had "passed the series 3 exam. He now will be licensed to run a hedge fund. Gord [Driver] is having his prospectus being approved by the governing body and feels that the Hedge Fund should be operational before October 1st".

[172] Subsequently, the PPM and a subscription agreement for the Axcess Fund Investment were provided to the point persons for distribution to investors. Ronald, Rutledge and Reynold all testified that they received a subscription agreement and/or the PPM from Driver and provided them to investors. E-mails from Driver dated November 7 and 17, 2008 show that Driver provided Taylor with the PPM and an application for the Axcess Fund Investment.

[173] We were also presented with evidence that Driver maintained bank accounts related to the activities of the Axcess Investments. We are satisfied that Staff's flow of funds analysis, supported by the banking records, shows that Driver maintained and controlled eight bank accounts in his name or in the name of Axcess Automation for the receipt and transfer of investor funds. Driver is listed as a signing authority for these accounts and signed all cheques drawn on, and endorsed all deposits to, these accounts.

[174] The analysis further shows that these accounts were used, among other things, to (i) receive investor funds, usually by wire transfer, in the aggregate amount of US$15,169,160.72; (ii) make payments to investors by wire transfer or cheque in the aggregate amount of US$10,356,704.72; (iii) pay commissions to point persons, as described in paragraph [163] above; and (iv) transfer funds to trading accounts in the aggregate amount of approximately US$3,621,665.

[175] Staff's analysis shows that, during the Material Time, Driver used the US$3,621,665 described in paragraph [174] above for futures trading and incurred a cumulative net loss of approximately US$3,532,237.52.

[176] We conclude that the conduct of Driver and the Axcess Companies discussed above constituted trades and acts in furtherance of trades within the meaning of the OSA relating to both the Axcess Automation Investment and Axcess Fund Investment.

**(ii) Taylor and the Taylor Companies**

[177] Throughout the Material Time, Taylor acted as the point person between Driver and the investors in the Taylor Group. As set out in paragraphs [115] to [121] above, Taylor established a scheme which enabled two types of investors, the direct investors and the piggyback investors, to participate in the Axcess Automation Investment. Staff's analysis shows that the Taylor Group invested a total of US$2,126,085.48 and received payments from Driver totaling US$4,098,564.91.

[178] Taylor solicited investors to participate in the Axcess Automation Investment. We heard evidence from A.T., who worked for Taylor from April to September 2007, that she was required to invest in the Axcess Automation Investment and a portion of her salary in the amount of $10,000 was withheld by Taylor for that purpose. A.T. testified that, when requiring her to invest, Taylor described the Axcess Automation Investment as "a good investment and that your money will grow and we could teach you how to invest your money and how you will get an increase on it" (Hearing Transcript dated April 13, 2011 at p. 142).

[179] We also heard from A.T. and P.A. that Taylor solicited investors to participate in the Axcess Automation Investment at events and seminars that Taylor hosted. P.A. testified that, at these events and seminars, various speakers were invited to discuss particular investment products and Taylor discussed the Axcess Automation Investment with a number of people who were interested. Similarly, A.T. testified that, as the employee who arranged travel for Taylor, she understood that the Axcess Automation Investment was discussed at these events and seminars.

[180] According to P.A., in Taylor's solicitation of investors, he described the Axcess Automation Investment as "a program that had been written by Gordon [Driver] and was being tested by Gordon [Driver] and was brought to us as an opportunity to potentially get or be involved in a [sic] investment that gave us a better return than we might normally expect" (Hearing Transcript dated April 14, 2011 at pp. 111 and 112). P.A. further testified that Taylor also described Driver as "being genius in

what he did" and "vouched for his…abilities, integrity, because he knew Steven [Taylor] as a childhood friend and had known him since that time" (Hearing Transcript dated April 14, 2011 at p. 112).

[181] In his capacity as a point person, Taylor was responsible for the administration of the Axcess Automation Investment on behalf of the investors in the Taylor Group and the evidence shows that Taylor maintained an office and hired staff for that purpose. A.T. testified that she worked for Taylor from April to September 2007, her relationship with Taylor was that of an independent contractor, she would only take instructions from Taylor and that her compensation was paid by Montecassino. She described Taylor's office in Markham and other employees at the office, including an individual who will be referred to as "**T.**" in these Reasons and Decision.

[182] `P.A. also testified that Taylor maintained a home office in Markham which P.A. was able to describe in his testimony as he had visited Taylor's office to discuss the Axcess Automation Investment or to attend learning events or seminars. P.A. testified that he knew Taylor had hired employees, including A.T. and T., to administer the Axcess Automation Investment. The evidence also shows that P.A. received e-mail updates from T. about both the Axcess Automation Investment and the Axcess Fund Investment.

[183] The process of administering the Axcess Automation Investment was initiated by the provision of the form of a letter of agreement (or letter of loan agreement). A.T. confirmed that letters of agreement (or letters of loan agreement) were provided by Taylor or his staff to investors to be completed and signed.

[184] The letters of agreement (or letters of loan agreement) set out wiring or payment instructions, and both A.T. and P.A. testified that Taylor orally communicated these instructions to investors.

[185] According to A.T., following the receipt of a completed letter of agreement and payment for the investment, a client file would be opened and maintained at Taylor's office. A.T. testified that when she was working for Taylor at his office, one of her duties was to maintain the client files. She testified that the files were colour-coded and that the contents of the file included "signed papers or any correspondence that happened between us and the client" (Hearing Transcript dated April 13, 2011 at p. 149).

[186] The evidence shows that withdrawal requests by investors were communicated to Driver through Taylor, and that Taylor implemented a system to facilitate the withdrawal requests. In her evidence, A.T. described an automated system by which an investor would simply click on a link and enter the dollar amount that he or she wished to withdraw, and the request would be forwarded to e-mail accounts held by Taylor and A.T. P.A. also testified that he communicated his withdrawal requests to Taylor by e-mail.

[187] Following an investor's withdrawal request, the name of the investor would be added to a document referred to as the "queue", which A.T. described as "a list of names with the dollar amount and where you were as in whether you're first or last" (Hearing Transcript dated April 13, 2011 at p. 176). Based on her metadata examination of the queue, Kozovski testified that the document had been created by ACG.

[188] Taylor and his staff also facilitated the withdrawal process by distributing cheques to investors. For example, A.T. testified that she would receive cheques payable to investors from Taylor who had received them from Driver. She was responsible for reviewing the cheques as there would always be mistakes. In that case, she would return the cheques to Taylor to be returned to Driver. Once she confirmed that the cheques were correct, A.T. would send them to investors. P.A.'s testimony that he went to Taylor's office to pick up a cheque is confirmatory of Taylor's role in the distribution of cheques.

[189] Staff provided us with documents relating to bank accounts at the Royal Bank of Canada in the name of Taylor and 1303066. The banking documents show that Taylor was a signing authority on the accounts to which he deposited investor funds and from which he transferred funds to Driver to be invested and make payment to investors.

[190] In addition to administrative work, Taylor's role as a point person also included communicating with investors about the status of their investments. According to A.T., she responded to investor inquiries over the telephone and indicated that investors were usually "calling in to see where their money was, when they're going to get their cheque, what number were they on in the queue" (Hearing Transcript dated April 13, 2011 at p. 156).

[191] Throughout the Material Time, Taylor or his staff sent e-mail communications to investors advising them of the purported value of or return on their investments. For example, A.T. gave evidence that she received an e-mail update from Taylor dated October 4, 2007 that the US$10,000 investment she made in April 2007 had grown to US$19,600 in October 2007. P.A. testified that he received similar updates throughout the Material Time, including an e-mail from Taylor dated June 19, 2006 that the initial US$1,000 investment he made in May 2006 had grown to US$1,433.92 in June 2006.

[192] As mentioned in paragraph [169], A.T. testified that Taylor and Driver were in contact every day and that she overheard discussions between them about spreadsheets which Driver provided to Taylor and which included investors names and the

value of, or return on, their investments. A.T. testified that Taylor "always worked on them, so they never went out directly to the clients right away. He would work on them. What he did I'm not sure … And then after a certain point he would give me the okay and we would send them out" (Hearing Transcript dated April 14, 2011 at p. 8).

[193] Similarly, when P.A. was asked about the spreadsheets during the hearing, he described his understanding that Taylor was "taking that information [from Driver] and verifying the information and then turning it over …" (Hearing Transcript dated April 14, 2011 at p. 188).

[194] E-mail communications originating from Taylor or his office also included, for example, information about Driver's willingness to continue trading on behalf of investors, screenshots of Driver's computer screen that captured Driver's purported trading activities and a document entitled "An Interview with Gordon" dated December 17, 2007 in which Taylor stated that "I as well as many others are so pleasantly pleased with the outcome" and Driver stated "I didn't realize the test was going to be so successful".

[195] P.A. also received e-mails from Taylor or T. regarding the transition to the Axcess Fund Investment. For example, an e-mail from Taylor dated November 27, 2007 discussed the "resturcting [sic]", the "incorporation side of the plan" and "becoming a CTA[3]". In an e-mail dated June 25, 2008, T. stated "I firmly believe that everything is moving forward towards the hedge fund. Once there most of the issues will disappear". We were also presented with evidence that Taylor made reference to the PPM in various e-mails to investors, including an e-mail to P.A. dated June 16, 2008 and an e-mail to an investor dated October 29, 2008 stating "All the REAL details will be in the PPM. It will answer your questions" [emphasis added.]. A.T. similarly testified that she received an e-mail dated April 11, 2008 in which Taylor made reference to Driver being excited about the Axcess Fund Investment.

[196] In addition, the evidence shows that Taylor personally met with investors to discuss their investments. A.T. testified that she scheduled Taylor's appointments with investors and prepared client files for Taylor in advance of the meetings. P.A. confirmed that he met with Taylor at Taylor's office to review his investments and recalled being shown his account information on the computer screen at one of the meetings.

[197] We also heard evidence that Taylor held conference calls to answer questions about the Axcess Investments. As set out in paragraph [160] above, A.T. testified that Taylor held monthly teleconferences which she helped to organize. She explained that questions about the Axcess Automation Investment would be collected from investors in advance and that she would mute each investor during the teleconferences, Taylor responded to the questions and gave updates by way of a general overview. Again, we accept the recording of the teleconference on March 31, 2009 as an example of such teleconference and we find that Taylor played a significant role in the teleconference in discussing the Axcess Investments. Among other things, he spoke about the transition from the Axcess Automation Investment to the Axcess Fund Investment and continued to endorse both.

[198] Staff's flow of funds analysis shows that Taylor received commissions or other payments from Driver totaling US$1,430,216, of which US$120,000 was received by Taylor personally, US$314,606 was received through 1303066, US$805,610 was received through Berkshire and US$190,000 was received through Montecassino.

[199] Based on the foregoing, we conclude that the evidence demonstrates that Taylor and the Taylor Companies engaged in trades and acts in furtherance of trades within the meaning of the OSA in relation to both the Axcess Automation Investment and the Axcess Fund Investment.

**(iii) Reynold and WCC**

[200] From July 2007 to the end of 2008, Reynold acted as the point person for the Reynold Group. Staff's analysis shows that the Reynold Group invested a total of US$4,131,400.96 and that payments totaling US$2,875,054.87 were subsequently made to them by Driver.

[201] As set out above in paragraph [81], Reynold admitted to paragraphs 20, 33, 34, 35, 39 and 40 of the Statement of Allegations. Reynold also testified at the hearing and provided us with further evidence concerning his involvement in the Axcess Investments. He admitted that he introduced investors to the Axcess Automation Investment, all of whom he identified as family and friends. In his evidence, Reynold described the way in which he discussed the Axcess Automation Investment with investors. He testified that he prepared an Excel document showing the growth of his investment and showed them to investors:

> And just in the course of family life or just with my friends, I just told them this [is] an amazing opportunity that has just landed in my lap, so to speak, and it's there and I'm doing this and I'm excited about it, and here are the numbers, here are some of the returns. Here's what's happening

[3] Commodity Trading Advisor.

> to me. Some of them I showed them that chart that I did on my own investment. I said, "Look at this, isn't this amazing," and –
>
> (Hearing Transcript dated April 19, 2011 at p. 144)

[202] Reynold acknowledged that he organized or facilitated meetings between Driver and approximately 15 investors.

[203] As a point person, Reynold was responsible for administering the Axcess Automation Investment on behalf of the Reynold Group. He testified that he obtained the form of a letter of agreement from Driver, made suggestions to Driver to "make it more clear and understandable" and distributed letters of agreement to investors (Hearing Transcript dated April 19, 2011 at p. 132). Once investors completed and signed the letters of agreement, they returned them to Reynold who in turn returned them to Driver for his signature. If an investor wanted to retain a copy of the completed letter of agreement signed by Driver, Reynold would make that request to Driver on behalf of the investor.

[204] Reynold admitted that he relayed wiring instructions given to him by Driver to investors. He testified that, on rare occasions, he accepted cheques from investors in sealed envelopes and delivered them to Driver. He also assisted Driver by keeping track of incoming investor funds and by informing Driver that investors would be wiring funds to Driver's account.

[205] He also facilitated the return of investor funds by communicating withdrawal requests by investors to Driver.

[206] In addition to the administration of the Axcess Automation Investment, another function of a point person performed by Reynolds was to inform investors about Driver's trading activities. Having obtained the percentage returns on the Axcess Automation Investment from Driver, Reynold would communicate those returns to investors by e-mail.

[207] E-mail messages Reynold sent to investors also included, for example, screenshots of Driver's computer screen that captured Driver's purported trading activities and updates informing investors when Driver would be able to start trading for the Reynold Group.

[208] In 2008, Reynold informed investors about the transition from the Axcess Automation Investment to the Axcess Fund Investment. For example:

(a) In an e-mail dated April 14, 2008, Reynold communicated to investors that: "… there are some changes that will be coming down the pipe in the next few months that will take the whole investment to the next level professionally, in security, in accountability etc. Gord [Driver] is heading toward licensing and establishing a registered 'hedge fund'. Don't know all the details at this point but it will be ultimately better for us as investors".

(b) In an e-mail dated September 10, 2008, Reynold communicated to investors that: "Gord [Driver] … has passed his licensing exam for the hedge fund which was the final hurdle he needed to get over. The hedge fund is now in final stage approvals. There are some changes that are coming into effect like the 3 month compound cycle … we'll keep you posted on the transitions that will take place over the next few weeks and months".

Reynold confirmed in his testimony that he received the foregoing information from Driver.

[209] When the Axcess Automation Investment was purportedly to be transferred to the Axcess Fund Investment, Reynold provided the PPM for the Axcess Fund Investment to some investors.

[210] Reynold was promised commissions for acting as a point person. He understood that the commissions would be 5% of the trading profits that Driver retained, or 3.75% of the total profits generated by Driver's trading activities, which was the same as the arrangements with Rutledge and Ronald described in paragraph [162] above. According to Reynold, although commissions were not paid to him directly on a regular basis and were only paid to him on request, they were purportedly accrued for him, added to the principal of his investment and recorded in a separate column on a statement. He admitted that he received funds from Driver either personally or through WCC, although it is unclear whether the amounts represented the return on Reynold's investment or commissions, or both.

[211] Staff's flow of funds analysis shows that Reynold received a total of $210,219.50 from Driver, of which $9,987 was received by Reynold personally and $200,232.50 was received through an account in the name of WCC.

[212] Based on Reynold's admissions and evidence described above, we find that Reynold and WCC engaged in trades and acts in furtherance of trades within the meaning of the OSA in relation to both the Axcess Automation Investment and the Axcess Fund Investment.

### 3. Findings

[213] We find that all of the Respondents engaged in trades or acts in furtherance of trades in relation to both the Axcess Automation Investment and the Axcess Fund Investment without being registered to do so. As discussed in paragraphs [224] to [233] below, as no exemptions from the registration requirements were available, the Respondents acted contrary to subsection 25(1)(a) of the OSA.

## B. Did the Respondents engage in a distribution with respect to the Axcess Fund Investment without a prospectus contrary to subsection 53(1) of the OSA?

### 1. The Applicable Law

[214] Subsection 53(1) of the OSA sets out the prospectus requirement for trades that constitute a distribution:

> No person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[215] The definition of "distribution" under subsection 1(1) of the OSA provides that:

> "distribution", where used in relation to trading in securities, means,
>
> (a) a trade in securities of an issuer that have not been previously issued,
>
> …

[216] The prospectus requirement plays an essential role for the protection of investors. As stated by the Supreme Court of Ontario (now the Superior Court of Justice) in *Jones v. F.H. Deacon Hodgson Inc.* (1986), 9 O.S.C.B. 5579 (H.C.) at p. 5590: "There can be no question but that the filing of a prospectus and its acceptance by the Commission is fundamental to the protection of the investing public who are contemplating purchase of the shares". The prospectus requirement ensures that prospective investors have sufficient information to ascertain the risk level of their investment and to make informed investment decisions (*Re First Global Ventures, S.A.* (2007), 30 O.S.C.B. 10473 at para. 145).

[217] For a trade in securities of an issuer that have not been previously issued, it is therefore important that a prospectus be issued to protect the public.

### 2. Analysis

[218] Staff only made allegations that the Respondents contravened subsection 53(1) of the OSA in their conduct relating to the Axcess Fund Investment. Staff did not allege that the Respondents contravened subsection 53(1) of the OSA in their conduct relating to the Axcess Automation Investment.

[219] As established above in our discussion of subsection 25(1)(a) of the OSA, the Respondents all engaged in trades and/or acts in furtherance of a trade in relation to the Axcess Fund Investment. Accordingly, the Respondents traded the securities of an issuer as contemplated by paragraph (a) of the definition of "distribution" under the OSA.

[220] The second requirement of the definition is that the securities in question have not been previously issued. In the present matter, the sale of the limited partnership units in connection with the Axcess Fund Investment was the first issuance of the securities thereby satisfying the requirement that the securities have not been previously issued. Accordingly, the trades of these securities constituted a distribution within the meaning of the OSA.

[221] We received no evidence that a prospectus was filed with the Commission.

[222] We also note that Reynold admitted to having engaged in a distribution of securities in relation to the Axcess Fund Investment for which no preliminary prospectus or prospectus was filed and for which no receipt was issued by the Director.

### 3. Findings

[223] We find that all of the Respondents engaged in a distribution of securities in relation to the Axcess Fund Investment for which no prospectus was filed. As discussed in paragraphs [224] to [233] below, no exemptions from the prospectus requirement were available. Accordingly, we find that the Respondents contravened subsection 53(1) of the OSA in their conduct relating to the Axcess Fund Investment.

### C. Were any Exemptions Available to the Respondents?

[224] As set out in subsection 25(1)(a) of the OSA, no person or company shall "trade in a security" unless the person or company "is registered as a salesperson or as a partner or as an officer of a registered dealer and is acting on behalf of the dealer". Subsection 53(1) of the OSA provides that "no person or company shall trade in a security … if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director".

[225] However, there are numerous exemptions from the registration requirement, many of which are similar to the exemptions from the prospectus requirement. Some exemptions are explicitly set out in securities legislation or rules, while other exemptions are granted by the Commission on a discretionary basis.

[226] Once Staff has shown that the Respondents have traded securities without registration or engaged in a distribution without filing a prospectus, the onus shifts to the Respondents to establish that one or more exemptions from the registration or distribution requirements were available to them (*Limelight*, *supra*, at para. 142).

[227] The evidence suggests that, from time to time in connection with their sale of the Axcess Investments, the Respondents purported to rely on certain exemptions from the registration and prospectus requirements set out in Part 2 of National Instrument 45-106 – *Prospectus and Registration Exemptions*, such as the accredited investor exemption and the private issuer exemption and in the case of the Axcess Fund Investment, the minimum amount investment exemption. Having considered the evidence before us, such as the financial circumstances of the investors and the absence of any intention or process to determine the eligibility of investors to participate in the Axcess Investments, including whether prospective investors would quality as accredited investors, and whether there should be controls on the number of investors, we are not persuaded that any exemptions were available to the Respondents.

[228] Staff submits that, pursuant to the Commission Rule 91-503 – *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario – Rules Under the Securities Act* ("**OSC Rule 91-503**"), an exemption from the registration and distribution requirements under the OSA was available to the Respondents.

[229] OSC Rule 91-503 provides that:

> A. Registration Exemption – Section 25 of the [OSA] does not apply to a trade in, or advice given in respect of, an exempt exchange contract.
>
> B. Prospectus Exemption – Section 53 of the [OSA] does not apply to a trade in an exempt exchange contract.

[230] OSC Rule 91-503 also provides the following definitions:

> "CFA["] means "the *Commodity Futures Act*";
>
> "commodity futures contract", "commodity futures exchange" and "commodity futures option" have the respective meanings ascribed to them in the CFA;
>
> "exempt exchange" means a commodity futures exchange that is not registered with or recognized by the Commission under the CFA and the forms of contracts of which are not accepted by the Director under the CFA; and
>
> "exempt exchange contract" means a commodity futures contract or a commodity futures option entered into on an exempt exchange.

[231] "Commodity futures contract", "commodity futures exchange" and "commodity futures option" are defined in the CFA as follows:

> "commodity futures contract" means a contract to make or take delivery of a specified quantity and quality, grade or size of a commodity during a designated future month at a price agreed upon when the contract is entered into on a commodity futures exchange pursuant to standardized terms and conditions set forth in such exchange's by-laws, rules or regulations;
>
> "commodity futures exchange" means an association or organization, whether incorporated or unincorporated, operated for the purpose of providing the facilities necessary for the trading of contracts;

> "commodity futures option" means a right, acquired for a consideration, to assume a long or short position in relation to a commodity futures contract at a specified price and within a specified period of time and any other option of which the subject is a commodity futures contract;

[232] Staff submits that the Chicago Mercantile Exchange is an "exempt exchange" and the contracts traded by Driver were "exempt exchange contracts", in each case as defined in OSC Rule 91-503 and in the CFA. Staff submits that an exemption was therefore available to the Respondents in relation to the Axcess Automation Investment as sections 25 and 53 of the OSA do not apply to the Axcess Automation Investment, and the registration and prospectus requirements would be confined to the Axcess Fund Investment.

[233] In our view, the securities underlying the Axcess Automation Investment, as discussed in paragraph [152] above, were separate investment contracts between Driver or Axcess Automation on the one hand and investors on the other which provided investors with an interest in the profits generated by Driver's trading activities. The securities had none of the characteristics of, and were clearly not, commodity futures contracts within the meaning of the CFA. Accordingly, we disagree with Staff's submission that the Axcess Automation Investment was exempt from the application of sections 25 and 53 of the OSA.

**D. Did Driver, the Axcess Companies, Taylor and the Taylor Companies engage in fraud in respect of the Axcess Automation Investment and Axcess Fund Investment contrary to subsection 126.1(b) of the OSA?**

**1. The Applicable Law**

[234] Subsection 126.1(b) of the OSA states that:

> A person or company shall not, directly or indirectly, engage or participate in any act, practice or course of conduct relating to securities or derivatives of securities that the person or company knows or reasonably ought to know,
>
> …
>
> (b) perpetrates a fraud on any person or company.

[235] In interpreting the term "fraud", the Commission has taken the approach by other securities regulators and adopted the definition from the decision of the Supreme Court in *R. v. Théroux*, [1993] 2 S.C.R. 5 ("***Théroux***") (See, for example, *Al-Tar*, *supra*, at paras. 216 to 221; *Re Lehman Cohort Global Group Inc.* (2010), 33 O.S.C.B. 7041 at paras. 86 to 100; and *Re Global Partners Capital* (2010), 33 O.S.C.B. 7783 at paras. 239 to 245).

[236] In *Théroux*, the elements of fraud were summarized as follows:

> … the *actus reus* of the offence of fraud will be established by proof of:
>
> 1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and
>
> 2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.
>
> Correspondingly, the *mens rea* of fraud is established by proof of:
>
> 1. subjective knowledge of the prohibited act; and
>
> 2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).
>
> (*Théroux*, supra, at para. 27)

[237] The actus reus of the offence of fraud is therefore established on proof of two essential elements, namely, a dishonest act and deprivation (*Théroux*, *supra*, at para. 16). The first element, the dishonest act, is established by proof of deceit, falsehood or "other fraudulent means".

[238] In order to find fraud by deceit or by falsehood, "all that need be determined is whether the accused, as a matter of fact, represented that a situation was of a certain character, when, in reality, it was not" (*Théroux*, *supra*, at para. 18).

[239] The third category of dishonesty, other fraudulent means, encompasses all other means, other than deceit or falsehood, which can properly be characterized as dishonest. In considering whether an act is dishonest, the Supreme Court has held that the issue is "determined objectively, by reference to what a reasonable person would consider to be a dishonest act". (*Théroux*, *supra*, at paras. 17 and 18; and *R. v. Olan*, [1979] 2 S.C.R. 1175 ("***Olan***") at p. 1180).

[240] In considering the meaning of other fraudulent means, courts have included the non-disclosure of important facts, the unauthorized diversion of funds and the unauthorized arrogation of funds or property (*Théroux*, supra, at para. 18).

[241] The second essential element of the *actus reus* of fraud, namely, deprivation, is satisfied on proof of detriment, prejudice, or risk of prejudice to the economic interests of the victim caused by the dishonest act (*Théroux*, *supra*, at paras. 16 and 27).

[242] While actual economic loss suffered by a victim may establish deprivation, it is not required for a finding of fraud. In Borealis, the Commission found that the respondents breached subsection 126.1(b) of the OSA although no loss was suffered by the investors, and that in fact, investors were repaid their capital and received an 18% return on their investments because of the gratuitous payment by the respondents.

> The fact that, at the end of the day, they suffered no loss, is not and should not be determinative. The investors put their money at risk on the assurance that not only their capital, but also their interest was "guaranteed." It was not. It was not, notwithstanding that they received both the interest and the principal, as promised. That occurred only because of the 'good will' of Villanti and his company, IBC. It occurred not because of the contractual obligation, that the Borealis GRIC was secured, insured or reinsured. It occurred in spite of the fact that the GRIC was not invested as promised, to generate funds through loans to small and medium businesses. The contractual obligation entered into with the investors was based on a number of false premises. It was misleading. It was fraudulent. Borealis, Villanti and Haliday's 'after the fact' letter did not change the fact that the investment contracts entered into, with the acquiescence of Villanti were false and misleading. For all these reasons, we, therefore, notwithstanding Villanti's original honourable intention, conclude that he violated subsection 126.1(b) of the [OSA].
>
> (*Borealis*, *supra*, at para. 108)

[243] In *Théroux*, *supra*, at paras. 16, 17 and 27, the Supreme Court stated that either prejudice or the risk of prejudice to an economic interest is sufficient to support a finding of fraud.

[244] With respect to the mental element of fraud, this subjective awareness can be inferred from the totality of the evidence. Direct evidence as to the accused's specific knowledge at the time of the fraudulent acts is not required (*Théroux*, *supra*, at paras. 23 and 29).

[245] This subjective awareness of the accused may also be established by evidence showing that the accused was reckless or wilfully blind to the consequence of his or her conduct and the truth or falsity of their statements (*Théroux*, *supra*, at paras. 26 and 28).

[246] A sincere belief or hope that no risk or deprivation would ultimately materialize does not vitiate fraud. As stated in *Théroux*, a "sanguine belief that all will come out right in the end" is not a defence:

> Pragmatic considerations support the view of mens rea proposed above. A person who deprives another person of what the latter has should not escape criminal responsibility merely because, according to his moral or her personal code, he or she was doing nothing wrong or because of a sanguine belief that all will come out right in the end. Many frauds are perpetrated by people who think there is nothing wrong in what they are doing or who sincerely believe that their act of placing other people's property at risk will not ultimately result in actual loss to those persons. If the offence of fraud is to catch those who actually practise fraud, its mens rea cannot be cast so narrowly as this.
>
> (*Théroux*, *supra*, at para. 36)

[247] The operative language of subsection 126.1(b) of the OSA is identical to the comparable provisions of subsection 57(b) of the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418, as amended (the "**BCA**"). In interpreting subsection 57(b) of the BCA as it relates to the mental element of fraud, the British Columbia Court of Appeal in *Anderson v. British Columbia (Securities Commission)*, 2004 BCCA 7 (leave to appeal to the Supreme Court of Canada denied, [2004] S.C.C.A. No. 81 (S.C.C.)) at para. 26 stated that:

> … s. 57(b) does not dispense with proof of fraud, including proof of a guilty mind … Section 57(b) simply widens the prohibition against participation in transactions to include participants who know or ought to know that a fraud is being perpetrated by others, as well as those who participate in perpetrating the fraud. It does not eliminate proof of fraud, including proof of subjective knowledge of the facts constituting the dishonest act, by someone involved in the transactions.

[248] To prove a breach of subsection 126.1(b) of the OSA when considering the mental element with respect to a corporation, it is sufficient to show that its directing minds knew or reasonably ought to have known that the acts of the corporation perpetrated a fraud (See, for example, *Al-Tar*, *supra*, at para. 221).

**2. Analysis**

**(a) Driver and the Axcess Companies**

[249] In letters of agreement and his communications with the point persons and investors in connection with the Axcess Automation Investment, Driver represented that investor funds would be used to trade E-mini S&P 500 futures on the Chicago Mercantile Exchange. In the case of the Axcess Fund Investment, the PPM provides that investor funds would be used to trade future contracts and options.

[250] Driver also represented that his trading activities were capable of generating a substantial return. According to Reynold, Driver told Reynold in July 2007 that he was able to "pretty much double the money within a month, but – and the type of returns he's able to get to the investors is about 25 percent, though, a month" (Hearing Transcript dated April 19, 201 at p. 125). Rutledge also testified that "[Driver's] claim to us was that he was doubling his money every month" (Hearing Transcript dated April 15, 2011 at p. 43).

[251] Ronald and Rutledge testified that, during meetings with the investors in the Ronald-Rutledge Group, Driver made representations about his trading activities and percentage returns realized. Rutledge testified that, in a meeting in July 2007, the clear message conveyed by Driver was that "he had been very successful in trading … to the point where the returns were, for a typical investors, were coming in at 20, 25 percent a month return" (Hearing Transcript dated April 15, 2011 at p. 58). He further testified that, in a similar meeting in February 2009, Driver described that he was "typically getting close to 25 percent a month for an investor" and showed investors a brokerage statement that purportedly showed that he had US$57 million in that account (Hearing Transcript dated April 15, 2011 at p. 151).

[252] In the teleconference on March 31, 2009 described in paragraph [160] above, Driver told investors in the Taylor Group that the Axcess Automation Investment was "successful" (Transcript of Teleconference on March 31, 2009 at p. 7). He informed investors that "I had another incredible day in the market and if anybody saw the S&Ps today it shot up quite a bit so" (Transcript of Teleconference on March 31, 2009 at p. 19). He also claimed that he was making "almost a hundred percent return in one week":

> Last week I sent out to Steve [Taylor] and I know he sent it out to a quite a few of the investors a test account which was an experiment and where I took some funds and over a 5 day period and, and even tried to push this off for a little bit harder and got more aggressive and was able to generate a very strong return in one week and I started out with 30,000 dollars and got to 56,000 dollars within 5 days and generate those kinds of returns which is almost you know almost a hundred percent return in one week. That doesn't that's not what I do in terms of the large fund but a lot of the trades are parallel but instead of trading for one point I might trade for three points or four points or you know because I know that the range is much bigger so they're, they're parallel to the fact the trades are probably the same but I, I'm trying to reach for more profit in the test account.
>
> (Transcript of Teleconference on March 31, 2009 at p. 39)

[253] Driver regularly communicated purported returns on the Axcess Automation Investment to Ronald, Rutledge and Reynold to be relayed to investors. This is supported by the e-mail correspondence in evidence and the testimony of Ronald, Rutledge and Reynold. For example:

(a) In an e-mail dated November 4, 2007, Driver communicated to Rutledge and Reynold that the "percentages for the weeks ending" October 19, 2007, October 26, 2007 and November 2, 2007 were 4.62%, 4.71% and 6.35%, respectively.

(b) In an e-mail dated November 26, 2007, Driver stated that "Today was a great day" and sent Rutledge a spreadsheet showing positive returns on the investment.

(c) In an e-mail dated February 28, 2008, Driver communicated to Rutledge and Reynold that the "return[s] for the week ending" February 15, 2008 and February 22, 2008 were 4.79% and 3.61%, respectively.

(d) In an e-mail dated April 12, 2008, Driver provided Rutledge with the weekly returns for the period from February 8, 2008 to April 4, 2008 which ranged from 0% to 5.23%.

(e) In an e-mail dated October 8, 2008, Driver communicated to Rutledge and Reynold that the weekly returns from July 11, 2008 to October 3, 2008 ranged from 1.60% to 6.71%.

Reynold and Rutledge confirmed in their evidence that they relayed these percentage returns to investors.

[254] In the case of the Taylor Group, we found above in paragraph [169] that Driver communicated percentage returns to Taylor to be relayed to investors. A review of an example of the spreadsheets provided to Taylor by Driver shows that Driver reported positive returns on the Axcess Automation Investment. For example, the spreadsheets reported a return of 2.27% for the week of July 15, 2006, 6.92% for the week of December 22, 2006, 6.02% for the week of June 8, 2007 and 6.28% for the week of July 20, 2007. No losses were reported on the spreadsheets.

[255] Throughout the Material Time, Driver made representations that the Axcess Investments were generating substantial returns. As noted in paragraph [108] above, Driver represented to investors that the Axcess Automation Investment was "successful" and that he created the Axcess Fund Investment in order to ensure the legality of his trading activities (Transcript of Teleconference on March 31, 2009 at p. 7). Ronald confirmed in his testimony that Driver never reported a loss. Rutledge and Reynold testified that, when investors made requests to withdraw their funds, the requests were usually honoured. They further testified that Driver told them that he had been working with his legal counsel and accountants to obtain a license and to establish a hedge fund in an effort to ensure that his trading activities were legal.

[256] Staff's flow of funds analysis shows that Driver's representations about the Axcess Investments were false and misleading. We note that, although we are unable to reconcile the amounts received and dispersed by Driver, the discrepancies do not affect the outcome of our analysis. In particular, we accept that, of the US$15,169,160.72 that Driver received from investors, a majority of the investor funds were not used to trade in E-mini S&P 500 futures (or other futures contracts or options) as represented by Driver. Although Kassabgui's evidence suggests that Driver may have spent a small portion of the funds on his business, as described below, we accept Staff's flow of funds analysis and find that, on balance, Driver diverted approximately US$1,158,329.40 to pay personal expenses as follows:

(a) US$68,304.53 was used to pay auto-related expenses;

(b) US$469,369.03 was withdrawn in cash;

(c) US$162,877.91 was used to fund retail purchases;

(d) US$71,946.34 was used to pay travel-related expenses;

(e) US$59,206.59 was spent on computers and electronics, although it is unclear to us whether the funds were used in relation to Driver's business;

(f) US$13,879.05 was used to fund PayPal transactions;

(g) US$9,546.55 was spent at restaurants or for other entertainment;

(h) US$159,886.70 was used to pay other personal expenses, including groceries, insurance, telephone services, postal and shipping services, rent, tuition, dental expenses, medical expenses and veterinary expenses, which included US$30,777.03 spent on tuition, part of which was paid in relation to courses taken by Driver that pertained to his business; and

(i) US$143,312.70 was spent on accounting and legal services and other expenses that did not appear to be business expenses, although Kassabgui testified that it was unclear to him whether the amount was for Driver's personal use or for his business.

[257] Staff's flow of funds analysis also shows that Driver used investor funds to pay the point persons, Taylor and Reynold, US$1,430,216 and $210,219.50, respectively.

[258] In addition, US$10,356,704.72 was used to pay investors.

[259] Of the US$15,169,160.72 received from investors by Driver, only approximately US$3,621,665 was in fact used to trade in E-mini 500 S&P futures. Staff's trading analysis shows that, rather than resulting in positive returns as he consistently represented to investors, Driver's trading activities incurred a cumulative net loss during the Material Time of approximately US$3,532,237.52. In his testimony, Kassabgui was asked whether Driver made any trading profits, and his response was that "He had one or two days where he did very well, but in subsequent days he lost whatever gains he had" (Hearing Transcript dated April 14, 2011 at p. 82). Kassabgui's assessment is consistent with his trading analysis which we accept as accurate.

[260] Witnesses consistently testified that they relied on the false information discussed above when deciding whether to invest or to remain invested. Ronald testified that he and his family invested US$31,200 because he "saw it as a – it appeared to be a great opportunity, a great investment, that I trusted what Gord [Driver] was saying with the kind of returns that he was getting and there was no reason for me to doubt what he said, so I took it at face value" (Hearing Transcript dated April 19, 2011 at pp. 57 and 58).

[261] Rutledge testified that the fact that withdrawal requests made by investors in the Rutledge-Ronald Group were honoured in a timely manner "raise[d] the comfort level of the investors and potentially any new investors that guys had invested and, yes, they had made withdrawal requests and received money off of their investments. This was the functioning, you know, working investment" (Hearing Transcript dated April 15, 2011 at p. 86).

[262] The Axcess Investments caused deprivation to investors. Of the US$15,169,160.72 raised, US$10,356,704.72 was returned to investors, which demonstrates that some of the investors suffered actual losses. We accept Staff's analysis that the Ronald-Rutledge Group, comprised of 45 investors, invested a total of US$2,051,199.39 and subsequently received payments from Driver totaling only US$746,507. Similarly, the Reynold Group, comprised of 23 investors, invested a total of US$4,131,400.96 and subsequently received payments from Driver totaling only US$2,875,054.87.

[263] We take note that not all of the investors suffered losses. P.A. invested just over US$2,500 and received US$13,000 from his investment. The Taylor Group, comprised of the direct investors and the piggyback investors, invested a total of US$1,337,836 and US$788,249.48, respectively. The evidence shows that the direct investors subsequently received payments from Driver totaling US$2,913,145.54 and the piggyback investors subsequently received payments from Driver totaling US$1,185,419.37. The Taylor Group, collectively, did not suffer any losses.

[264] The fact that some of the investors did not suffer losses, or even made profits on their investments, does not preclude a finding of fraud. We adopt the analysis set out in *Borealis*, *supra*, at para. 108, set out in paragraph [242] above. In particular, we find that investors' money was put at significant risk of loss because the majority of their money was being diverted to pay Driver's personal expenses, commissions or returns to investors and that, in many cases, investors were paid with the proceeds of the investments made by subsequent investors.

[265] It is clear that Driver knew that these fraudulent acts would cause deprivation to investors. Driver made representations that he was trading in E-mini S&P 500 futures (or futures contracts or options, in the case of the Axcess Fund Investment) with investor funds and that he was generating positive returns, when in reality he applied investor funds in a manner that was contrary to the representations made to investors and incurred substantial losses in the trading in which he was actually involved.

[266] In his cross-examination of Kassabgui, Driver put to Kassabgui a document purporting to show that he made a profit of US$34,177.40 on an investment of US$50,000 during the period from March to June 2009. Driver also argued that the results of his trading during the three-month period were "critical in terms of the success rate of the software that [he] designed" (Hearing Transcript dated April 14, 2011 at p. 96). In our view, even if Driver's contentions about the trading profits generated in the three-month period were true, the fact remains that throughout the Material Time, while Driver consistently represented that he was generating substantial gains, he suffered a cumulative net loss of approximately US$3,532,237.52, diverted investor funds for personal use or uses unrelated to the trading of E-mini S&P 500 futures (or other futures contracts or options, in the case of the Axcess Fund Investment) and subjected investor funds to a significant risk of loss.

[267] The Axcess Companies furthered the fraudulent acts which caused deprivation to investors. The Axcess Companies represented to investors in letters of agreement and the PPM that investors' funds would be used to trade E-mini S&P 500 futures and/or futures contracts or options. Axcess Automation held accounts to which investor funds were deposited and from which they were dispersed in an unauthorized manner. Axcess Fund and Axcess Fund Management were the entities established purportedly to ensure the legality of Driver's trading activities and were investment vehicles designed to raise additional funds by issuing limited partnership units which would purportedly permit investors to participate in Driver's trading activities.

[268] As Driver was the directing mind of the Axcess Companies, his knowledge of the fraudulent acts was attributable to the Axcess Companies. We find that the Axcess Companies knew about the dishonest acts and the deprivation of investors that would result.

[269] We conclude that Driver and the Axcess Companies knowingly perpetrated a fraud, contrary to subsection 126.1(b) of the OSA.

**(b) Taylor and the Taylor Companies**

[270] As described above, an essential aspect of Taylor's role as a point person was to provide information about the Axcess Investments to investors and prospective investors. We heard evidence from P.A. which we find to be illustrative of Taylor's interaction with investors during the Material Time.

[271] P.A. testified that, in Taylor's solicitation of investors, he described that the Axcess Automation Investment would be able to generate a "superior return" or "a better return than we might normally expect" (Hearing Transcript dated April 14, 2011 at pp. 111 and 112). He further testified that he received communications from Taylor throughout the Material Time informing him of the alleged returns on his investment. In 2006, P.A. made principal investments totaling US$2,566.08. In an e-mail dated May 31, 2007, Taylor informed P.A. that the value of his investment had grown to US$13,821.65. Based on this information, P.A. made a withdrawal request of US$10,000 in June 2007.

[272] P.A. experienced a delay in obtaining the requested funds, and did not receive the US$10,000 requested until October 2007. Meanwhile, P.A. received e-mail updates from Taylor informing him that his investment continued to grow but there were "new technical glitches" (Hearing Transcript dated April 14, 2011 at p. 168). For example:

(a) In an e-mail dated July 5, 2007, Taylor informed P.A. that the value of P.A.'s investment was US$16,730.13. Taylor stated that he had noticed "a glitch in the reporting spreadsheet but it has been fixed and is being re-checked so these numbers my [*sic*] be slightly out … We have said that we are working on some technical, logistical and reporting changes that will happen over the summer and into the fall to streamline and make the process smoother and easier all around".

(b) In an e-mail dated August 2, 2007, Taylor stated: "THE TEST WOW!!! The numbers are in. Even in the summer. Wow!!! Its [*sic*] not too late" [emphasis in the original.]. Another e-mail on the same day advised P.A. that the value of his investment as of June 29, 2007 was in fact US$17,366.39. The e-mail reiterated that "We are working on some technical, logistical and reporting changes".

[273] P.A. testified that communication from Taylor became sporadic in the fall or early winter of 2007. According to P.A., he was told by Taylor that this was because Driver was "not a very good communicator and was not responding" (Hearing Transcript dated April 14, 2011 at p. 181). P.A. nonetheless received e-mail messages from Taylor in late 2007 and in 2008 that reported positive returns and explained that the delays in reporting were due to Driver. For example:

(a) In an e-mail dated December 18, 2007, Taylor stated "There is so much activity going on and although things are moving slower than any of us would like, I am confident that Gordon [Driver] is making the progress we so want". In the attached "An Interview with Gordon [Driver]", Taylor stated that progress was being made and "I as well as many others are so pleasantly pleased with the outcome". In that interview, Driver also stated that "I didn't realize the test was going to be so successful".

(b) In an e-mail dated January 28, 2008, T., on behalf of Taylor, provided P.A. with the following update on the Axcess Automation Investment:

> Great news! We have received the update spreadsheet from Gordon [Driver].
>
> We are currently verifying the transactions against our records to ensure accuracy. We will then have Gordon [Driver] make any necessary adjustments. We anticipate having all of this complete by the early part of this week and as soon as possible, we will be sending you the much anticipated results of the last few months.
>
> FYI, we know you will be happy with the results and for those who have been asking, Gordon [Driver] was able to capitalize on the volatility during the large market correction last week and he produced excellent results for us. So, hang in there just a little longer. As the old saying goes, "Good things come to those that wait".

(c) In an e-mail dated March 18, 2008, T. represented to P.A. that the value of his investment in January 2008 was US$39,187.95. T. also stated: "**The update is finally here!** We think once you review your account balance that you will see that Gordon [Driver] has done a great job of growing your investment. Kudos to Gordon [Driver]! Your patience is being rewarded so please enjoy the update" [Emphasis in the original.].

(d) In an e-mail dated April 11, 2008, Taylor stated "we are not concerned by the lack of communication, and that we consider it good news because we know Gordon [Driver] is extremely busy working on the new program. [T.] and I are every bit (and maybe even more) frustrated by the slowness of this process and the slow flow of information as you are".

[274] Beginning in March or April 2008, Taylor began making references to the "new structure" and "hedge fund", that is, the Axcess Fund Investment and indicated that the Axcess Fund Investment would be the solution to Driver's communication problems:

(a) In an e-mail dated April 11, 2008, Taylor stated that "I have been asked a few times about my thoughts on the hedge fun [*sic*]. My response is that the hedge fund certainly is not the best solution but it is the best solution given the situation we have with the person who is in charge – given his attention to detail and his sharpness in the trading area that he has demonstrated. When it all is said and done we should all be happier than when we first got in and somewhere more advanced on our wealth plan".

(b) In an e-mail dated June 25, 2008, T. stated that "I firmly believe that everything is moving forward towards the hedge fund. Once there most of the issues will disappear".

[275] Staff's analysis shows that, although most of the investments made by investors in the Taylor Group were made in 2006 or early 2007, Taylor did accept new investments from investors throughout the Material Time. Staff also placed into evidence e-mail messages that Taylor sent to investors in the Taylor Group regarding the purported performance of the Axcess Automation Investment. These e-mail messages are similar in tenor to those received by P.A. They provided positive percentage returns on the investments, updated investors on Driver's trading activities, including the development of the Axcess Fund Investment, and ascribed any delays in withdrawal or communication to "technical glitches" or failure on the part of Driver to communicate information.

[276] In the teleconference on March 31, 2009, Taylor continued to endorse the Axcess Investments:

> … and as we all know when we began this thing we named it the Test cause that's indeed what it was and you know in many ways it's a test that has gone extremely right in so many ways … .By all indication especially after my, my discussions with Gordon [Driver] last week you know it really feels like we are making headroom and, and that's really exciting to see.
>
> (Transcript of Teleconference on March 31, 2009 at pp. 4 and 5)

[277] The overall message communicated to investors in the Taylor Group throughout the Material Time was that the Axcess Automation Investment was generating substantial returns. As A.T.'s testified, "[t]hey would say that we would always have a good month" (Hearing Transcript dated April 13, 2011 at pp. 169 and 170). Similarly, P.A. testified that no losses were ever reported to him, he was never told that there were serious concerns about the investment and the fundamentals of the investment were "never in doubt" (Hearing Transcript dated April 14, 2011 at p. 176). As we found in paragraphs [256] to [259] above, however, these statements were false and misleading.

[278] Investors relied on the misinformation communicated to them by Taylor to determine whether to withdraw their investments or to remain invested. For example, P.A. testified that he believed the value of his investment as represented to him in various e-mail updates to be true. He testified that, in June 2006, he perceived the Axcess Automation Investment as giving "very good return and … we were very happy with that" (Hearing Transcript dated April 14, 2011 at p. 131) and as a result, P.A. wrote to Taylor in an e-mail dated June 17, 2006 stating that he and his wife were "interested in continuing with the experiment for obvious reasons". He further explained that, initially, his "attitude was we'll see if this thing is real or not and we'll see if we can actually withdraw money from it" (Hearing Transcript dated April 14, 2011 at p. 163). When his withdrawal request was honoured, P.A. wrote to his family endorsing the Axcess Automation Investment.

[279] For the reasons set out in paragraphs [263] and [264] above, we find that the misinformation caused deprivation to investors. More specifically, despite the evidence that the Taylor Group collectively did not suffer a loss, the misinformation induced investors to participate in the Axcess Investments and placed their funds at significant risk of loss.

[280] The e-mail exchanges between Taylor and Driver in Staff's evidence show that Taylor knew that the representations he made to investors were false and misleading and would put investor funds at significant risk of loss. The evidence shows that Taylor was aware as early as May 2007 that Driver had trouble honouring withdrawal requests, which led to complaints from many investors in the Taylor Group. In an e-mail dated May 24, 2007, Taylor wrote to Driver stating that "I am getting calls and emails from people. This guy is desperate … The implications area [*sic*] very large. I am still waiting to find out about the wires you were to have sent". Shortly after, in an e-mail dated June 1, 2007, Taylor described the situation as "It seems we are now [at] a crisis level. Looks like almost all cheques have bounced".

[281] A.T., who worked at Taylor's office during that time, also testified that she received telephone calls from angry investors asking where their money was. According to A.T., she was "being yelled at and screamed at every single day" (Hearing Transcript dated April 13, 2011 at p. 157).

[282] The statements made by Taylor in e-mail communications to Driver show that Taylor was aware of the fraudulent nature of Driver's actions. For example:

(a) In an e-mail dated June 1, 2007, Driver asked Taylor: "I've still have not received any new funds that you said were coming. How much is coming and when? It would make it much easier to re-allocate and disburse".

In an email to Driver on the same day, Taylor stated that "using incoming funds to pay outgoing requests is a problem according to acceptable practices (ponzi)".

(b) In an e-mail dated October 6, 2007, Taylor told Driver that "if money does not flow faster and communication improve you will find yourself behind bars. I totally think that is possible".

(c) In an e-mail dated December 13, 2007, Taylor told Driver that "The queue is a poor bandaid solution at best because you either cannot or will not advance people what they request. That, all by itself has legal implications that are quite serious … I do not want to have to open the circle to expose things as they are but will because both our lives are on the line … If I don't put a stop to this I will continue to be complicit in this matter. I have to say now it [*sic*] the time of action".

(d) In an e-mail dated February 20, 2008, Taylor told Driver that "The skipping of so many weeks is not only bad and wrong it is dangerous and likely fraudulent".

(e) In an e-mail dated June 10, 2008, Taylor told Driver that "Apart from the phantom transactions that you have NEVER let you [*sic*] administrator know about we have a SERIOUS FRAUDULENT ISSUE concerning this spreadsheet" [Emphasis in the original.].

[283] Further, Taylor's statements in various e-mails demonstrate that he had never seen, and was never provided with, proof of any legitimate trading activities. For example:

(a) In an e-mail dated December 13, 2007, Taylor told Driver that "I have no proof of ANY activity" [Emphasis in the original.].

(b) In an e-mail dated August 20, 2008, Taylor told Driver that "you have furnished NO evidence of the timeline of the progress or the access to funds on the go-forward basis or any paperwork … As you are well aware, I have not seen any proof of funds, nor has there been an update on this account in many months. Your agreement with me also indicated that any account connected to me would be given a significantly better split on the return … If you fail to respond or fail to transfer [funds to ACG] by Friday, August 22, 2008 then I will treat it as fraud and as breach and take actions accordingly, including having you co-named in the pending suit against me and others that may follow" [Emphasis in the original.].

[284] An e-mail from Taylor to an investor dated September 25, 2008, introduced into evidence through Kozovski, indicated that Taylor counseled the investor not to contact law enforcement authorities:

> There is one option but is [*sic*] is NOT A GOOD OPTION. The option is calling in authorities and regulators. Why is this not a good option? Well, the first thing they do is FREEZE EVERYTHING, then they take their time and do an audit. This can take years sometimes AND they eat up much of the proceeds while they are doing their investigation. Then, you may or may not get anything at the end of the day. So, that being our only viable option that would make the whole thing vulnerable is just not a very good one.
>
> [Emphasis in the original.]

[285] The e-mails from Taylor described above show that Taylor was aware of the fraudulent nature of his and Driver's actions in late May 2007 at the latest. Taylor never received proof of Driver's trading activities. He knew that Driver had trouble meeting withdrawal requests and that Driver was using newly-received investor funds to pay previous investors. Taylor nonetheless never informed investors that there were serious concerns about the Axcess Investments. Taylor continued to issue letters of agreement and accept new investments after May 2007, as shown by the letters of agreement in evidence issued in June and July 2007 and Staff's analysis discussed in paragraph [275] above. In addition, as exemplified by Taylor's communications to P.A. described above, Taylor continued to represent after May 2007 that investors' investments were growing at a steady rate and attributed any delays in withdrawal or communication to technical problems. It is clear that he knew

that making these representations would put investors' funds at a significant risk of loss. We find that Taylor provided incomplete information and misinformation and failed to provide accurate information, all of which clearly constitutes deceit and material misrepresentation.

[286] The Taylor Companies enabled the misrepresentations by Driver and the unauthorized diversion of investor funds by (i) receiving funds from and sending funds to investors; (ii) sending funds to Driver for purported investment; and (iii) receiving payments from Driver. In particular, we note that, as set out in paragraph [198] above, 1303066 received US$314,606, Berkshire received US$805,610 and Montecassino received US$190,000. There is further evidence that Montecassino and 1303066 formed part of the infrastructure implemented to administer the Axcess Investments. For example, A.T. testified that she was paid by Montecassino and the evidence shows that the queue document was created by 1303066 (ACG). As Taylor was the directing mind of the Taylor Companies, Taylor's knowledge is attributable to the Taylor Companies. Accordingly, we find that the Taylor Companies acted in furtherance of the fraudulent scheme with knowledge of the dishonest acts and the deprivation of investors that would result.

[287] For the reasons set out above, we find that Taylor and the Taylor Companies knowingly engaged in fraud, contrary to subsection 126.1(b) of the OSA.

### 3. Findings

[288] We conclude that Driver, the Driver Companies, Taylor and the Taylor Companies knowingly perpetrated a fraud, contrary to subsection 126.1(b) of the OSA.

## E. Was Driver responsible for the breaches of the Axcess Companies, was Taylor responsible for the breaches of the Taylor Companies and was Reynold responsible for the breaches of WCC pursuant to section 129.2 of the OSA?

### 1. The Applicable Law

[289] By virtue of section 129.2 of the OSA, a director or officer who authorized, permitted or acquiesced in a company's non-compliance with the OSA is deemed to be liable for such non-compliance. Specifically, section 129.2 states that:

> For the purposes of this Act, if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to also have not complied with Ontario securities law, whether or not any proceeding has been commenced against the company or person under Ontario securities law or any order has been made against the company or person under section 127.

[290] In subsection 1(1) of the OSA, a "director" is defined as "a director of a company or an individual performing a similar function or occupying a similar position for any person". An "officer", in relation to an issuer or registrant, is defined as:

> (a) a chair or vice-chair of the board of directors, a chief executive officer, a chief operating officer, a chief financial officer, a president, a vice-president, a secretary, an assistant secretary, a treasurer, an assistant treasurer and a general manager,
>
> (b) every individual who is designated as an officer under a by-law or similar authority of the registrant or issuer, and
>
> (c) every individual who performs functions similar to those normally performed by an individual referred to in clause (a) or (b).

[291] The language of section 129.2 also uses the terms "authorize", "permit" and "acquiesce". The threshold for a finding of liability against a director or officer under section 129.2 of the OSA is low. Indeed, merely acquiescing in the conduct or activity in question will satisfy the requirement of liability. As stated in *Momentas*:

> Although these terms have been interpreted to include some form of knowledge or intention, the threshold for liability under section 122 and 129.2 is a low one, as merely acquiescing [in] the conduct or activity in question will satisfy the requirement of liability. The degree of knowledge of intention found in each of the terms "authorize", "permit" and "acquiesce" varies significantly. "Acquiesce" means to agree or consent quietly without protest. "Permit" means to allow, consent, tolerate, give permission, particularly in writing. "Authorize" means to give official approval or permission, to give power or authority or to give justification.
>
> (*Momentas*, *supra*, at para. 118)

**2. Analysis**

**(a) Driver**

[292] The corporate documents in evidence show that, during the Material Time, Driver was the President and Secretary of Axcess Automation. Driver executed letters of agreement on behalf of Axcess Automation and controlled the accounts in the name of Axcess Automation to which investor funds were deposited and from which investor funds were dispersed. As we found in paragraph [173], Driver was listed as a signing authority on these accounts, and signed all of the cheques drawn on, and endorsed the cheques deposited to, those accounts.

[293] Driver was listed as the resident agent and manager (or managing member) of Axcess Fund Management and the resident agent of Axcess Fund. He created Axcess Fund and Axcess Fund Management to provide an investment vehicle which would purportedly allow investors to participate in his trading activities legally. The evidence shows that the issuance of limited partnership units of Axcess Fund was to be approved by Driver.

[294] Driver was a director or officer of the Axcess Companies and authorized, permitted or acquiesced in their contraventions of subsections 25(1)(a), 53(1) and 126.1(b) of the OSA. It is clear that Driver acted on behalf of the Axcess Companies in organizing and setting up the Axcess Investments and in receiving investor funds.

**(b) Taylor**

[295] The corporate documents in evidence show that, during the Material Time, Taylor was listed as a director and officer of 1303066 and the sole director of Berkshire. Although we were not provided with copies of supporting account statements in some instances, we accept Staff's analysis which shows that Taylor was the signing authority for or controlled accounts in the name of 1303066 and Berkshire. These accounts were used, among other things, to deposit funds received from investors for their investments and to receive commissions or payments from Driver. In particular, 1303066 received US$314,606 from Driver and Berkshire received US$805,610 from Driver. In addition, ACG (1303066), under the direction of Taylor, carried out certain tasks related to the administration of the Axcess Investments including the creation of the queue document.

[296] We received no corporate documents or banking documents with respect to Montecassino, however, Taylor testified in the compelled examination on August 6, 2009 that he established Montecassino in 2007 and was its President. The evidence shows that he performed the functions of and exercised powers similar to those of a director or officer. For example, he directed that A.T.'s compensation be paid out of account(s) in the name of Montecassino, and account(s) in the name of Montecassino received payments totaling US$190,000 from Driver.

[297] We find that Taylor was a director or officer of the Taylor Companies within the meaning of the OSA. He authorized, permitted or acquiesced in the Taylor Companies' contraventions of subsections 25(1)(a), 53(1) and 126.1(b) of the OSA.

**(c) Reynold**

[298] As set out above in paragraph [81], Reynold admitted to paragraphs 17 and 45 of the Statement of Allegations. More specifically, he admitted that he was the President and sole director of WCC, and authorized, permitted or acquiesced in WCC's non-compliance with Ontario securities law.

**3. Findings**

[299] We find that Driver authorized, permitted or acquiesced in the Axcess Companies' contraventions of subsections 25(1)(a), 53(1) and 126.1(b) of the OSA and is, therefore, responsible for such contraventions pursuant to section 129.2 of the OSA.

[300] We find that Taylor authorized, permitted or acquiesced in the Taylor Companies' contraventions of subsections 25(1)(a), 53(1) and 126.1(b) of the OSA and is, therefore, responsible for such contraventions pursuant to section 129.2 of the OSA.

[301] We also find that Reynold authorized, permitted or acquiesced in WCC's contraventions of subsections 25(1)(a) and 53(1) of the OSA and is, therefore, responsible for such contraventions pursuant to section 129.2 of the OSA.

## F. Was the Conduct of the Respondents Contrary to the Public Interest?

### 1. The Applicable Law

[302] As set out in section 1.1 of the OSA, it is the Commission's mandate:

> (a) to provide protection to investors from unfair, improper or fraudulent practices; and
>
> (b) to foster fair and efficient capital markets and confidence in capital markets.

[303] In pursuing the purposes of the OSA, the Commission must consider fundamental principles as stated in paragraph (2) of section 2.1 of the OSA, the relevant parts of which are as follows:

> i. requirements for timely, accurate and efficient disclosure of information,
>
> ii. restrictions on fraudulent and unfair market practices and procedures, and
>
> iii. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[304] Staff alleges that the conduct of the Respondents is contrary to the public interest.

2. Analysis

[305] The Respondents engaged in conduct contrary to Ontario securities law. All of the Respondents traded in securities without being registered to do so and engaged in a distribution without satisfying the distribution requirements of the OSA when no exemption was available, contrary to subsections 25(1)(a) and 53(1) of the OSA. The Respondents' conduct was contrary to the public interest as registration and distribution requirements are essential to protect investors and to ensure the integrity of the capital markets.

[306] For the reasons described above, we have also found that Driver, the Axcess Companies, Taylor and the Taylor Companies knowingly engaged in fraud contrary to subsection 126.1(b) of the OSA. The evidence demonstrates that Driver was the directing mind of an investment scheme that, whatever its original objectives, was clearly fraudulent notwithstanding periodic allusions to the desirability of investors using the proceeds derived from their investments for charitable and religious purposes. Taylor was inextricably involved in furthering the fraudulent elements of the scheme and was clearly aware that he and Driver and their respective companies were acting illegally.

[307] Reynold acknowledged that his participation in the Axcess Investments assisted Driver in obtaining investor funds and his failure to comply with the securities regulatory regime was harmful to the investors whose funds he solicited and the public interest. Reynold testified that whatever returns he derived from his personal investment were used for his Christian ministry and not personally and that the collapse of the Axcess Investments was a source of considerable personal embarrassment and humiliation and resulted in serious financial hardship for his family. Although Reynold may have been insensitive to obvious flaws in the Axcess Automation Investment, he eventually ceased to solicit funds from new investors although he did continue to accept new funds from existing investors. Staff did not allege any fraudulent behaviour by Reynold and we saw no evidence of such behaviour.

[308] The conduct of the Respondents undermined the integrity of and confidence in the capital markets, which we find to be contrary to the public interest.

### 3. Findings

[309] We conclude that all of the Respondents engaged in conduct contrary to the public interest.

## VIII. CONCLUSION

[310] For the reasons stated above, we find that:

> (a) Axcess Automation, Axcess Fund Management, Axcess Fund, Driver, Taylor, Berkshire, 1303066, Montecassino, Reynold and WCC traded in securities of the Axcess Investments without being registered to trade in securities, contrary to subsection 25(1)(a) of the OSA;
>
> (b) Axcess Automation, Axcess Fund Management, Axcess Fund, Driver, Taylor, Berkshire, 1303066, Montecassino, Reynold and WCC engaged in a distribution of securities of the Axcess Fund Investment for

which a preliminary prospectus or a prospectus had not been filed and for which receipts had not been issued by the Director, contrary to subsection 53(1) of the OSA;

(c) Axcess Automation, Axcess Fund Management, Axcess Fund, Driver, Taylor, Berkshire, 1303066 and Montecassino engaged or participated in acts, practices or a course of conduct relating to the Axcess Investments that they knew perpetrated a fraud, contrary to subsection 126.1(b) of the OSA;

(d) Driver authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a), 53(1) and 126.1(b) of the OSA by Axcess Automation, Axcess Fund Management and Axcess Fund and is deemed to be liable for such contraventions pursuant to section 129.2 of the OSA;

(e) Taylor authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a), 53(1) and 126.1(b) of the OSA by Berkshire, 1303066 and Montecassino and is deemed to be liable for such contraventions pursuant to section 129.2 of the OSA;

(f) Reynold authorized, permitted or acquiesced in the contraventions of subsections 25(1)(a) and 53(1) of the OSA by WCC and is deemed to be liable for such contraventions pursuant to section 129.2 of the OSA; and

(g) Axcess Automation, Axcess Fund Management, Axcess Fund, Driver, Taylor, Berkshire, 1303066, Montecassino, Reynold and WCC acted contrary to the public interest.

[311] We will also issue an order dated September 27, 2012 which sets down the date for the hearing with respect to sanctions and costs in this matter.

Dated at Toronto this 27th day of September, 2012.

"Christopher Portner"
Christopher Portner

"Paulette L. Kennedy"
Paulette L. Kennedy

### 3.1.3 M P Global Financial Ltd. and Joe Feng Deng – 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**
**M P GLOBAL FINANCIAL LTD.,**
**AND JOE FENG DENG**

**REASONS AND DECISION ON SANCTIONS AND COSTS**
**(Sections 127 and 127.1 of the Securities Act)**

| | | |
|---|---|---|
| **Sanctions Decision:** | October 1, 2012 | |
| **Sanctions and Costs Hearing:** | June 21, 2012 | |
| **Panel:** | Margot C. Howard, CFA | Commissioner and Chair of the Panel |
| **Counsel:** | Matthew Britton | For Staff of the Ontario Securities Commission |
| | Anthony M. Speciale | For M P Global Financial Ltd. and Joe Feng Deng |

**TABLE OF CONTENTS**



**REASONS AND DECISION**
**ON SANCTIONS AND COSTS**

## I. BACKGROUND

[1] This was a hearing before the Ontario Securities Commission (the "**Commission**") to consider pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "**Act**") whether it is in the public interest to make an order with respect to sanctions and costs against M P Global Financial Ltd. ("**MP**") and Joe Feng Deng also known as Feng Deng and Yue Wen Deng ("**Mr. Deng**") (collectively, the "**Respondents**").

[2] This proceeding was commenced by a Statement of Allegations and a Notice of Hearing dated September 10, 2009. It was alleged by Staff of the Commission ("**Staff**") that the Respondents contravened subsections 25(1)(a) (unregistered trading), subsection 25(1)(c) (illegal advising in securities) and subsection 53(1) (illegal distribution of securities). Staff further alleged that

as a director of MP, Mr. Deng authorized, permitted or acquiesced in the conduct of MP, contrary to section 129.2 of the Act, and that all of the conduct described above was contrary to the public interest.

[3] MP and its associated legal entities were created by Mr. Deng to market and manage different types of financial products. The evidence in the hearing on the merits focused on the sale of debentures which raised amounts aggregating in excess of $25 million that were received by MP and MP Group Ltd. ("**MP Group**"), entities under Mr. Deng's control and the understanding that funds from investors were to be used to fund currency trading. Investors purchased debentures from MP, and were generally given certificates. The majority of the investors were from the Chinese-Canadian community in and around the Greater Toronto Area and there were also investments made through accounts in Hong Kong and certain Caribbean islands. The rates of return promised to the holders of the debentures were high and ranged from 1% to 4% per month.

[4] Of the $8.2 million that was deposited into the MP Group trading accounts, $7.75 million was lost through unprofitable trades by March 2009. Although there were periods of profitable trading, the trend was negative, with one notable period of profitable trading from April 2008 until mid July 2008, where prior losses were recouped, only to be lost again in subsequent months. Given the currency trading losses and the high rates of return promised to holders of the debentures, Mr. Deng found himself in the position of having to use new investors' money to fund returns and redemptions. This situation was not sustainable as the more money raised from investors, the higher the monthly return commitment, and monthly return cheques and redemptions were suspended in March 2009.

[5] During the hearing on the merits, the Respondents were represented by Mr. Anthony Speciale. The decision on the merits was issued on August 19, 2011 (*Re M P Global Financial Ltd.* (2011), 34 OSCB 8897) (the "**Merits Decision**").

[6] Following the release of the Merits Decision, the Commission held a separate hearing on June 21, 2012 to consider submissions from Staff and counsel for the Respondents regarding sanctions and costs (the "**Sanctions and Costs Hearing**"). Staff appeared at the Sanctions and Costs Hearing and Mr. Speciale represented the Respondents. Staff provided written submissions dated April 25, 2012, along with a Book of Authorities, and an affidavit, Bill of Costs and dockets in support of the costs request. Counsel for the Respondents provided written submissions dated June 18, 2012.

[7] These are my reasons and decision as to the appropriate sanctions and costs to be ordered against the Respondents. A Sanctions and Costs Order giving effect to these reasons is attached as "Schedule A".

## II. THE MERITS DECISION

[8] The Merits Decision addressed the following issues:

1. Did the Respondents engage in unregistered trading in securities in breach of subsection 25(1)(a) of the Act, without any available exemptions?

2. Did the Respondents engage in unregistered investment advisory activity in breach of subsection 25(1)(c) of the Act, without any available exemptions?

3. Did the Respondents engage in a distribution of securities contrary to subsection 53(1) of the Act?

4. Is Mr. Deng responsible for the breaches of MP, pursuant to section 129.2 of the Act?

5. Did the Respondents act contrary to the public interest?

(Merits Decision, *supra*, at para. 21)

[9] The panel concluded in the Merits Decision that:

1. the Respondents breached subsection 25(1)(a) of the Act because they:

   i. engaged in trading and acts in furtherance of trades;

   ii. were not registered; and

   iii. did not qualify for any of the registration exemptions under the Act.

2. the Respondents breached subsection 53(1) of the Act because:

   i. a distribution of securities occurred;

ii. no prospectus was issued; and

iii. no exemptions were available;

3. Mr. Deng was a *de facto* officer and director of MP who authorized, permitted and acquiesced in MP's breaches of Ontario securities law pursuant to section 129.2 of the Act;

4. the Respondents engaged in conduct contrary to the public interest by virtue of the breaches referred to above; and

5. There was insufficient evidence to show that the Respondents breached subsection 25(1)(c) of the Act.

[10] It is this conduct that I must consider in determining the appropriate sanctions to impose in this matter.

## III. SANCTIONS AND COSTS REQUESTED BY STAFF

[11] Staff requests the following sanctions and costs orders against the Respondents.

*Cease trade and other prohibition orders*

[12] Staff seeks an order:

(a) pursuant to clause 2 of subsection 127(1) of the Act, that trading in any securities by the Respondents cease permanently;

(b) pursuant to clause 2.1 of subsection 127(1), that the acquisition of any securities by the Respondents cease permanently;

(c) pursuant to clause 3 of subsection 127(1), that any exemptions contained in Ontario securities law do not apply to the Respondents permanently;

(d) pursuant to clause 7 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of an issuer;

(e) pursuant to clause 8 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of any issuer permanently;

(f) pursuant to clause 8.1 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of any registrant;

(g) pursuant to clause 8.2 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of any registrant permanently;

(h) pursuant to clause 8.3 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of an investment fund manager;

(i) pursuant to clause 8.4 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of an investment fund manager permanently; and

(j) pursuant to clause 8.5 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently.

*Reprimand*

[13] Staff seeks an order, pursuant to clause 6 of subsection 127(1), reprimanding each of the Respondents.

*Administrative Penalties*

[14] Staff submits that an administrative penalty in the range of $500,000 to $750,000 paid by each of the Respondents is appropriate in the circumstances. The panel found in the Merits Decision that the Respondents each breached two significant sections of the Act. Staff submits that a substantial administrative penalty is necessary to deter Mr. Deng from engaging in the same or similar conduct in the future and to send a clear deterrent message to other market participants in similar positions.

*Disgorgement*

[15] Staff seeks an order, pursuant to clause 10 of subsection 127(1) of the Act, requiring the Respondents to disgorge to the Commission all amounts obtained as a result of their non-compliance with Ontario securities law, such amounts to be allocated to or for the benefit of third parties pursuant to subsection 3.4(2)(b) of the Act.

[16] Staff seeks a specific order that the Respondents jointly and severally disgorge $7,905,946.61 to the Commission, being the amount equal to the difference between what the Respondents were found to have received from investors and paid to investors.

[17] Staff submits that the entire amount obtained by the Respondents from the investors should be ordered disgorged based on the following factors:

(a) the amount requested to be disgorged represents the entire amount obtained as a result of the Respondents' illegal trading;

(b) the Respondents' misconduct was serious and the investors were seriously harmed by the misappropriation of their funds;

(c) the amounts the Respondents obtained as a result of the non-compliance is reasonably ascertainable;

(d) it does not appear likely that investors will be able to obtain any redress; and

(e) a disgorgement order for the entire amount obtained by the Respondents from the investors would have a significant specific and general deterrent effect.

[18] Citing the reasoning in *Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 and *Re Sabourin*, (2010) 33 OSCB 5299, Staff submits that this Panel should order the amounts obtained in non-compliance with Ontario securities law less the amount repaid to investors be disgorged to the Commission. Accordingly, Staff submits that the Panel should order that the Respondents disgorge the difference between the amounts that were obtained by them from investors in non-compliance with Ontario securities law being $18,452,272 and $3,003,674(USD) as set out in clause 1 of paragraph 26 of the Merits Decision and the amounts that were repaid to investors being $10,432,649 and $3,108,882(USD) as set out in clause 4(1) of the Merits Decision.

*Staff's Conclusion on Sanctions*

[19] Staff submits that the sanctions proposed by Staff are proportionate to the Respondents' serious misconduct and will serve as a specific and general deterrent. An order permanently removing the Respondents from the capital markets, requiring disgorgement of all funds obtained from the investors, and requiring the Respondents to pay significant administrative penalties will signal both to the Respondents and to like-minded individuals that serious misconduct will result in severe sanctions.

*Costs*

[20] Staff also seeks an order for the payment by the Respondents of the Commission's investigation and hearing costs pursuant to section 127.1 of the Act. Staff submits that the Respondents should be ordered to pay $317,940.92 on a joint and several basis, which amount Staff submits is comprised of the time expended by professionals on the file totalling $271,503.75 and the disbursements totalling $46,437.17.

## IV. THE POSITIONS OF THE RESPONDENTS

[21] The Respondents take the position that the Commission should reject Staff's requested sanctions as they are not reflective of the facts in this case nor are they in keeping with the legal principles established by the Commission and the courts.

[22] Furthermore, the Respondents take the position at paragraph 18 of their written submissions on sanctions that "to ask for sanctions on a permanent basis is not equitable and clearly punitive. Furthermore, to close the door forever to the Respondents from the exemptions contained in the Act is manifestly unjust. It is further respectfully submitted that the facts of this case do not warrant for a disgorgement order or administrative penalty to be imposed."

[23] The Respondents take the position in paragraph 19 of their written submissions that the following sanctions are better suited to be ordered in this matter:

(a) that pursuant to clause 2 of subsection 127(1) of the Act, the Respondents cease trading securities or acquiring securities for a specific period of three years from April 13, 2009;

(b) that the Respondents be reprimanded;

(c) that pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Mr. Deng be prohibited from acting as a director or officer of any issuer, registrant or investment fund manager for a period of five years from April 13, 2009; and

(d) that pursuant to clauses 8.5 of subsection 127(1) of the Act, the Respondents be prohibited from becoming or acting as a registrant, an investment fund manager and as a promoter for a period of five years from April 13, 2009.

[24] With respect to costs, the Respondents submit at paragraph 21 of their written submissions that "success has been relatively divided in this matter, and accordingly, there should be no award of costs made."

## V. SANCTIONS

### (i) The Law on Sanctions

[25] The Commission's dual mandate is (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets (section 1.1 of the Act).

[26] The Commission's objective when imposing sanctions is not to punish past conduct, but rather to restrain future conduct that may be harmful to investors or Ontario's capital markets. This objective was described in *Re Mithras Management Ltd*. as follows:

> … the role of this Commission is to protect the public interest by removing from the capital markets – wholly or partially, permanently or temporarily, as the circumstances may warrant – those whose conduct in the past leads us to conclude that their conduct in the future may well be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts, particularly under section 118 [now 122] of the Act. We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be; we are not prescient, after all.
>
> (*Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at pp. 1610-1611)

[27] Further, the Supreme Court of Canada has recognized general deterrence as an additional factor that the Commission may consider when imposing sanctions. In Cartaway Resources Corp., [2004] 1 S.C.R. 672 at para. 60 the Supreme Court stated that: "… it is reasonable to view general deterrence as an appropriate and perhaps necessary consideration in making orders that are both protective and preventative".

[28] The Commission must ensure that the sanctions imposed in each case are proportionate to the circumstances and conduct of each respondent. The Commission has previously identified the following as some of the factors that a panel should consider when imposing sanctions:

(a) the seriousness of the conduct and the breaches of the Act;

(b) the respondent's experience in the marketplace;

(c) the level of a respondent's activity in the marketplace;

(d) whether or not there has been recognition by a respondent of the seriousness of the improprieties;

(e) whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets;

(f) the size of any profit obtained or loss avoided from the illegal conduct;

(g) the size of any financial sanction or voluntary payment;

(h) the effect any sanctions may have on the ability of a respondent to participate without check in the capital markets;

(i) the reputation and prestige of the respondent;

(j) the remorse of the respondent; and

(k) any mitigating factors.

(*Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 at p. 7746; and *Re M.C.J.C. Holdings Inc. and Michael Cowpland* (2002), 25 OSCB 1133)

The applicability and importance of such factors will vary according to the circumstances of each case.

**(ii) Specific Sanctioning Factors Applicable in this Matter**

[29] Overall, the sanctions I impose must protect investors and Ontario capital markets by barring or restricting the Respondents from participating in those markets in the future.

[30] In considering the various factors referred to in paragraph 28, I find the following factors and circumstances to be relevant in this matter:

**(a) *The Seriousness of the Misconduct***

[31] The allegations proven in this case involve very serious misconduct and a significant contravention of the Act, as well as conduct contrary to the public interest. The Respondents engaged in unregistered trading. As the panel noted in the Merits Decision, registration requirements serve an important role in securities regulation. We stated in the Merits Decision that:

> In order for there to be fairness and confidence in Ontario's capital markets it is critical that brokers, dealers and other market participants who are in the business of selling or promoting securities meet the minimum registration, qualification and conduct requirements of the Act.
>
> (Merits Decision, *supra*, at para. 46)

[32] The Respondents breached two key provisions of the Act, by trading without registration and by engaging in a distribution without satisfying the distribution requirements under the Act. Both of these provisions are intended to protect investors from the very conduct that occurred here; the Respondents actions caused financial damage to the investors and to the integrity of Ontario's capital markets, and were clearly contrary to the public interest.

[33] Registration requirements ensure that market participants meet appropriate proficiency requirements and distribution requirements are designed to provide investors with the information they need to understand the risks and return potential of investments they are considering. MP was issuing securities on a continuous basis and information such as Mr. Deng's actual trading losses, the high level fixed interest obligations that MP had as a result of the issuance of the Debentures and the amount of Debentures outstanding would likely have given a number of investors serious concerns as to investing in MP.

[34] The Respondents failed to maintain high standards of fairness and business conduct to ensure honest and responsible conduct.

**(b) *The Respondents' Experience and Knowledge***

[35] Mr. Deng was a former registrant with the Commission. He would have been aware that registration and filing of a prospectus was required under the Act. For someone with experience in the capital markets, I find it troublesome that Mr. Deng did not take all the necessary steps to ensure that he complied with Ontario securities law. In my view, Mr. Deng chose to disregard the registration requirements in Ontario. The Respondents should have obtained proper registration prior to trading MP securities and ensured that they qualified for exemptions. The Respondents chose to ignore the registration requirements. Registration requirements are obligatory for all market participants and must be adhered to by all market participants.

**(c) *The Respondents' activity in the marketplace:***

[36] MP was involved in a systematic process of attracting potential investors and selling its securities, and raised a very significant amount of funds. The evidence established that investors purchased approximately $25 million in debentures from the Respondents. The investors understood that these funds would be used in currency trading. The panel found in the Merits Decision that the debentures satisfied the definition of a security under the Act and the panel was satisfied that the Respondents engaged in trading these securities without being registered and without having filed a prospectus. In finding that Mr. Deng engaged in the trading of securities, the panel noted at paragraph 84 of the Merits Decision that:

> Mr. Deng dealt directly with certain investors who made very large investments and he also met with some of the investors to explain the investment to them. … [S]ome investors, such as J.D., testified that Mr. Deng explained that their investment was "guaranteed …"

**(d)** ***The Sanctions will Deter the Respondents and Like-Minded People from Engaging in Similar Abuses of the Capital Markets***

[37] In this case, given the Respondents' serious misconduct, significant sanctions are appropriate to deter the Respondents and like-minded individuals in similar positions. Mr. Deng was a respected individual within his community who his peers trusted. We must deter others in similar positions from abusing that trust.

**(e)** ***The Size of any Profit Made or Loss Avoided from the Illegal Conduct***

[38] The panel found in the Merits Decision that $678,134 and $1,387,794 (USD) was paid to Mr. Deng or for his personal benefit and $383,044 and $108,900 (USD) was spent on credit card payments, of which $127,945 was in respect of jewellery purchases by Mr. Deng. These are substantial amounts.

**(f)** ***The Restraint Any Sanctions May Have on the Ability of a Respondent to Participate Without Check in the Capital Markets***

[39] The requested restrictions on trading and acting as a director or officer of a reporting issuer will have the effect of restraining the Respondents' participation in our capital markets in a way that is directly related to the Respondents' misconduct in this matter. The misconduct in this case related directly to trading in securities while the Respondents were unregistered under the requirements of the Act.

**(g)** ***The Ability of the Respondents to Pay***

[40] At the Sanctions and Costs Hearing, I was not provided with any affidavit or other evidence as to the Respondents' ability to pay any monetary sanctions. However, counsel for the Respondents submits that MP lost its business and has no assets as a result of these proceedings. Further, Mr. Deng's counsel submitted that Mr. Deng lost his marriage, personal residence, and has no meaningful assets or employment prospects. Mr. Deng returned to China following the completion of the hearing and continues to live there with his family who are supporting him.

[41] Given the seriousness of the Respondents' misconduct and the lack of evidence as to the Respondents' financial resources, I do not consider the Respondents' ability to pay as a significant factor in determining the appropriate monetary sanctions or costs.

**(iii) Trading and Other Bans**

[42] Staff takes the position that it would be appropriate for me to order that Mr. Deng cease trading in securities permanently and that exemptions contained in Ontario securities law not apply to any of the Respondents permanently.

[43] The Respondents submit that to ask for trading sanctions on a permanent basis is not equitable and is clearly punitive. The Respondents argued that more appropriate sanctions would be for the Respondents to cease trading securities or acquiring securities for three years from April 13, 2009 (now expired), that Mr. Deng be prohibited from acting as a director or officer of any issuer, registrant or investment fund manager for a period of five years from April 13, 2009 and that the Respondents be prohibited from becoming or acting as a registrant, investment fund manager or promoter for a period of five years from April 13, 2009.

[44] The trading, exemption and director/officer bans sought by Staff relate directly to the Respondent's conduct of trading in securities and running a business, and to Mr. Deng's oversight role as a director or officer of an issuer. The Respondents engaged in unregistered trading through the issuance of the Debentures, which the Commission regards as a serious breach. However, there was no allegation of fraud as in certain precedents cited by Staff and there was no evidence of abusive trading. In my view, while the conduct of the Respondents is too serious to not issue a trading ban of significant duration on the Respondents, both as a specific and general deterrent, a permanent ban is not appropriate and a carve-out to allow him to trade on behalf of his own account is reasonable.

[45] In all of the circumstances, I have concluded that it is in the public interest to make the following orders:

(a) each of the Respondents shall cease trading in any securities for a period of fifteen years from the date of this decision, with the exception that Mr. Deng is permitted to trade in securities on his own behalf, through a registered dealer;

(b) the acquisition of any securities by the Respondents shall cease for a period of fifteen years from the date of this decision, with the exception that Mr. Deng is permitted to acquire securities on his own behalf, through a registered dealer;

(c) a removal of exemptions against each of the Respondents for a period of fifteen years from the date of this decision;

(d) an order that Mr. Deng resign all positions he may hold as a director or officer of an issuer, registrant or investment fund manager;

(e) an order that Mr. Deng be prohibited for a period of fifteen years from the date of this decision from becoming or acting as a director or officer of an issuer, registrant or investment fund manager; and

(f) an order reprimanding each of the Respondents.

**(iv) Disgorgement**

[46] Clause 10 of subsection 127(1) of the Act provides that a person or company that has not complied with Ontario securities law can be ordered to disgorge to the Commission "any amounts obtained as a result of the non-compliance". The disgorgement remedy is intended to ensure that respondents do not retain any financial benefit from their breaches of the Act and to provide specific and general deterrence.

[47] Disgorgement is not intended primarily as a means to compensate investors for their losses. However, subsection 3.4(2)(b) of the Act allows the Commission to order that amounts paid to the Commission in satisfaction of a disgorgement order or administrative penalty be allocated to or for the benefit of third parties.

[48] I have considered the following factors in determining whether to issue a disgorgement order against the Respondents:

(a) the amount obtained by the Respondents as a result of their non-compliance with the Act;

(b) the fact that the amount obtained as a result of the Respondents' non-compliance is reasonably ascertainable;

(c) the seriousness of the misconduct and breaches of the Act;

(d) whether the individuals who suffered losses are likely to be able to obtain redress by other means; and

(e) the deterrent effect of a disgorgement order on the Respondents and other market participants.

(*Re Limelight Entertainment Inc.*, *supra*, at para. 52)

[49] In my view, a disgorgement order is appropriate in these circumstances because it ensures that none of the Respondents will benefit from their breaches of the Act and because such an order will deter them and others from similar misconduct. However, while I accept the principle from *Re Limelight* that all monies obtained as a result of non-compliance with securities law should be disgorged, the circumstances of this case do not warrant full disgorgement. This was not a case that involved an allegation of fraud or a sham investment scheme of any kind, and therefore a 100 percent disgorgement would verge on the punitive side. In my view, it is appropriate that a disgorgement order in these circumstances relate to the amount obtained by Mr. Deng that he used for his own personal benefit.

[50] I will order that the Respondents disgorge $2,193,873 (CDN) on a joint and several basis. That amount represents the total amount in Canadian dollars that was obtained by the Respondents and used for their own personal benefit, as detailed in paragraph 9(d) and (e) of Staff's written submissions:

(d) $678,134 and $1,387,794 (USD) was paid to Mr. Deng or for his own personal benefit;

(e) $380,044 and $108,900 (USD) was spent on credit card payments of which $127,945 was used for jewellery purchases by Mr. Deng.

I included only the $127,945 from subparagraph (e), as there was no dispute that this amount was used for a personal benefit/personal purchase. The remainder of the amount spent on credit card payments may include personal amounts but this was not explored in sufficient detail for me to include them in the disgorgement order.

[51] I impose joint and several liability on MP and Mr. Deng because, as stated in the Merits Decision, Mr. Deng was the directing and controlling mind of MP. Ultimately it was Mr. Deng who managed investors' funds.

### (v) Administrative Penalty

[52] In my view, it is appropriate to impose substantial administrative penalties against the Respondents, in addition to my disgorgement order. I have considered the submissions made by Staff as to the appropriate administrative penalty in this case. However, I find it necessary to distinguish this case from the fraud cases which Staff directed me to. In my view, the Respondents' behaviour was not predatory or rapacious, however it is conduct of serious concern where Mr. Deng took large amounts of funds from investors and then was not forthcoming with said investors when all of their funds were lost. This is unacceptable conduct by any person but as a former registrant and someone who was familiar with the markets, there is an expectation placed on such a Respondent for them to comply with the Act. It was clear from the evidence provided by Staff during the hearing on the merits that extensive time was required to gather and analyze the financial records of MP in order to ascertain what happened to investors' funds.

[53] In imposing the following administrative penalty, I have considered the findings in the Merits Decision, the respective roles of each Respondent in the illegal conduct involved in this matter and the extent of the involvement of each Respondent.

[54] I will order that an administrative penalty of $250,000 be paid to the Commission by each of MP and Mr. Deng. The Respondents committed multiple violations of the Act, which caused serious harm to the investors. As noted above, Mr. Deng was the directing and controlling mind of MP and orchestrated the investment of the funds obtained and then mismanaged those funds. A very substantial administrative penalty is justified based on the amount of money that appears to have been lost by investors. Further, a substantial administrative penalty is necessary to signal to the public that you cannot neglect registration and use of a prospectus and avoid monetary penalty. That amount shall be allocated to or for the benefit of third parties in accordance with section 3.4(2)(b) of the Act in accordance with this decision (see paragraph 55 of these reasons).

### (vi) Allocation of Amounts for Benefit of Third Parties

[55] Any amounts paid to the Commission in compliance with my orders for disgorgement and administrative penalties shall be allocated to or for the benefit of third parties, including investors who lost money as a result of investing with MP, in accordance with subsection 3.4(2)(b) of the Act.

[56] The terms of paragraph 55 shall not give rise to or confer upon any person, including any investor (i) any legal right or entitlement to receive, or any interest in, amounts received by the Commission under my orders for disgorgement and administrative penalties, or (ii) any right to receive notice of any application by Staff to the Commission made in connection with that paragraph or of any exercise by the Commission of any discretion granted to it under that paragraph.

## VI. COSTS

[57] Section 127.1 of the Act gives the Commission discretion to order a person or company to pay the costs of an investigation and a hearing if the Commission is satisfied that the person or company has not complied with the Act or has not acted in the public interest. The panel held in the Merits Decision that the Respondents contravened subsections 25(1)(a) and 53(1), Mr. Deng contravened section 129.2 and that the Respondents have not acted in the public interest.

[58] Staff seeks an order for the payment of $317,940.92 of the costs of investigation and of the hearing in this matter against all of the Respondents, including disbursements, on a joint and several basis. Staff submitted an affidavit, a Bill of Costs and dockets supporting that amount.

[59] Staff submits that the hearing on the merits took 18 days to complete, and the Respondents did not contribute to the efficiency of the hearing. Their conduct was egregious and their primary defence was without merit.

[60] The claim for costs was calculated according to a schedule of hourly rates for various members of Staff of the Enforcement Branch of the Commission.

[61] The Respondents submit that success was relatively divided in this matter and, accordingly, there should be no award of costs made. Further, the Respondents argue that the dockets provided by Staff in support of the costs request were "grossly deficient", and that the number of Enforcement Staff present at the hearing was unnecessary. The Respondents submit that the quantum for hours requested for Mr. Humphreys for 315.25 hours and 580 hours for Ms. Collins, respectively, are excessive. Furthermore, they submit that the amounts claimed for these hours at the rate of $185.00 per hour, for a total combined amount of $165,621.25, are inappropriate and seriously offensive to the principle of indemnification.

[62] The Respondents submit that no costs should be paid for internal litigation counsel, being the amount of 438 hours for Mr. Britton and 78.5 hours for Ms. Heydon. They submit that section 127.1 of the Act contemplates only costs which are incurred by outside counsel who are retained to provide services to the Commission. Therefore, the Respondents submit that Mr. Britton and Ms. Heydon are staff in-house members of the Commission and on top of that, have failed to provide the actual hourly wage information as part of Staff costs submissions.

[63] I do not agree with the Respondents' submissions that certain costs such as internal litigation counsel costs are not recoverable in this matter. The language of subsection 127.1(4) of the Act is quite clear, in which it states that "the costs that the Commission may order the person or company to pay *include, but are not limited to*, all or any of the following:

3. Costs for time spent by the Commission or the staff of the Commission.

Therefore, I do not find that the payment of internal litigation counsel costs by the Respondents inappropriate or outside the parameters of the Act.

[64] Lastly, the Respondents submit that all of the 78.5 hours of Ms. Heydon should be disallowed. This proceeding commenced in 2009. Ms. Heydon was called to the Bar in 2008. The Respondents submit that Ms. Heydon at best fulfilled the role as junior counsel, law clerk or student during the proceeding.

[65] I agree with the Respondents that in this particular matter where one allegation has not been proved by Staff, this should be taken into account regarding a costs award. I also find it reasonable for the Respondents to make the argument that it was Staff's choice to have multiple counsels present at a fairly straight-forward hearing, and therefore it is not entirely fair for Respondents to automatically assume that full burden. Further, while I do not take the view that the dockets provided by Staff were "grossly deficient" as argued by the Respondents, I would note that the dockets lacked detail as to the type of work performed. The dockets do show however that many hours were spent on this case by various members of Staff, and I do not doubt the time spent on this case as it was clear from the Merits Hearing that extensive investigation and financial analysis was required. I have taken the Respondents submissions at paragraphs 61 to 64 into account however I am of the view that the costs requests of Staff sit squarely within the parameters of the Act. I take no issue with the disbursements.

[66] Therefore, I order that costs in the amount of $150,000 shall be payable by the Respondents on a joint and several basis.

## VII. CONCLUSION

[67] For the reasons discussed above, I have concluded that the sanctions I impose above are proportionate to the respective conduct and culpability of each of the Respondents in the circumstances and are in the public interest. I will issue a sanctions and costs order substantially in the form attached as Schedule "A" to these reasons.

Dated at Toronto, this 1st day of October, 2012.

"Margot C. Howard"

**Schedule "A"**

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

**AND**

**IN THE MATTER OF**
**M P GLOBAL FINANCIAL LTD.,**

**AND JOE FENG DENG**

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

**WHEREAS** on September 10, 2009, 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 M P Global Financial Ltd. ("**MP**") and Joe Feng Deng also known as Feng Deng and Yue Wen Deng ("**Mr. Deng**") (collectively referred to as the "**Respondents**");

**AND WHEREAS** the Commission conducted the hearing on the merits in this matter on February 17, 18, 19, 22, 23, 24, and 25, 2010, March 1, 2010, April 13, 14, 23, 26, 27, 28, 29, and 30, 2010, May 4, 2010 and June 2, 2010;

**AND WHEREAS** the Commission issued its Reasons and Decision on the merits in this matter on August 19, 2011 (the "**Merits Decision**");

**AND WHEREAS** the Commission concluded in the Merits Decision that all of the Respondents contravened Ontario securities law and have 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 June 21, 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, each of the Respondents shall cease trading in any securities for a period of fifteen years from the date of the Sanctions Decision, with the exception that Mr. Deng may trade on his own behalf in his own account, solely through a registered dealer (which dealer must be given a copy of this Order);

(b) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by any of the Respondents is prohibited for a period of fifteen years from the date of the Sanctions Decision, with the exception that Mr. Deng may acquire securities on his own behalf in his own account, solely through a registered dealer (which dealer must be given a copy of this Order);

(c) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions in Ontario securities law do not apply to any of the Respondents for a period of fifteen years from the date of the Sanctions Decision;

(d) pursuant to clause 6 of subsection 127(1) of the Act, each of the Respondents are reprimanded;

(e) pursuant to clause 7 of subsection 127(1) of the Act, Mr. Deng shall immediately resign all positions he may hold as a director or officer of any issuer;

(f) pursuant to clause 8 of subsection 127(1) of the Act, Mr. Deng shall be prohibited from becoming or acting as a director or officer of any issuer for a period of fifteen years from the date of the Sanctions Decision;

(g) pursuant to clause 8.1 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of any registrant;

(h) pursuant to clause 8.2 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of any registrant for a period of fifteen years from the date of the Sanctions Decision;

(i) pursuant to clause 8.3 of subsection 127(1), that Mr. Deng resign all positions he may hold as a director or officer of an investment fund manager;

(j) pursuant to clause 8.4 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a director or officer of an investment fund manager for a period of fifteen years from the date of the Sanctions Decision; and

(k) pursuant to clause 8.5 of subsection 127(1), that Mr. Deng be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of fifteen years from the date of the Sanctions Decision;

(l) pursuant to clause 9 of subsection 127(1) of the Act, each of MP and Mr. Deng shall pay an administrative penalty of $250,000 to the Commission, such amount to be allocated to or for the benefit of third parties;

(m) pursuant to clause 10 of subsection 127(1) of the Act, MP and Mr. Deng shall jointly and severally disgorge $2,193,873 to the Commission, such amount to be allocated to or for the benefit of third parties; and

(n) pursuant to section 127.1 of the Act, MP and Mr. Deng shall jointly and severally pay costs of $150,000 to the Commission.

**DATED** at Toronto, Ontario this 1st day of October, 2012.

"Margot C. Howard"

# 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 |
|---|---|---|---|---|
| | | | | |

**THERE ARE NO ITEMS FOR THIS WEEK.**

### 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 |
|---|---|---|---|---|---|
| Focus Graphite Inc. | 24 Sept 12 | 05 Oct 12 | | | |
| Boyuan Construction Group, Inc. | 02 Oct 12 | 15 Oct 12 | | | |

### 4.2.2 Outstanding Management & Insider Cease Trading Orders

| Company Name | Date of Order or Temporary Order | Date of Hearing | Date of Permanent Order | Date of Lapse/ Expire | Date of Issuer Temporary Order |
|---|---|---|---|---|---|
| China Wind Power International Corp. | 08 Aug 12 | 20 Aug 12 | 20 Aug 12 | | |
| Canadian Oil Recovery & Remediation Enterprises Ltd. | 31 Aug 12 | 12 Sept 12 | 12 Sept 12 | | |
| Focus Graphite Inc. | 24 Sept 12 | 05 Oct 12 | | | |
| Boyuan Construction Group, Inc. | 02 Oct 12 | 15 Oct 12 | | | |
| McVicar Industries Inc. | 12 Sept 12 | 24 Sept 12 | 24 Sept 12 | | |

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## Chapter 7

# Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

## Chapter 8

# Notice of Exempt Financings

**REPORTS OF TRADES SUBMITTED ON FORMS 45-106F1 AND 45-501F1**

| Transaction Date | No of Purchasers | Issuer/Security | Total Purchase Price ($) | No of Securities Distributed |
|---|---|---|---|---|
| 09/03/2012 | 1 | ABCA Funds Ireland PLC - Common Shares | 19,725,934.49 | 14,763.93 |
| 07/10/2012 to 07/20/2012 | 2 | Accutrac Capital Solutions Inc. - Preferred Shares | 800,000.00 | 800.00 |
| 09/14/2012 | 3 | Advanced Explorations Inc. - Units | 1,045,680.00 | 4,356,999.00 |
| 04/20/2012 | 5 | Alpha Cancer Technologies Inc. - Common Shares | 489,999.94 | 261,334.00 |
| 05/31/2011 | 2 | Alpha Cancer Technologies Inc. - Notes | 30,000.00 | 30.00 |
| 04/19/2011 | 2 | Alpha Cancer Technologies Inc. - Notes | 50,000.00 | 50.00 |
| 03/18/2012 | 17 | Alpha Cancer Technologies Inc. - Notes | 930,000.00 | 930.00 |
| 09/04/2012 | 4 | American Axle & Manufacturing, Inc. - Notes | 4,438,350.00 | 4.00 |
| 09/14/2012 | 60 | American Bonanza Gold Corp. - Units | 5,000,000.00 | 25,000,000.00 |
| 08/08/2012 to 09/07/2012 | 31 | Argonaut Exploration Inc. - Units | 291,875.00 | 5,837,500.00 |
| 09/04/2012 | 1 | Australia and New Zealand Banking Group Limited - Bonds | 24,491,323.82 | N/A |
| 09/13/2012 | 1 | AvalonBay Communities, Inc. - Notes | 973,203.11 | 1.00 |
| 06/29/2012 | 19 | bcIMC Realty Corporation - Notes | 249,937,500.00 | 249,937.50 |
| 06/29/2012 | 28 | bcIMC Realty Corporation - Notes | 249,952,500.00 | 249,952.50 |
| 09/04/2012 | 1 | Blue Planet Environmental Inc. - Common Shares | 493,150.00 | 2,772,863.00 |
| 10/01/2012 | 1 | Caisse popilaire St-Jacques de Hanmer Inc. - Preferred Shares | 1,500,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Azilda Inc. - Preferred Shares | 1,000,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Cochrane Limitee - Preferred Shares | 3,600,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Coniston Inc. - Preferred Shares | 900,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Cornwall Inc. - Preferred Shares | 1,000,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire d'Alfred Limitee - Preferred Shares | 4,800,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire des Voyageurs Inc. - Preferred Shares | 4,500,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire New Liskeard Limitee - Preferred Shares | 1,000,000.00 | N/A |

| Transaction Date | No of Purchasers | Issuer/Security | Total Purchase Price ($) | No of Securities Distributed |
|---|---|---|---|---|
| 10/01/2012 | 1 | Caisse populaire Nouvel-Horizon Inc. - Preferred Shares | 7,000,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Orleans Inc. - Preferred Shares | 5,300,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Pointe-Aux-Roches-Tecumseh Inc. - Preferred Shares | 500,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Rideau d'Ottawa Inc. - Preferred Shares | 5,800,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Trillium Inc. - Preferred Shares | 11,000,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Val Caron Limitee - Preferred Shares | 1,000,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Vermillon Inc. - Preferred Shares | 1,400,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Vision Inc. - Preferred Shares | 6,600,000.00 | N/A |
| 10/01/2012 | 1 | Caisse populaire Welland Limitee - Preferred Shares | 4,000,000.00 | N/A |
| 08/31/2012 | 1 | Convertible Debenture Trust - Units | 38,805,432.00 | 2,479,152.61 |
| 09/14/2012 | 1 | DJO Finance LLC/DJO Finance Corporation - Notes | 517,737.50 | 1.00 |
| 08/06/2012 | 9 | Everest Mortgage Investment Corporation - Preferred Shares | 445,000.00 | 4,454.00 |
| 08/20/2012 | 7 | Frontier Communications Corporation - Notes | 16,830,000.00 | 7.00 |
| 08/22/2012 | 3 | Gener8 Digital Media Corp. - Common Shares | 59,400.00 | 108,000.00 |
| 03/28/2012 | | Great Atlantic Resources Corp. - Units | | 1,000,000.00 |
| 09/07/2012 | 23 | Greystone Real Estate Fund Inc. - Common Shares | 54,654,000.00 | 628,459.73 |
| 08/31/2012 | 1 | HOMESTAKE RESOURCE CORPORATION - Flow-Through Shares | 700,000.00 | 2,000,000.00 |
| 09/11/2012 | 1 | Indigo Exploration Inc. - Common Shares | 15,000.00 | 300,000.00 |
| 09/05/2012 | 1 | Investeco Sustainable Food Fund L.P. - Limited Partnership Units | 501,500.00 | 500.00 |
| 09/06/2012 | 8 | JOG Limited Partnership No. VI - Limited Partnership Units | 73,200,000.00 | 73,200.00 |
| 08/31/2012 | 10 | Kik Interactive Inc. - Notes | 4,273,308.47 | 10.00 |
| 09/15/2012 | 1 | Kingwest Avenue Portfolio - Units | 1,000,000.00 | 33,867.42 |
| 09/15/2012 | 1 | Kingwest High Income Fund - Units | 500,000.00 | 84,719.92 |
| 09/15/2012 | 1 | Kingwest US Equity Portfolio - Units | 1,500.00 | 95.30 |
| 09/03/2012 | 1 | Macquarie Asian Alpha Fund - Common Shares | 98,630,000.00 | N/A |
| 09/05/2012 | 33 | MAG Silver Corp - Common Shares | 33,146,374.00 | 3,526,210.00 |
| 08/30/2012 | 1 | Marret IGB Trust - Units | 28,462,503.59 | 2,277,929.68 |

| Transaction Date | No of Purchasers | Issuer/Security | Total Purchase Price ($) | No of Securities Distributed |
|---|---|---|---|---|
| 09/06/2012 | 7 | MBMI Resources Inc. - Units | 610,000.00 | 12,200,000.00 |
| 09/12/2012 | 4 | Micromem Technologies Inc. - Units | 102,000.00 | 728,572.00 |
| 09/06/2012 to 09/14/2012 | 8 | Newport Balanced Fund - Trust Units | 67,078.75 | N/A |
| 09/06/2012 to 09/14/2012 | 9 | Newport Canadian Equity Fund - Trust Units | 400,565.83 | N/A |
| 09/06/2012 to 09/14/2012 | 17 | Newport Fixed Income Fund - Trust Units | 419,364.94 | N/A |
| 09/06/2012 to 09/14/2012 | 1 | Newport Global Equity Fund - Trust Units | 22,500.00 | N/A |
| 09/06/2012 to 09/14/2012 | 34 | Newport Yield Fund - Trust Units | 1,132,707.05 | N/A |
| 09/13/2012 | 10 | Nightingale Informatix Corporation - Debentures | 2,750,000.00 | 2,750.00 |
| 03/30/2012 | 18 | Northleaf Global Private Equity Investors (Canada) V LP - Limited Partnership Units | 22,203,207.00 | 2,210.00 |
| 08/31/2012 | 2 | NWM Private Equity Limited Partnership - Units | 1,244,000.00 | 121,960.78 |
| 09/05/2012 | 3 | QEP Resources, Inc. - Notes | 7,921,600.00 | 3.00 |
| 09/04/2012 | 2 | Rebellion Media Group Corp. - Preferred Shares | 9,863,003.81 | 2,754,822.00 |
| 08/24/2012 | 5 | Redbourne Realty Fund II Inc. - Common Shares | 18,491,652.00 | 18,419.65 |
| 09/13/2012 | 14 | Renewable Evener Management Inc. - Units | 552,506.46 | 567.00 |
| 09/01/2012 | 1 | Sensato S2 Asia Pacific Fund L.P. - Limited Partnership Interest | 198,019,801.98 | N/A |
| 09/24/2012 | 6 | Synodon Inc. - Units | 131,540.00 | 1,315,400.00 |
| 04/03/2012 | 8 | Three2N International Inc. - Debentures | 1,125,000.00 | N/A |
| 08/20/2012 to 08/24/2012 | 23 | UBS AG, Jersey Branch - Certificates | 6,730,962.02 | 23.00 |
| 08/27/2012 to 08/31/2012 | 17 | UBS AG, Jersey Branch - Certificates | 5,501,044.03 | 17.00 |
| 08/27/2012 | 25 | UMC Financial Management Inc. - Limited Partnership Interest | 2,500,000.00 | N/A |
| 09/21/2012 | 2 | Viper Gold Ltd. - Common Shares | 0.00 | 167,000.00 |
| 08/30/2012 | 29 | Walton Alliston Development IC - Common Shares | 769,660.00 | 76,966.00 |
| 08/30/2012 | 8 | Walton Alliston Development LP - Limited Partnership Units | 979,660.00 | 97,966.00 |
| 08/30/2012 | 16 | Walton GA Yargo Township LP - Limited Partnership Units | 666,859.08 | 67,156.00 |
| 08/30/2012 | 19 | Walton Westphalia Development Corporation - Units | 604,660.00 | 60,466.00 |

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## Chapter 11

# IPOs, New Issues and Secondary Financings

**Issuer Name:**
Appia Energy Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Non-Offering Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Tom Drivas
Anastasios (Tom) Drivas
**Project** #1964725

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**Issuer Name:**
Belo Sun Mining Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated September 25, 2012
NP 11-202 Receipt dated September 25, 2012
**Offering Price and Description:**
$50,008,000.00 - 35,720,000 Common Shares Price: $1.40 per Offered Share
**Underwriter(s) or Distributor(s):**
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
CIBC WORLD MARKETS INC.
CORMARK SECURITIES INC.
DUNDEE SECURITIES LTD.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
**Promoter(s):**
-
**Project** #1963414

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**Issuer Name:**
Can-Global REIT Income Fund
Principal Regulator - Alberta
**Type and Date:**
Preliminary Long Form Prospectus dated September 20, 2012
NP 11-202 Receipt dated September 24, 2012
**Offering Price and Description:**
Maximum $* - * Units Price: $10.00 per Unit Minimum Purchase: 100 Units
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Middlefield Capital Corporation
Dundee Securities Ltd.
Mackie Research Capital Corporation
**Promoter(s):**
Middlefield Limited
**Project** #1962966

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**Issuer Name:**
Cluny Capital Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary CPC Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 25, 2012
**Offering Price and Description:**
Maximum: $1,000,000.00 - 5,000,000 Common Shares; Minimum: $200,000.00 - 1,000,000 Common Shares
Price: $0.20 per Common Share
**Underwriter(s) or Distributor(s):**
Hampton Securities Limited
**Promoter(s):**
Simon Yakubowicz
**Project** #1963139

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**Issuer Name:**
CounterPath Corporation
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Base Shelf Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
US$50,000,000.00:
Common Stock
Preferred Stock
Debt Securities
Warrants
Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1964796

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**Issuer Name:**
Crius Energy Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated September 25, 2012
NP 11-202 Receipt dated September 26, 2012
**Offering Price and Description:**
C$ * - * Units Price: C$10.00 per Unit
**Underwriter(s) or Distributor(s):**
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
UBS SECURITIES CANADA INC.
NATIONAL BANK FINANCIAL INC.
**Promoter(s):**
Crius Energy, LLC
**Project** #1963640

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**Issuer Name:**
Edgefront Realty Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary CPC Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
Minimum: $200,000.00 - 2,000,000 Common Shares;
Maximum: $400,000.00 - 4,000,000 Common Shares
Price: $0.10 per Common Share
**Underwriter(s) or Distributor(s):**
Desjardins Securities Inc.
**Promoter(s):**
Kelly C. Hanczyk
**Project** #1965090

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**Issuer Name:**
Exall Energy Corporation
Principal Regulator - Alberta
**Type and Date:**
Preliminary Short Form Prospectus dated September 25, 2012
NP 11-202 Receipt dated September 25, 2012
**Offering Price and Description:**
$* - *CDE Flow-Through Shares Price: $0.95 per CDE Flow-Through Share and $ * - * CEE Flow-Through Shares Price: $1.00 per CEE Flow-Through Share
**Underwriter(s) or Distributor(s):**
STONECAP SECURITIES INC.
EMERGING EQUITIES INC.
RAYMOND JAMES LTD.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
**Promoter(s):**
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**Project** #1963552

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**Issuer Name:**
Faircourt Gold Income Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
Maximum: $ * - * Shares Price: $ * per Offered Share
**Underwriter(s) or Distributor(s):**
Canaccord Genuity Corp.
GMP Securities L.P.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Dundee Securities Ltd.
Mackie Research Capital Corporation
PI Financial Corp.
**Promoter(s):**
-
**Project** #1964960

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**Issuer Name:**
Faircourt Gold Income Corp.
Principal Regulator - Ontario
**Type and Date:**
Preliminary Short Form Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
$ * - Class D Warrants to Subscribe for up to 4,478,165 Shares at an Exercise Price of $10.00
**Underwriter(s) or Distributor(s):**
Canaccord Genuity Corp.
**Promoter(s):**
-
**Project** #1964999

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**Issuer Name:**
First Asset DEX Provincial Bond Index ETF
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 24, 2012
**Offering Price and Description:**
Common Units and Advisor Class Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
First Asset Investment Management Inc.
**Project** #1962704

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**Issuer Name:**
Front Street Flow-Through 2012-II Limited Partnership
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated September 25, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
$20,000,000.00 - 800,000 Units Price: $25.00 per Unit - Minimum, Purchase: 200 Units
**Underwriter(s) or Distributor(s):**
NATIONAL BANK FINANCIAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
TD SECURITIES INC.
GMP SECURITIES L.P.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
MACQUARIE CAPITAL MARKETS CANADA LTD.
MANULIFE SECURITIES INCORPORATED
RAYMOND JAMES LTD.
TUSCARORA CAPITAL INC.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
SHERBROOKE STREET CAPITAL (SSC) INC.
**Promoter(s):**
FSC GP IV Corp.
Front Street Capital 2004
**Project** #1965024

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**Issuer Name:**
NEI Northwest Macro Canadian Asset Allocation Corporate Class
Principal Regulator - Ontario
**Type and Date:**
Preliminary Simplified Prospectus dated September 28, 2012
NP 11-202 Receipt dated October 1, 2012
**Offering Price and Description:**
Series A, F, and T Shares
**Underwriter(s) or Distributor(s):**
Credential Asset Management Inc.
**Promoter(s):**
Northwest & Ethical Investments L.P.
**Project #**1965610

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**Issuer Name:**
Potash Ridge Corporation
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated September 28, 2012 to Preliminary Long Form Prospectus dated September 25, 2012
NP 11-202 Receipt dated October 1, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
NATIONAL BANK FINANCIAL INC.
CLARUS SECURITIES INC.
GMP SECURITIES L.P.
SCOTIA CAPITAL INC.
CORMARK SECURITIES INC.
DUNDEE SECURITIES LTD.
**Promoter(s):**
-
**Project** #1963375

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**Issuer Name:**
RRF Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Non-Offering Prospectus dated September 28, 2012
NP 11-202 Receipt dated October 1, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Arrow Capital Management Inc.
**Project** #1965375

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**Issuer Name:**
Matrix 2012 Enhanced Short Duration National Class
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated September 26, 2012
NP 11-202 Receipt dated September 26, 2012
**Offering Price and Description:**
Maximum Offering: $25,000,000 - 2,500,000 Matrix 2012 Enhanced Short Duration National Class Units
Price: $10.00 per National Class Unit: Minimum Subscription: $2,500 - 250 National Class Units – and -
Maximum Offering: $15,000,000 - 1,500,000 Matrix 2012 Enhanced Short Duration Quebec Class Units
Price: $10.00 per Quebec Class Unit Minimum Subscription: $2,500 - 250 Quebec Class Units
**Underwriter(s) or Distributor(s):**
National Bank Financial Inc.
CIBC World Markets Inc.
Desjardins Securities Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
Industrial Alliance Securities Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Laurentian Bank Securities Inc.
Argosy Securities Inc.
Dundee Securities Ltd.
Mackie Research Capital Corporation
Macquarie Private Wealth Inc.
MGI Securities Inc.
Raymond James Ltd.
Union Securities Ltd.
**Promoter(s):**
Matrix Funds Management
**Project** #1963795; 1963794

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**Issuer Name:**
Meranex Energy Trust
Principal Regulator - Alberta
**Type and Date:**
Amended and Restated Preliminary Long Form Prospectus dated September 28, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
$ * - * Units Price: $10.00 per Unit
**Underwriter(s) or Distributor(s):**
SCOTIA CAPITAL INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
MACQUARIE CAPITAL MARKETS CANADA LTD.
**Promoter(s):**
MERANEX ENERGY ADMINISTRATOR INC.
**Project** #1962675

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**Issuer Name:**
National Bank of Canada
Principal Regulator - Quebec
**Type and Date:**
Preliminary Base Shelf Prospectus dated September 28, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
$5,000,000,000.00:
Debt Securities (unsubordinated indebtedness)
Debt Securities (subordinated indebtedness)
First Preferred Shares
Common Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1965209

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**Issuer Name:**
North American REIT Income Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
Maximum: $ * - * Units Price: $10.00 per Unit Minimum Purchase: 100 Units
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
CIBC World Markets Inc.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
TD Securities Inc.
Raymond James Ltd.
Canaccord Genuity Corp.
Macquarie Private Wealth Inc.
Desjardins Securities Inc.
Dundee Securities Ltd.
Manulife Securities Incorporated
**Promoter(s):**
Propel Capital Corporation
**Project** #1964902

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**Issuer Name:**
Oracle Mining Corp.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated September 26, 2012
NP 11-202 Receipt dated September 26, 2012
**Offering Price and Description:**
$20,000,000.00 - * Units Price: $ * per Unit
**Underwriter(s) or Distributor(s):**
Paradigm Capital Inc.
Clarus Securities Inc.
Haywood Securities Inc.
National Bank Financial Inc.
Toll Cross Securities Inc.
**Promoter(s):**
-
**Project** #1963960

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**Issuer Name:**
Potash Ridge Corporation
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated September 25, 2012
NP 11-202 Receipt dated September 26, 2012
**Offering Price and Description:**
$ * - * Common Shares Price: $ * per Offered Share
**Underwriter(s) or Distributor(s):**
NATIONAL BANK FINANCIAL INC.
CLARUS SECURITIES INC.
GMP SECURITIES L.P.
SCOTIA CAPITAL INC.
CORMARK SECURITIES INC.
DUNDEE SECURITIES LTD.
**Promoter(s):**
-
**Project** #1963375

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**Issuer Name:**
Primero Mining Corp.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated September 24, 2012
NP 11-202 Receipt dated September 24, 2012
**Offering Price and Description:**
$44,217,915.00 - 8,422,460 Common Shares Price $5.25 per Offered Share
**Underwriter(s) or Distributor(s):**
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
**Promoter(s):**
-
**Project** #1963138

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**Issuer Name:**
Pure Multi-Family REIT LP
Principal Regulator - British Columbia
**Type and Date:**
Preliminary Short Form Prospectus dated September 25, 2012
NP 11-202 Receipt dated September 25, 2012
**Offering Price and Description:**
US$25,029,000.00 - 4,860,000 Units Price: US$5.15 Per Unit
**Underwriter(s) or Distributor(s):**
DUNDEE SECURITIES LTD.
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
RAYMOND JAMES LTD.
SCOTIA CAPITAL INC.
GMP SECURITIES L.P.
MACQUARIE CAPITAL MARKETS CANADA LTD.
DESJARDINS SECURITIES INC.
HSBC SECURITIES (CANADA) INC.
SORA GROUP WEALTH ADVISORS INC.
**Promoter(s):**
Sunstone MultiFamily Investments Inc.
**Project** #1963540

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**Issuer Name:**
Raven Rock Strategic Income Fund
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated September 25, 2012
NP 11-202 Receipt dated September 25, 2012
**Offering Price and Description:**
Maximum $* - * Units Minimum Purchase: 100 Units $10.00 per Unit
**Underwriter(s) or Distributor(s):**
CIBC World Markets Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
Macquarie Private Wealth Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
**Promoter(s):**
Arrow Capital Management Inc.
**Project** #1963415

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**Issuer Name:**
RCP Capital Corp.
Principal Regulator - British Columbia
**Type and Date:**
Preliminary CPC Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
$250,000.00 - (2,500,000 COMMON SHARES) PRICE: $0.10 PER COMMON SHARE
**Underwriter(s) or Distributor(s):**
Jordan Capital Markets Inc.
**Promoter(s):**
Sokhie Puar
**Project** #1964724

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**Issuer Name:**
Slate U.S. Opportunity (No. 2) Realty Trust
Principal Regulator - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
Minimum: U.S.$10,000,000.00 - 1,000,000 Class A Units, Class F Units and/or Class U Units;
Maximum: U.S.$50,000,000.00 - 5,000,000 Class A Units, Class F Units and/or Class U Units Price: C$10.00 per Class A Unit or Class F Unit and U.S.$10.00 per Class U Unit Minimum Purchase: 100 Class A Units, Class F Units or Class U Units
**Underwriter(s) or Distributor(s):**
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
GMP SECURITIES L.P.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
RAYMOND JAMES LTD.
MACQUARIE PRIVATE WEALTH INC.
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
DUNDEE SECURITIES LTD.
**Promoter(s):**
SLATE PROPERTIES INC.
**Project** #1964660

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**Issuer Name:**
Bluefire Mining Corp.
Principal Regulator - British Columbia
**Type and Date:**
Final Long Form Prospectus dated September 26, 2012
NP 11-202 Receipt dated September 27, 2012
**Offering Price and Description:**
$500,000.00 - 3,333,334 Common Shares Price: $0.15 per Share
**Underwriter(s) or Distributor(s):**
Canaccord Genuity Corp.
**Promoter(s):**
David E. De Witt
**Project** #1942715

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**Issuer Name:**
BMO Canadian Equity ETF Fund
(Series A and I Units)
BMO U.S. Equity ETF Fund
(Series A and I Units)
Principal Regulator - Ontario
**Type and Date:**
Amendment No. 4 dated September 21, 2012 (amendment no. 4) to the Amended and Restated Simplified Prospectuses and Annual Information Form dated April 11, 2012, amending and restating the Simplified Prospectuses and Annual Information Form dated March 26, 2012.
NP 11-202 Receipt dated September 26, 2012
**Offering Price and Description:**
Series A and I Untis @ Net Asset Value
**Underwriter(s) or Distributor(s):**
BMO Investments Inc.
**Promoter(s):**
BMO Investments Inc.
**Project** #1862292

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**Issuer Name:**
CWN Mining Acquisition Corporation
Principal Regulator - British Columbia
**Type and Date:**
Final CPC Prospectus dated September 25, 2012
NP 11-202 Receipt dated September 26, 2012
**Offering Price and Description:**
$200,000.00 - (2,000,000 COMMON SHARES) Price: $0.10 per Common Share
**Underwriter(s) or Distributor(s):**
Jordon Capital Markets Inc.
**Promoter(s):**
Kin Foon Tai
**Project** #1936406

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**Issuer Name:**
DHX Media Ltd.
Principal Regulator - Nova Scotia
**Type and Date:**
Final Short Form Prospectus dated September 25, 2012
NP 11-202 Receipt dated September 25, 2012
**Offering Price and Description:**
$17,730,000.00 - 11,820,000 Subscription Receipts each representing the right to receive one Common Share Price: $1.50 per Subscription Receipt
**Underwriter(s) or Distributor(s):**
CANACCORD GENUITY CORP.
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
BYRON CAPITAL MARKETS LTD.
CORMARK SECURITIES INC.
NCPNORTHLAND CAPITAL PARTNERS INC.
**Promoter(s):**
-
**Project** #1961371

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**Issuer Name:**
Dundee Industrial Real Estate Investment Trust
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated September 26, 2012
NP 11-202 Receipt dated September 26, 2012
**Offering Price and Description:**
$155,000,000.00 - 15,500,000 Units Per Unit $10.00
**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.
DESJARDINS SECURITIES INC.
GMP SECURITIES L.P.
NATIONAL BANK FINANCIAL INC.
**Promoter(s):**
DUNDEE PROPERTIES LIMITED PARTNERSHIP
**Project** #1946226

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**Issuer Name:**
Enbridge Inc.
Principal Regulator - Alberta
**Type and Date:**
Final Base Shelf Prospectus dated September 28, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
$4,000,000,000.00:
MEDIUM TERM NOTES
(UNSECURED)
**Underwriter(s) or Distributor(s):**
CIBCWorld Markets Inc.
BMONesbitt Burns Inc.
Citigroup Global Markets Canada Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
J.P. Morgan Securities Canada Inc.
Merrill Lynch Canada Inc.
Morgan Stanley Canada Limited,
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.,
**Promoter(s):**
-
**Project** #1962264

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**Issuer Name:**
Fidelity Canadian Equity Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity Concentrated Canadian Equity Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity U.S. Equity Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity U.S. Equity Currency Neutral Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity International Equity Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity International Equity Currency Neutral Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity Global Equity Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity Global Equity Currency Neutral Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity Concentrated Value Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity Balanced Income Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity Balanced Income Currency Neutral Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity Balanced Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity Balanced Currency Neutral Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity Asset Allocation Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity Asset Allocation Currency Neutral Private Pool
(Series B, Series S5, Series S8, Series I, Series I5, Series I8, Series F, Series F5 and Series F8 Securities)
(Class of Fidelity Capital Structure Corp.)
Fidelity Premium Fixed Income Private Pool (Series B, Series I and Series F)

Fidelity Premium Money Market Private Pool (Series B, Series I, Series D and Series F)
Fidelity Premium Fixed Income Capital Yield Private Pool (Series B, Series I, Series F, Series S5, Series I5, and Series F5) (Class of Fidelity Capital Structure Corp.)
Fidelity Premium Tactical Fixed Income Capital Yield Private Pool (Series B, Series I and Series F)
Fidelity Canadian Equity Investment Trust (Series O)
Fidelity Concentrated Canadian Equity Investment Trust (Series O)
Fidelity U.S. Equity Investment Trust (Series O)
Fidelity International Equity Investment Trust (Series O)
Fidelity Global Equity Investment Trust (Series O)
Fidelity Emerging Markets Debt Investment Trust (Series O)
Fidelity Emerging Markets Equity Investment Trust (Series O)
Fidelity Floating Rate High Income Investment Trust (Series O)
Fidelity High Income Commercial Real Estate Investment Trust (Series O)
Fidelity Convertible Securities Investment Trust (Series O)
Fidelity U.S. Small/Mid Cap Equity Investment Trust (Series O)
Fidelity Concentrated Value Investment Trust (Series O)
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectuses dated September 26, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1939791

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**Issuer Name:**
Front Street DCA Special Opportunities Class
Principal Regulator - Ontario
**Type and Date:**
Final Simplified Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 25, 2012
**Offering Price and Description:**
Series A, B and F Shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Front Street Capital 2004
**Project** #1938594

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**Issuer Name:**
Front Street Resource Class
Front Street Tactical Equity Class
Front Street Diversified Income Class
Front Street Growth Class
Front Street Special Opportunities Class
Front Street Global Opportunities Class
Front Street Growth and Income Class
Front Street Value Class
Front Street Money Market Class
(Series A, B, F and X Shares)
(Each a fund of Front Street Mutual Funds Limited)
Principal Regulator - Ontario
**Type and Date:**
Amended and Restated Simplified Prospectuses and Annual Information Form dated September 21, 2012 (the amended prospectus) amending and restating the Simplified Prospectuses and Annual Information Form dated June 28, 2012.
NP 11-202 Receipt dated September 25, 2012
**Offering Price and Description:**
Series A, Series B, Series F and Series X shares
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Front Street Capital 2004
**Project** #1917161

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**Issuer Name:**
GLG Income Opportunities Fund
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
Class L Units and Class M Units @ Net Asset Value
**Underwriter(s) or Distributor(s):**
GMP Securities L.P.
**Promoter(s):**
Man Investments Canada Corp.
**Project** #1957338

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**Issuer Name:**
GLG Prospect Mountain Ltd.
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Non-Offering Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1959765

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**Issuer Name:**
Horizons Income Plus ETF
Horizons Tactical Bond ETF
Principal Regulator - Ontario
**Type and Date:**
Amendment #1 dated September 21, 2012 to the Long Form Prospectus dated August 22, 2012
NP 11-202 Receipt dated September 26, 2012
**Offering Price and Description:**
Class E Units and Advisor Class Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
AlphaPro Management Inc,
**Project** #1934294

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**Issuer Name:**
Income Strategies Trust
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Non-Offering Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 27, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Picton Mahoney Asset Management
**Project** #1958274

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**Issuer Name:**
Intus Capital Corporation
Principal Regulator - Alberta
**Type and Date:**
Final CPC Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
$500,000.00 - 5,000,000 Common Shares Price: $0.10 per Common Share
**Underwriter(s) or Distributor(s):**
Leede Financial Markets Inc.
**Promoter(s):**
Dimitris Agouridis
**Project** #1925392

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**Issuer Name:**
Legg Mason BW Investment Grade Focus Fund
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
RBC Dominion Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Macquarie Private Wealth Inc.
Raymond James Ltd.
Desjardins Securities Inc.
Manulife Securities Incorporated
Mackie Research Capital Corporation
**Promoter(s):**
Meadowbank Capital Inc.
**Project** #1952965

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**Issuer Name:**
LMIG Trust
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Non-Offering Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Meadowbank Capital Inc.
**Project** #1957573

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**Issuer Name:**
Paramount Resources Ltd.
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated September 24, 2012
NP 11-202 Receipt dated September 24, 2012
**Offering Price and Description:**
$60,016,000.00 - 1,936,000 CEE Flow-Through Shares and $10,021,400.00 - 356,000 CDE Flow-Through Shares
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
CIBC World Markets Inc.
Cormark Securities Inc.
FirstEnergy Capital Corp.
GMP Securities L.P.
HSBC Securities (Canada) Inc.
Peters & Co. Limited
RBC Dominion Securities Inc.
Scotia Capital Inc.
Stifel Nicolaus Canada Inc.
TD Securities Inc.
**Promoter(s):**
-
**Project** #1960794

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**Issuer Name:**
Picton Mahoney Tactical Income Fund
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated September 27, 2012
NP 11-202 Receipt dated September 27, 2012
**Offering Price and Description:**
Maximum $175,000,000.00 - 17,500,000 Class A Units and Class F Units @ $10.00 per Unit $25,000,000 - 2,500,000 Class A Units @ $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

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**Issuer Name:**
Sprott Physical Gold Trust
Principal Regulator - Ontario
**Type and Date:**
Final Base Shelf Prospectus dated September 28, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
U.S.$3,000,000,000.00 - Trust Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
Sprott Asset Management LP
**Project** #1962574

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**Issuer Name:**
Timbercreek U.S. Multi-Residential Opportunity Fund #1
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated September 28, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
(1) Minimum: C$25,000,000.00 of Class A Units and/or Class B Units (Minimum 2,500,000 Class A Units and/or Class B Units); and (2) Maximum: C$75,000,000.00 of Class A Units and/or Class B Units (Maximum 7,500,000 Class A Units and/or Class B Units) Price: C$10.00 per Class A Unit and C$10.00 per Class B Unit; Minimum Purchase: 1,000 Class A Units or 500,000 Class B Units
**Underwriter(s) or Distributor(s):**
Raymond James Ltd.
CIBC World Markets Inc.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
Macquarie Capital Markets Canada Ltd.
Dundee Securities Ltd.
Manulife Securities Incorporated
**Promoter(s):**
Timbercreek Asset Management Inc.
**Project** #1957444

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**Issuer Name:**
TriOil Resources Ltd.
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated September 28, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
$20,004,750.00 - 7,845,000 Class A Shares; and
$8,751,864.00 - 2,917,288 Flow-Through Shares Price:
$2.55 per Class A Share $3.00 per Flow-Through Share
**Underwriter(s) or Distributor(s):**
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
DUNDEE SECURITIES LTD.
TD SECURITIES INC.
ALTACORP CAPITAL INC.
HAYWOOD SECURITIES INC.
CORMARK SECURITIES INC.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
**Promoter(s):**
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**Project** #1962733

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**Issuer Name:**
U.S. Agency Mortgage-Backed REIT Advantaged Fund
Principal Regulator - Ontario
**Type and Date:**
Final Long Form Prospectus dated September 28, 2012
NP 11-202 Receipt dated September 28, 2012
**Offering Price and Description:**
Maximum $100,000,000.00 (10,000,000 Class A and/or Class F Units)
**Underwriter(s) or Distributor(s):**
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
Raymond James Ltd.
Canaccord Genuity Corp.
GMP Securities L.P.
Macquarie Private Wealth Inc.
Mackie Research Capital Corporation
**Promoter(s):**
Connor, Clark & Lunn Capital Markets Inc.
**Project** #1956966

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**Issuer Name:**
Xtreme Drilling and Coil Services Corp.
Principal Regulator - Alberta
**Type and Date:**
Final Short Form Prospectus dated September 21, 2012
NP 11-202 Receipt dated September 25, 2012
**Offering Price and Description:**
$15,001,750.00 - 13,045,000 Common Shares Price: $1.15 per Offered Share
**Underwriter(s) or Distributor(s):**
Peters & Co. Limited
**Promoter(s):**
-
**Project** #1960874

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**Issuer Name:**
SQI Diagnostics Inc.
Principal Jurisdiction - Ontario
**Type and Date:**
Preliminary Base Shelf Prospectus dated August 23, 2012
Withdrawn on September 27, 2012
**Offering Price and Description:**
$20,000,000
Common Shares
Subscription Receipts
Warrants
Units
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1948478

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**Issuer Name:**
Spara Acquisition One Corp.
Principal Jurisdiction - Ontario
**Type and Date:**
Preliminary Long Form Prospectus dated July 16, 2012
Withdrawn on September 19, 2012
**Offering Price and Description:**
-
**Underwriter(s) or Distributor(s):**
-
**Promoter(s):**
-
**Project** #1932835

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# Chapter 12

# Registrations

### 12.1.1 Registrants

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| Voluntary Surrender of Registration | Info Financial Consulting Group Inc. | Exempt Market Dealer and Mutual Fund Dealer | September 25, 2012 |
| Change in Registration Category | Picton Mahoney Asset Management | From: Investment Fund Manager, Exempt Market Dealer and Portfolio Manager<br><br>To: Investment Fund Manager, Exempt Market Dealer, Portfolio Manager and Commodity Trading Manager | September 25, 2012 |
| Change in Registration Category | Grafton Asset Management Inc. | From: Exempt Market Dealer<br><br>To: Exempt Market Dealer and Investment Fund Manager | September 26, 2012 |
| Voluntary Surrender of Registration | Creststreet Securities Limited | Exempt Market Dealer | September 27, 2012 |
| New Registration | Scarsdale Equities LLC | Restricted Dealer | September 27, 2012 |
| New Registration | Harris, Bolduc et Associés Inc./ Harris Bolduc and Associates Inc. | Portfolio Manager | September 27, 2012 |
| Consent to Suspension (Pending Surrender) | Strategic Analysis (1994) Corporation | Portfolio Manager | September 28, 2012 |
| Change in Registration Category | Tactex Gestion D'actifs Inc./ Tactex Asset Management Inc. | From: Exempt Market Dealer and Portfolio Manager<br><br>To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager | October 1, 2012 |

| Type | Company | Category of Registration | Effective Date |
|---|---|---|---|
| New Registration | Stetler Asset Management Inc. | Portfolio Manager | October 1, 2012 |
| Change in Registration Category | Dradis Capital Management Limited | From: Investment Fund Manager and Portfolio Manager<br><br>To: Exempt Market Dealer, Portfolio Manager and Investment Fund Manager | October 2, 2012 |

# Chapter 13

# SROs, Marketplaces and Clearing Agencies

## 13.2 Marketplaces

### 13.2.1 Toronto Stock Exchange – Notice of Approval – Amendments to Part IV of the TSX Company Manual

**TORONTO STOCK EXCHANGE**

**NOTICE OF APPROVAL**

**AMENDMENTS TO PART IV OF THE TORONTO STOCK EXCHANGE ("TSX") COMPANY MANUAL**

**Introduction**

In accordance with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals (the "Protocol") between the Ontario Securities Commission (the "OSC") and Toronto Stock Exchange ("TSX"), TSX has adopted, and the OSC has approved, amendments (the "Amendments") to Part IV of the TSX Company Manual (the "Manual"). The Amendments are public interest amendments to the Manual. The Amendments were published for public comment in a request for comments on September 9, 2011 ("Request for Comments"). TSX notes the concurrent publication today of a new request for comments proposing further amendments to TSX rules in respect of mandating majority voting for TSX listed issuers.

**Reasons for the Amendments**

TSX proposed the Amendments to improve corporate governance standards and disclosure for all TSX listed issuers, in support of upholding security holder interests and the integrity and reputation of the Canadian capital markets. TSX has monitored the corporate governance landscape in Canada and in other jurisdictions and believes that director election practices in Canada are lagging other major international jurisdictions. Canadian investors may not therefore have as effective a voice in electing directors as investors in other jurisdictions. As neither securities nor corporate law in Canada requires individual director voting, annual director elections, or disclosure of all voting results and majority voting policies, and having considered the comments received on the Request for Comments, TSX has determined to implement the Amendments for its listed issuers.

The Amendments require issuers listed on Toronto Stock Exchange to:

1. elect directors individually;
2. hold annual elections for all directors;
3. disclose annually in Management Information Circulars:
    (a) whether they have adopted a majority voting policy for directors for uncontested meetings; and
    (b) if not, to explain:
        i) their practices for electing directors; and
        ii) why they have not adopted a majority voting policy;
4. advise TSX if a director receives a majority of "withhold" votes (if a majority voting policy has not been adopted); and
5. promptly issue a news release providing detailed disclosure of the voting results for the election of directors.

Annual elections provide security holders with the opportunity to hold directors accountable on an annual basis. Individual director elections provide insight into the level of support of security holders for each director. Majority voting policies also support good governance by providing a meaningful way for security holders to hold individual directors accountable and require issuers to closely examine directors that do not have the support of a majority of security holders. Disclosure of an issuer's adoption or non-adoption of a majority voting policy is valuable information for security holders and will ensure that boards of

directors consider director election practices. Disclosure of the votes received for each director is also valuable information for security holders and other stakeholders.

As proposed, TSX will require issuers that have not adopted a majority voting policy to advise TSX if a director receives a majority of "withhold" votes. TSX will follow up with the issuer and the director where a director has not received a majority of votes.

**Summary of the Final Amendments**

TSX received thirty-five (35) comment letters in response to the Request for Comments. A summary of the comments submitted, together with TSX's responses, is attached as **Appendix A**. Overall, a majority of commenters support the Amendments. However, there are some submissions which question TSX's involvement in director election practices and disclosure and which do not support the Amendments.

TSX respects the public comment process and appreciates the value such public input provides. TSX thanks all commenters for their submissions. TSX believes that security holders should be provided with an opportunity to vote annually for each director. TSX has a longstanding interest and commitment to disclosure, and believes that security holders should be informed about majority voting policies of its listed issuers and the outcome of votes. A majority of commenters support TSX requiring public disclosure of detailed voting results. TSX agrees with these commenters and has amended the Amendments accordingly. TSX has also clarified the process for implementing annual director elections in the event that security holders do not approve changes required to be made to articles or by-laws to enable annual elections.

As a result of the comment process, TSX has also made some drafting changes to the Amendments which do not represent a substantive change to the Amendments. A blackline of the Amendments showing changes made since the Request for Comments is attached as **Appendix B.**

In addition, the transition period for compliance with the Amendments is set out below in this Notice of Approval.

**Text of the Amendments**

The Final Amendments are attached as **Appendix C**.

**Effective Date**

The Amendments will become effective on **December 31, 2012** (the "Effective Date"). The Amendments will not have any retroactive effect, so that security holder meetings (i) which have already been set and (ii) for which proxy materials have already been approved, will be unaffected by the Amendments until their next security holder meeting at which directors will be elected.

All applicants for listing on TSX after the Effective Date and applicants with listing applications in progress are expected to explain to TSX if they are in compliance with the Amendments, and if not, the plan and time frame in which they will be in compliance with the Amendments.

By December 31, 2013**,** all TSX listed issuers and applicants are expected to be in compliance with the Amendments. Issuers will otherwise be considered to be in breach of the Manual. If changes to an issuer's articles or by-laws are required to implement annual elections, and the issuer's security holders do not support the required resolution, TSX will respect the security holder vote and the issuer will not be considered to be in breach of the Manual. However, the issuer must present the resolution to security holders again in not more than three years and must support the approval of the resolution.

TSX will continue to monitor the corporate governance landscape in Canada and internationally, as well as the effect of the Amendments on its issuers and the marketplace. TSX will also complete its rule review process with respect to the amendments proposed today that would require majority voting for its listed issuers.

**APPENDIX A**
**SUMMARY OF COMMENTS AND RESPONSES**
**PART IV – MAJORITY VOTING**

**List of Commenters:**

| | |
|---|---|
| British Columbia Investment Management Corporation (bcIMC) | NEI Investments (NEI) |
| Bennett Jones on behalf of Atco Group (Atco) | Norton Rose (Norton) |
| Bennett Jones on behalf of a foreign senior listed issuer who wishes to remain confidential (BJ) | Oromin Explorations Ltd. (Oromin) |
| Bombardier Inc. (Bombardier) | Osler LLP (Osler) |
| California State Teachers Retirement System (CalSTRS) | PGGM Investments (PGGM) |
| Canadian Coalition for Good Governance (CCGG) | Pension Investment Association of Canada (PIAC) |
| CGI Group Inc. (CGI) | Power Corporation of Canada and Power Financial Corporation (Power) |
| Canadian Investor Relations Institute (CIRI) | PSP Investments (PSP) |
| CPP Investment Board (CPPIB) | Chris Reed (Reed) |
| Davies Ward Phillips & Vineberg (Davies) | The Roxborough Initiative (Roxborough) |
| Emerson Advisory (Emerson) | Shareholder Association for Research & Education (SHARE) |
| Canadian Foundation for Advancement of Investor Rights (FAIR) | Social Investment Organization (SIO) |
| Hermes Equity Ownership Services Limited (Hermes) | Standard Life Investments |
| Institute of Corporate Directors (ICD) | Stock Research DD Inc. (Stock Research) |
| Institutional Shareholder Services (ISS) | Ontario Teachers' Pension Plan (OTPP) |
| Kenmar Associates (Kenmar) | Torys LLP (Torys) |
| Local Authority Pension Fund Forum (LAPFF) | Transcontinental Inc. (Transcontinental) |
| Magna International Inc. (Magna) | |

Capitalized terms used and not otherwise defined shall have the meaning given in the Request for Comments for public interest amendments to amend Part IV of the TSX Company Manual relating to the election of directors, published in the OSC Bulletin on September 9, 2011.

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| **6. Is this initiative appropriate for TSX to pursue or are other organization(s) better suited to pursue it? Please consider whether all exchanges should require their issuers to have these corporate governance standards in responding to this question.** | |
| Yes, this initiative is appropriate for TSX to pursue. (bcIMC, CCGG, CPPIB, Hermes, Kenmar, NEI, PIAC, PSP, OTPP)<br><br>Not in a position to comment on the appropriateness of TSX to pursue the proposed amendments, but supportive of the amendments. (CIRI)<br><br>Some commenters did not specifically address the question, but expressed support for TSX implementing at least part of the amendments. (ICD, ISS, LAPFF, Oromin, SHARE, SIO, Stock Research)<br><br>It is within the mandate and appropriate for TSX to pursue. (FAIR) TSX has the authority to impose higher corporate governance standards for its listed issuers. (PSP)<br><br>It is undoubtedly within the appropriate jurisdiction of TSX, as a recognized exchange in Ontario, to implement the amendments. The subject matter of the amendments, corporate governance of TSX listed issuers, is a central issue for shareholders concerning the management of the companies in which they invest and concerning stakeholder confidence in our capital markets. (Emerson)<br><br>TSX has the ability to act more quickly than the OSC and CSA. (CCGG) Canadian securities regulators have been largely inactive over the last 10 years. (Davies)<br><br>There is an important role for TSX in corporate governance matters. There are many jurisdictions around the world in which stock exchanges are important influencers of corporate governance practices. (Davies)<br><br>TSX is the most prominent exchange in Canada and has generally been the standard setter for changes in the Canadian corporate governance system. (Standard) The consideration of these corporate governance matters will encourage other exchanges to consider them as well. (Standard) Some commented that they appreciate the leadership role that TSX is taking on these reform proposals. (CalSTRS, NEI)<br><br>A securities exchange's listing standards are an appropriate and effective way of maintaining a minimum and upgrading the governance practices of issuers. (PGGM, Standard, Hermes, Kenmar)<br><br>These standards are appropriate for all exchanges. (CPPIB, NEI, PIAC, CalSTRS, Osler) | A majority of commenters who responded to this question agree that it is within TSX's jurisdiction for TSX to pursue the Amendments and these commenters support some or all of the proposed Amendments. As the senior exchange in Canada, TSX agrees that it is within its jurisdiction to set standards for its listed issuers. |

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| TSX has the authority to pursue the Amendments but may not be best positioned to implement such regulatory changes because it has limited enforcement tools compared to the CSA. Proxy disclosure requirements should be consolidated. (Osler) | |
| No, TSX does not have jurisdiction in this area. (Atco, Transcontinental) The TSX proposal to mandate certain director practices is a notable departure from the Canadian regulatory norm and runs contrary to the theme of issuer diversity. (BJ) | Although TSX understands there are various sources of legal and regulatory requirements regarding corporate governance and director election practices, TSX does not believe that these other sources limit TSX's jurisdiction to adopt the Amendments. TSX has a longstanding interest in corporate governance, as evidenced by its role in monitoring corporate governance disclosure of its listed issuers. TSX Venture Exchange has existing requirements around director elections. Exchange involvement in these areas is not unique and has not created undue confusion or issues. |
| Corporate governance enforcement should be the responsibility of one level of authority and the securities commissions are in a better position to intervene. (CGI, Norton, Bombardier) | While there may be various organizations suited to adopt these measures, TSX does not believe that this limits its ability to be involved in this area. TSX believes that these measures are important to strengthen Canadian corporate governance. |
| Involvement of TSX in the election of directors and related disclosure would be confusing and inefficient. (Norton, CGI, Bombardier) | As noted, TSX Venture Exchange has existing requirements for director elections. Exchange involvement in this area is therefore not unique, and has not resulted in confusion or inefficiency. |
| Director election practices are the subject of corporate law. (Transcontinental, Atco, CGI, Norton, Bombardier) TSX should only regulate within its expertise, which in the case of listed issuers relates to disclosure and securities issuances. (Power)<br><br>Amendment of business corporation statutes is the most appropriate way to address the issues of director elections. Intervention by TSX in matters that are issues of federal and provincial jurisdiction would result in layers of potentially conflicting regulation. TSX ceded jurisdiction over corporate governance disclosure to provincial securities commissions, so the commissions are best positioned to establish such disclosure rules, to avoid both overlap and conflict which could result from the involvement of regulators at multiple levels. (Magna) | TSX currently has requirements for its issuers for the timing of annual meetings that are more stringent than requirements under corporate law. TSX views the Amendments similarly, as minimum standards for its listed issuers. Further, setting standards for listed issuers is within the expertise of TSX.<br><br>TSX is committed to continuing to monitor the landscape of corporate governance and director election practices in Canada. As securities law and/or corporate law evolves in Canada, TSX will ensure its rules work within the evolving framework. |

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| **7. Has TSX struck the appropriate balance between requirements and disclosure? If not, what revisions do you recommend, and why?** | |
| Several commenters believe that TSX should also require a majority voting standard for director elections and mandatory disclosure of voting results. (bcIMC, CCGG, CPPIB, Hermes, ISS, PGGM, PIAC, SHARE, SIO, Standard) Any board nominee who does not have a majority of support should not serve on the board. (SHARE, SIO, CPPIB) | TSX understands that a number of commenters, institutional investors in particular, would prefer that TSX require its issuers to adopt a majority voting standard. Although TSX proposed the Amendments based on its understanding of where Canada is on the continuum of education and awareness regarding majority voting, as a result of comments and further consideration, TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard. |
| One commenter suggests the rules be revised to exclude foreign issuers and issuers whose listed securities do not carry rights to vote on the election of directors. This commenter also recommends a transition period be provided. (Osler) | TSX recognizes that the practices among jurisdictions may differ. TSX has clarified that if security holders do not approve a change required for an issuer to hold annual elections of directors, TSX will respect their decision. Issuers will, however, be required to recommend the required amendments and to give shareholders an opportunity to reconsider this decision.<br><br>TSX has also revised the drafting of the Amendments to clarify that these rules apply only to securities eligible to vote for the election of directors.<br><br>TSX has also provided for a transition period until December 31, 2013 for issuers to adopt annual elections. |
| TSX should require majority voting for non-controlled corporations (where a shareholder controls over 50% of the voting rights). Controlled corporations should be required to disclose and explain whether they have a majority voting policy, and if they don't have one, to comment on how they take into account the views of minority shareholders. (PSP) | TSX understands that controlled corporations have unique considerations regarding majority voting. In accordance with the Amendments, all listed issuers, including controlled corporations, may choose to adopt or not adopt a majority voting policy providing they disclose their considerations of majority voting and how their choice is appropriate for them.<br><br>TSX agrees that issuers who do not adopt a majority voting policy should address how they take into account the views of minority shareholders when discussing their corporate governance practices. |
| Some commenters support the proposed disclosure model at this time. (CalSTRS, CIRI, Davies, Emerson, ICD) Some commenters who support mandatory majority voting support the TSX proposal as an interim measure. (CPPIB, Hermes, ISS, Kenmar, LAPFF, PIAC, OTPP)<br><br>One commenter supports the adoption of a majority voting policy as a best practice. (ICD) | TSX understands that several commenters would prefer a majority voting standard be imposed, but support the Amendments in the mean time. TSX has today adopted the Amendments, and also published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard. |

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| The disclosure model might be acceptable but it appears to be a first step toward mandatory majority voting which this commenter does not support. (Oromin) The proposed model implies that such a policy is a best practice for all issuers, which negatively affects those issuers who may legitimately not adopt such policies. (Power) Controlled corporations should be excluded from the majority voting disclosure requirements. (Osler) | TSX proposed the Amendments based on its understanding of where Canada is on the continuum of education and awareness regarding majority voting, rather than as a step toward mandatory majority voting. However, as a result of comments and further consideration, TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard.<br><br>As noted above, while TSX understands that controlled corporations may have unique considerations regarding majority voting, TSX believes that controlled corporations should disclose and explain their choice to adopt or not adopt a majority voting policy. |
| The rules should be reviewed at least annually and benchmarked against other exchanges. (Kenmar, FAIR) | TSX will continue to monitor corporate governance and director election practices in Canada and abroad. |
| One commenter suggests that where shareholders have alternative ways to express concerns about the board nominees, board agenda, or where the issuer does not apply a majority voting standard, then annual elections are not a vital requirement. Consider that annual elections may only be required in jurisdictions, and for issuers, where plurality voting applies and the calling of resolutions or meetings is restricted. (Hermes) | TSX understands staggered elections are more common internationally, and that those international jurisdictions also often have a majority voting standard.<br><br>TSX has clarified that if security holders do not approve a change required to implement annual elections of directors, TSX will abide by their decision. Issuers will be required to give security holders an opportunity to reconsider this decision at subsequent security holder meetings. |
| Issuers who have a majority election standard under their governing statute or constating documents should not have to adopt a majority voting policy. (Osler) | TSX agrees. Issuers that have a majority voting standard can meet TSX requirements by disclosing the details of their director election practices, including majority voting. |
| A majority of commenters support individual voting for directors. (bcIMC, CalSTRS, CCGG, CIRI, Davies, Emerson, FAIR, Hermes, ICD, ISS, Kenmar, LAPFF, NEI, Oromin, PGGM, Reed, SHARE, SIO, Standard, OTPP)<br><br>Shareholders can then feel more involved in the election process and provide feedback on director suitability. It is a common practice, does not impose any significant costs and does not adversely affect the election process. (ICD)<br><br>Slate elections do not permit adequate exercise of rights by shareholders. (LAPFF) Presenting directors as a slate is a very poor governance practice. (SHARE, SIO) It will help TSX listed issuers meet international best practices. (CCGG, FAIR) | Individual voting is simple for issuers to adopt and supports security holder rights to vote for directors. TSX further agrees with commenters that it is an area in which Canada is lagging with respect to corporate governance practices. TSX is of the view that the reputation of Canada's capital markets and TSX listed issuers will improve by having voting for individual directors. |

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| A majority of commenters also support annual director elections. (bcIMC, CalSTRS, CCGG, CIRI, FAIR, ICD, ISS, Kenmar, LAPFF, NEI, Oromin, Reed, OTPP) Annual elections enhance accountability to shareholders (ICD, NEI) and director responsiveness to shareholder concerns. (LAPFF) When directors are elected under staggered terms, they are held accountable to shareholders only at the end of their term. (OTPP) Most large Canadian companies have moved to annual director elections (CIRI), without disruption to their boards or ability to engage in long-term planning. (CCGG) This amendment will simply implement the status quo. (FAIR) | TSX acknowledges the support for this Amendment. |
| A Toronto-based resource company research website conducted a survey of support for the Amendments. The results were strongly positive for individual voting, positive but slightly less so for annual elections, and positive for majority voting policy disclosure too. (Stock Research) | TSX appreciates the input to the comment process. |
| **8. Will disclosure of majority voting practices encourage issuers to consider this practice and improve investors' understanding of an issuer's corporate governance practices?** | |
| Yes, disclosure will increase issuer awareness, and possibly the adoption of majority voting as a governance best practice. (bcIMC, CIRI, CPPIB, Davies, Emerson, Hermes, ISS, Kenmar, LAPFF, NEI, PGGM, PIAC, PSP, Standard) However, one commenter submits there are no credible arguments against adoption of majority voting for non-controlled corporations. (PSP)<br><br>Disclosure will bring majority voting to the attention of directors, and force them to consider the underlying rationale for adopting majority voting policies. (Emerson, NEI) Issuers will have an opportunity to better understand the long term implications of majority voting and establish policies appropriate to the potential future introduction of mandatory majority voting. (CIRI) Disclosure will also provide material information to investors. (Emerson) Disclosure will turn attention at listed issuers to the core issue of getting boards of directors that truly have the support of shareholders. (Hermes)<br><br>Disclosure will help provide transparency and increase shareholder awareness. (FAIR, Hermes)<br><br>Disclosure of majority voting policies will encourage and enhance the dialogue among stakeholders. (CIRI) | TSX agrees that by considering majority voting practices in the process of preparing disclosure, issuers will become more aware and educated about this practice. |
| A standard requirement for disclosure will ease tracking of majority voting policies of issuers, and help shareholders be aware of the repercussions of their vote and know where to find the disclosure. (ISS) | TSX agrees that the disclosure requirement will help standardize reporting about majority voting practices for security holders. |
| Disclosure will encourage issuers to adopt a majority voting policy but not have any impact on investors' understanding of corporate governance practices. (Osler) | TSX believes that clear and accurate disclosure about majority voting will be helpful for investors. |

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| **9. Do you support TSX mandating that its issuers have a majority voting policy for uncontested director elections? Please identify potential positive and negative impacts that may result if issuers are required to have a majority voting policy.** | |
| Yes. (bcIMC, CCGG, CPPIB, FAIR, Hermes, ISS, Kenmar, LAPFF, NEI, PGGM, PIAC, PSP, Reed, SHARE, SIO, Standard, OTPP)<br><br>Majority voting has been well publicized in the business community and should be well understood. It can be implemented without business interruption and without conflicting with laws. (CCGG) The concerns of majority voting creating corporate or securities law issues have not come to pass in Canada. (FAIR, NEI)<br><br>The positives of mandating majority voting far outweigh any negatives. In the event a majority of directors are not elected, issues can be overcome with by-law provisions for bridging terms, co-option of substitute directors, and the like. (PGGM, Standard)<br><br>The adoption will improve Canada's international reputation and help TSX-listed issuers meet internationally accepted best practices. (PGGM, PIAC, Standard, CPPIB) Canada and the US are the only countries that do not use a majority vote standard. (CCGG, FAIR)<br><br>A mandatory policy will be easier to enforce and require less regulatory oversight. (FAIR) | A number of submissions support TSX requiring its listed issuers to have a majority voting standard. TSX acknowledges that these comments are largely from institutional investors and investor advocates. Several of these commenters have also expressed some understanding of TSX adopting a disclosure requirement at this time. TSX has therefore determined to adopt the Amendments, and as a result of comments and further consideration, TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard. |
| Directors can only be truly accountable to shareholders if shareholders have a realistic opportunity to remove them from the board. (bcIMC, PGGM, Standard, LAPFF)<br><br>The plurality system is inconsistent with good governance and is not in the best interests of shareholders. Shareholders cannot vote directors off of the board which disengages shareholders and impedes good governance. (FAIR) | TSX believes that with individual voting and annual elections, TSX listed issuers are moving in a positive direction toward improving the accountability of directors to their shareholders. |
| Issuers should be allowed to consider and explain their own unique situation, so a comply or explain approach is currently appropriate. (CIRI, Davies, ICD, Osler) A majority voting standard could result in failed elections. (ICD) However, failed elections have not been the experience. (NEI) | Although TSX understands the comments, and proposed the Amendments based on its understanding of where Canada is on the continuum of education and awareness regarding majority voting, as a result of comments and further consideration, TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard. |

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| There is no need for a mandatory majority voting requirement nor special disclosure. (Power) Majority voting has been inspired by US developments and there are important differences between Canada and the US. (Norton, CGI, Bombardier) | Majority voting is the dominant practice internationally. Although TSX proposed the Amendments based on its understanding of where Canada is on the continuum of education and awareness regarding majority voting, as a result of comments and further consideration, TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard. TSX welcomes comments on the new proposed amendments with respect to relevant differences between Canada and international jurisdictions that have mandatory majority voting. |
| There is no compelling reason for TSX to impose mandatory majority voting. (Davies) | TSX believes that Canada is lagging international jurisdictions with respect to director election practices. TSX believes that these measures are important to strengthen Canadian corporate governance and may therefore benefit the Canadian capital market as a whole. |
| Mandating majority voting is premature at this time. There are legal issues that should first be studies and alternatives considered. Ancillary issues like proxy access for shareholders should also be considered. (Emerson) | TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard. TSX welcomes comments on any legal issues and ancillary issues<br>. |
| **10. Do you foresee any negative impact of the Amendments on issuers or other market participants?** | |
| No. (Emerson, FAIR, Kenmar, NEI, PGGM, PSP, SHARE, Standard, OTPP) However there should be a transition time for issuers to comply with the proposed amendments. (CIRI, Osler) | TSX appreciates the comments received and has provided a transition period. |
| One commenter questions whether TSX has considered either excluding foreign issuers or has it been determined that the Amendments are permitted under the laws of foreign jurisdictions. (Osler) Another commenter similarly submits that foreign issuers should be exempt if exempt under 71-102 or 58-101. (BJ) | As discussed earlier, TSX recognizes that the practices in other jurisdictions may differ and has clarified that if security holders do not approve a change to enable annual elections of directors, TSX will abide by their decision. Issuers will be required to give security holders an opportunity to reconsider this decision. The other Amendments largely already exist in other jurisdictions or are only disclosure related. |
| Consider that not all TSX listed securities carry the right to vote for directors. For example, there are limited partnership units, investment trust units, split share corporations, and non-equity securities. It is submitted that the Amendments should not dictate the terms of securities. (Osler) | TSX has revised the drafting to clarify this point. |
| The proposed amendments are quite benign. Doubtful that qualified, responsible and eligible individuals would not stand for election as directors because of the amendments. (Emerson)<br><br>Most of the amendments already reflect common practice. Only majority voting disclosure is new, and it is only disclosure. Therefore there should not be any negative impact. (PGGM, Standard, Kenmar, NEI) | TSX appreciates the input. |

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| A prescriptive one size fits all approach does not accommodate the diversity of issuers. Issuers should have flexibility to adopt their own corporate governance according to their needs, objectives and circumstances. (BJ, ICD, Power, Atco) Other commenters also caution against rigid prescriptive rules and regulations. (ICD, Power) | While TSX understands the diversity of its issuers and the caution around adopting prescriptive rules, it believes it has an important role in setting minimum standards for its listed issuers which support investor confidence and the reputation of Canada's capital markets. |
| Whether or not a majority of corporations have decided to elect directors individually should not mean the rules should change for everyone. (Transcontinental) The majority practice is not and should not be taken as conclusive evidence that all listed issuers should adhere to the same practice. (BJ) However, others submit that the fact that not as many have adopted majority voting should not be used to delay requiring majority voting. (FAIR) | Statistics can provide useful information, and TSX agrees they must be weighed in determining the appropriate action. |
| It would be unwise for shareholders to pick and choose among directors without regard for the group's dynamics. A move to individual director voting is unnecessary and could have an adverse impact on boardroom dynamics. (Atco) | Issuers may disclose relevant information about board composition and dynamics to assist investors in making informed vote on individual directors. |
| Staggered boards should be permitted. (Norton, CGI, Bombardier, Davies) Staggered boards are a common practice in four identified major international markets. TSX has previously identified some of these markets as acceptable jurisdictions with respect to shareholder rights. (BJ) Dodd-Frank does not include a restriction on staggered boards which had been contemplated. (BJ) The UK is also not restrictive and follows a comply or explain approach. (BJ)<br><br>There may be valid reasons to have a staggered board, such as longer term succession planning. (ICD)<br><br>There is no evidence that mandatory annual elections outweigh negative consequences. (Norton, CGI, Bombardier) | TSX notes that the international jurisdictions where staggered boards are a common practice have a majority voting standard. TSX has also clarified its practice in the event that security holders do not approve changes required to enable annual director elections.<br><br>Overall, TSX believes that annual elections are an important corporate governance practice. |
| It is not clear there is a problem caused by staggered boards that needs to be addressed. Issuers should be able to have a staggered board if there is a reason. Further, shareholders can make a proposal for change or requisition a meeting to make changes. (Davies) Constraining issuers unnecessarily has a negative impact on the ability of issuers to adopt corporate governance practices that are appropriate for them. (Davies) | Staggered boards may entrench management. Shareholder proposals and requisitions may be difficult and costly. |
| It appears that the market may be effectively self-regulating in the areas of annual elections. (ICD) and staggered boards. (BJ, Davies) | TSX agrees that the standard in Canada is the annual election of directors. By establishing the requirement, it will ensure no change from that practice. |
| Mandatory majority voting could result in the loss of directors with particular experience or expertise. (Norton, CGI, Bombardier) | A loss of directors has not been the experience in jurisdictions that have majority voting or of issuers that have adopted majority voting. |

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| Votes may be withheld for reasons unrelated to the director's discharge of duties, i.e. political reasons, which discredits the election process. (Norton, CGI, Bombardier) | TSX notes that this is the case today, with any security holder vote, and does not view this as a reason to restrict individual director voting. |
| Mandating a majority voting policy would have a profoundly negative impact on issuers with large institutional holders. This commenter does not believe that senior management should be prohibited from serving as directors. (Oromin) | TSX is not mandating a majority voting policy at this time. However TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard. TSX welcome comments on the new proposed amendments. |
| The usefulness of majority voting for controlled corporations is questionable since the controlling shareholder generally has sufficient votes to elect each director. (Norton, CGI, Bombardier, Power, Transcontinental, Atco) One commenter also submits that there would be increased costs and complexity and not in the best interests of shareholders as a whole. (Power) | As noted above, while TSX understands that controlled corporations may have unique considerations regarding majority voting, TSX believes that controlled corporations should disclose and explain their choice to adopt or not adopt a majority voting policy.<br><br>Issuers that have adopted individual director voting have not experienced significant increased costs or complexity. |
| CCGG has recognized acceptable differences in majority voting policies for controlled companies. In addition, the CSA committed to reviewing how existing governance policies affect controlled companies. (Power) | TSX will stay abreast of any such reviews published by the CSA. |
| **11. Should TSX consider requiring disclosure of vote results? In the alternative, should TSX consider requiring that the election of directors be conducted by ballot to ensure public disclosure of the vote results?** | |
| Yes. (bcIMC, CalSTRS, CCGG, CIRI, CPPIB, Davies, Emerson, FAIR, Hermes, ISS, Kenmar, NEI, PGGM, PIAC, PSP, SHARE, SIO, Standard, OTPP)<br><br>Consider the disclosure requirements elsewhere. (CIRI) In the US, the only other major global market that has plurality voting, detailed voting results are required to be published. Why should TSX listed issuers not be subject to similar disclosure requirements. (ISS) Every company that uses the public's money to fund its activities should be held to the highest standards of disclosure and accountability to its shareholders. (ISS)<br><br>Such disclosure is not a burdensome requirement. (NEI) There is no additional cost. (SHARE) It is contradictory to provide shareholders with the right to vote but then not to require issuers to provide complete and full disclosure on the results of those votes. (OTPP)<br><br>Accountability is not complete without transparency. All stakeholders can then have confidence in the outcome, and result in a truly democratic process for shareholder meetings. (bcIMC)<br><br>It is material information. Directors should also be interested in such assessment by their constituents. (Emerson) | The majority of commenters that addressed this question agreed that TSX should require detailed public disclosure of vote results.<br><br>TSX agrees that there are many positive benefits of such disclosure and minimal additional cost to issuers.<br><br>TSX has revised the Amendments to require prompt disclosure of voting results by news release. |

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| It is good practice to report the number and percentage of proxy votes based on proxies appointing persons nominated by management. Proxies appointing other persons are not reliable. The use of appointees is higher in contested meetings so any obligation to disclose proxy tabulation reports should not apply where the meeting is contested. (Osler)<br><br>Disclosure of votes is very valuable to shareholders as they evaluate directors. (CalSTRS)<br><br>Listed issuers should be required to disclose publicly detailed vote results of all proxy matters. (CCGG) | |
| Some commenters did support ballot voting, noting that show of hands voting has been largely phased out in the UK. (PGGM, Standard) Canadian securities regulators should require ballot voting to protect shareholders and improve corporate governance. (FAIR) | TSX has determined not to dictate the form of voting, but rather only require that the vote results be disclosed promptly by news release. |
| No, majority voting should not be mandatory, and therefore the results of majority voting should not be disclosed. This is not the role of TSX to be involved in the election of directors or related disclosure, and its involvement would be inefficient and confusing. (Norton, CGI, Bombardier) | TSX believes that the proposed rules are appropriate for it to adopt given TSX's continued role in corporate governance. TSX notes that TSX Venture Exchange has rules regarding the election of directors, which have not resulted in undue confusion or inefficiency. |
| Several commenters did not support TSX requiring votes by ballot. (CIRI, CPPIB, Davies, PIAC, PSP)<br><br>There is declining attendance at shareholder meetings so it is not the appropriate mechanism to ensure disclosure. (CIRI)<br><br>Ballots are cumbersome and time-consuming. (CPPIB) | TSX will not require votes by ballot at this time. |
| Ballots should only be required if it becomes evident that it is the only way to ensure complete disclosure of voting results. (OTPP) | |
| **12. Are there additional ancillary rule amendments not discussed in this Request for Comments that should be considered in adopting the Amendments?** | |
| If the board has an unlimited, overly broad or arbitrary discretion whether to accept the resignation of a director who does not receive a majority of votes, the vote becomes advisory and the majority voting policy is ineffective and illusory. Section 461.3 should be expanded to require meaningful disclosure of the principles and policy that the board will apply to a decision on receipt of a resignation after a director receives a majority of withhold votes (Hermes), as well as prompt and effective disclosure of the board's reasons if the resignation is not accepted. (Emerson) | TSX agrees that fulsome disclosure of an issuer's majority voting policy, if there is one, would include information with respect to what the board will do if a director does not receive a majority of support.<br><br>TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard. |

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| Disclosure in circulars by companies without majority voting policies should address actions that would be taken in the event a director receives less than a majority of support. (Hermes) | TSX agrees that information about what the board will do when a director receives a majority of withhold votes may be part of appropriate disclosure. |
| Recommendation that Canadian securities regulators consider additional reforms to allow shareholders to put forward director nominees and to solicit or communicate with other shareholders. (FAIR) | The CSA has the benefit of these comments for their consideration. |
| It was suggested that the role of TSX in proposed 461.4 be considered and clarified. If TSX will be involved when a director receives a majority of withhold votes, given concerns with the accuracy of proxy voting, it is suggested issuers be given time to confirm the voting results before disclosure to TSX. (ICD)<br><br>Another commenter notes that the requirement to advise TSX of a majority withhold vote is appropriate as an interim step until there is mandatory majority voting. (LAPFF) | TSX would expect to be promptly advised when a director receives a majority of withhold votes. If the results of the vote are close and an issuer is in the process of confirming the results, that can be part of the discussion with TSX. |
| Several commenters noted that they would like the CSA and corporate law to also address these reforms. (ISS, BJ, Hermes)<br><br>Ideally all of these rules would be in one instrument. (ICD) | TSX understands that the CSA and corporate law may address similar reforms and will continue to monitor the landscape for such changes and will adapt as necessary. |
| Proxy delivery, influence of unregulated proxy advisory firms and lack of transparency in the OBO/NOBO system should also be addressed. The early warning system should be lowered to 5%, and to incremental changes of 1%, to enhance share ownership disclosure. HRCC committees should have the same legal stature and prominence as audit committees, and should be mandated. (Kenmar)<br><br>The integrity of the proxy voting process must also be addressed. (CIRI, ICD, Norton, CGI, Bombardier) Amending the requirements for electing directors will not have a significant impact if the quality of the proxy voting process is not also addressed. (CIRI) The more fundamental problems relating to the voting of securities in Canada should be addressed before these new requirements are added. (Norton, CGI, Bombardier) | TSX thanks commenters for their input but these concepts are outside the scope of the current Amendments. |
| One comment letter proposes systemic changes to the election of directors and how candidates for boards are selected. (Roxborough Initiative) | TSX appreciates the comments provided but has determined to focus its efforts in the proposed areas that are within the scope of the current Amendments. |
| One commenter suggested we adopt a clarifying note with the director election requirements in the Manual along the lines of Section 19.6 of the TSX Venture Corporate Finance Manual to provide that issuers may still enter into contractual arrangements with shareholders or third parties for board appointment or nomination rights. (Torys) | TSX does not believe that the proposed rules prohibit an issuer from entering into a contractual arrangement that gives shareholders or third parties nomination rights. |

| *Summarized Comments Received* | *TSX Response* |
|---|---|
| One commenter submitted that the 30-day period allowed for comment is unreasonably short given the significant nature of the proposed Amendments and the nature of their organization. (CIRI) | The 30-day period is standard for exchange rule amendments. Accommodation for comments to be submitted after the comment period has ended may be provided in appropriate circumstances. |

**APPENDIX B**
**BLACKLINE OF THE FINAL AMENDMENTS**

Part I — Interpretation

"board of directors" has the same meaning as in National Instrument 51-102 – *Continuous Disclosure Obligations*.

"director" has the same meaning as in the OSA.

Section 461.1

At each annual meeting of ~~security~~ holders of listed securities, the board of directors must permit security holders of each class or series to vote on the election of all directors~~.~~ to be elected by such class or series.[4]

Section 461.2

Materials sent to ~~security~~ holders of listed securities in connection with a meeting ~~of security holders~~ at which directors are being elected must provide for voting on each individual ~~election of directors~~director.

Section 461.3

Materials sent to security holders by listed issuers that are subject to National Instrument 51-102 – Continuous Disclosure Obligations, in connection with a meeting of security holders at which directors are being elected, must disclose (a) whether the issuer has adopted a majority voting policy for the election of directors for non-contested meetings; and (b) if not, explain (i) their practices for electing directors; and (ii) why they have not adopted a majority voting policy.

Section 461.4

Following each meeting of security holders at which there is a vote on the election of directors, ~~a~~each listed issuer (a) that has not adopted a majority voting policy for the election of directors must provide notice to TSX by email to disclosure@tsx.com if a director receives a majority of "withhold" votes; and (b) must forthwith issue a news release disclosing the detailed results of the vote for the election of directors.

[4] If security holder approval is required to implement this requirement, for example because an amendment must be made to the issuer's articles of incorporation, the Exchange will not consider the issuer to be in breach of this section if the issuer has submitted and recommended the necessary amendments for approval by security holders and security holder approval is not attained; however if the amendments are not approved by security holders, the issuer must submit and recommend the necessary amendments for approval by security holders at the annual meeting of the issuer not later than three years after the security holder meeting, until such time as the necessary amendments are approved.

## APPENDIX C
## THE FINAL AMENDMENTS

Part I — Interpretation

"board of directors" has the same meaning as in National Instrument 51-102 – *Continuous Disclosure Obligations*.

"director" has the same meaning as in the OSA.

Section 461.1

At each annual meeting of holders of listed securities, the board of directors must permit security holders of each class or series to vote on the election of all directors to be elected by such class or series.[4]

Section 461.2

Materials sent to holders of listed securities in connection with a meeting at which directors are being elected must provide for voting on each individual director.

Section 461.3

Materials sent to security holders by listed issuers that are subject to National Instrument 51-102 – Continuous Disclosure Obligations, in connection with a meeting of security holders at which directors are being elected, must disclose (a) whether the issuer has adopted a majority voting policy for the election of directors for non-contested meetings; and (b) if not, explain (i) their practices for electing directors; and (ii) why they have not adopted a majority voting policy.

Section 461.4

Following each meeting of security holders at which there is a vote on the election of directors, each listed issuer (a) that has not adopted a majority voting policy for the election of directors must provide notice to TSX by email to disclosure@tsx.com if a director receives a majority of “withhold” votes; and (b) must forthwith issue a news release disclosing the detailed results of the vote for the election of directors.

[4] If security holder approval is required to implement this requirement, for example because an amendment must be made to the issuer’s articles of incorporation, the Exchange will not consider the issuer to be in breach of this section if the issuer has submitted and recommended the necessary amendments for approval by security holders and security holder approval is not attained; however if the amendments are not approved by security holders, the issuer must submit and recommend the necessary amendments for approval by security holders at the annual meeting of the issuer not later than three years after the security holder meeting, until such time as the necessary amendments are approved.

### 13.2.2 Toronto Stock Exchange – Request for Comment – Amendments to Part IV of the TSX Company Manual

**TORONTO STOCK EXCHANGE**
**REQUEST FOR COMMENTS**
**AMENDMENTS TO PART IV OF THE**
**TORONTO STOCK EXCHANGE ("TSX") COMPANY MANUAL**
**(THE "MANUAL")**

TSX is publishing proposed changes to Part IV of the Manual (the "Amendments"). The Amendments are being published for a 30-day comment period.

The Amendments will be effective upon approval by the Ontario Securities Commission (the "OSC") following public notice and comment. Comments should be in writing and delivered by ●, 2012 to:

Michal Pomotov
Legal Counsel
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Susan Greenglass
Director
Market Regulation
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Fax: (416) 595-8940
Email: marketregulation@osc.gov.on.ca

Comments will be publicly available unless confidentiality is requested.

**Overview**

TSX is seeking public comment on Amendments to the Manual. This Request for Comments explains the reasons for, and objectives of, the Amendments. Following the comment period, TSX will review and consider the comments received and implement the Amendments, as proposed, or as modified as a result of comments.

**Summary of the Amendments**

The Amendments would require issuers listed on Toronto Stock Exchange to have majority voting for director elections at uncontested meetings. To comply with the requirement, issuers may adopt a majority voting policy.

**Background to the Amendments**

On September 9, 2011, TSX published a request for comments with a number of proposed rule amendments concerning director election practices for TSX listed issuers (the "September RFC Amendments"). The September RFC Amendments are being finalized today and require issuers to:

1. annually elect directors;

2. elect directors individually;

3. publicly disclose the votes received for the election of each director;

4. disclose whether or not they have adopted a majority voting policy and if they have not, to explain this decision; and

5. disclose to TSX if a director receives a majority of "withhold" votes (if they do not have a majority voting policy).

TSX received a number of comments on the September RFC Amendments supporting mandating a majority voting process for TSX listed issuers. TSX therefore has determined to adopt the September RFC Amendments and simultaneously propose the Amendments.

***Description of Director Election Policy Choices in Canada***

**(a)** Plurality Voting

Under plurality voting for director elections, security holders vote "for" or "withhold" for each director or the slate of directors. The director or slate is elected if one vote is cast "for" the director or the slate, regardless of the number of "withhold" votes cast. This voting standard is plurality voting since the director or the slate may be elected without receiving a majority of votes.

As a result, virtually every nominee director or slate is elected with plurality voting.

**(b)** Majority Voting

Under mandatory majority voting, security holders vote "for" or "against" each individual board nominee.

When a majority voting policy is adopted, a plurality voting standard still applies, and security holders generally vote "for" or "withhold" for each individual board nominee. However the number of "withhold" votes are considered "against" votes and counted as part of the total votes cast. A typical majority voting policy provides that a director who receives a majority of "withhold" votes must tender his/her resignation, and the board will generally accept that resignation, absent exceptional circumstances, and publicly announce its decision by news release. Some majority voting policies provide that the board must accept the director's resignation, although those policies are less common. In either type of policy, a director who receives a majority of "withhold" votes would still be elected as a matter of law, but a majority voting policy is designed to ensure that only those directors who receive a majority of votes in their favour remain on the board.

According to the Canadian Coalition for Good Governance, sixty-one percent (61%) of the listed issuers in the S&P/TSX Composite Index (the "Index") have majority voting.

Comparison of Practices in Major International Markets

Canada, together with the United States, are among the few major developed jurisdictions that still have plurality voting. TSX believes that Canadian investors may not therefore have as effective a voice in electing directors as investors in other jurisdictions.

**Rationale for the Amendments**

*Improve Corporate Governance Standards*

Majority voting supports sound corporate governance by providing a meaningful way for security holders to hold directors accountable. TSX believes the Amendments will enhance the governance dialogue between issuers, security holders and other stakeholders and improve transparency. In addition, sixty-one percent of issuers in the Index already have majority voting, which reflects support for mandating the practice for all TSX listed issuers.

*Amendments Work within Existing Regime*

TSX is aware of concerns that mandatory majority voting may put issuers offside corporate or securities laws because if sufficient director nominees aren't supported, too few directors may be elected to achieve quorum or committee requirements.

The concerns expressed for mandatory majority voting do not, however, appear to have been the experience in Canada of those issuers that have majority voting. In particular, TSX listed issuers have generally adopted non-binding majority voting policies and maintained compliance with their legislative and regulatory requirements. Functionally, with a non-binding majority voting policy, directors that do not receive sufficient support are still elected, but they resign at a later time giving time for the board to reconstitute and reorganize the board if necessary without being offside any laws or creating any governance issues.

Issuers will be able to adopt a non-binding majority voting policy in satisfaction of the proposed Amendments and, as a result, there should be no conflict with current applicable corporate or securities rules or requirements.

*Strengthen International Reputation*

TSX believes that this initiative will bolster Canada's reputation for supporting strong governance standards, and bring Canada closer to the practices of other major international jurisdictions.

*Public Support*

As noted above, TSX received a number of comments on the September RFC Amendments supporting mandating majority voting for TSX listed issuers. Further, the comments received on the September RFC Amendments that did not support majority voting were largely based on submissions regarding failed elections, a loss of directors, TSX jurisdiction and timing.

Failed elections or a loss of directors have not however been the experience of issuers that have adopted majority voting. Further, the strong backing that we received for TSX proposing these Amendments supports TSX jurisdiction.

*Jurisdiction of TSX*

TSX received some comments with respect to the September RFC Amendments submitting that TSX was not the appropriate organization to pursue the Amendments. However, more comments were submitted supporting the jurisdiction of TSX and the appropriateness of TSX pursuing the Amendments. As such, TSX continues to believe that the Amendments are within its jurisdiction and appropriate for it to pursue.

**Timing of the Amendments**

TSX anticipates that the Amendments would become effective as of December 31, 2013.

**Questions**

1. Do you support TSX mandating that its listed issuers have majority voting, which may be satisfied by adopting a majority voting policy for uncontested director elections? Please identify potential positive and negative impacts if issuers are required to have majority voting.

2. Do you believe it would be useful for TSX to provide specific guidance that it expects that the board of directors will typically accept the resignation of a director that receives a majority of "Withhold" votes, absent exceptional circumstances? If you agree, please suggest the preferred means to provide it (for example in a Staff Notice, in commentary about the Amendment or in the drafting of the Amendment itself).

3. What positive or negative impacts may the Amendments have on other market participants or the market in Canada in general?

4. Do you support the jurisdiction of TSX to adopt and enforce the Amendments? If not, please support your response, and differentiate the Amendments from the September RFC Amendments being finalized today.

5. Are there additional ancillary rule amendments or other relevant issues not discussed in this Request for Comments that should be considered in adopting the Amendments?

**Public Interest**

TSX is publishing the Amendments for a 30-day comment period, which expires November 5, 2012. The Amendments will only become effective following public notice and the approval of the OSC.

## APPENDIX A
## TEXT OF PROPOSED AMENDMENTS

Section 461.3

~~Materials sent to security holders by listed issuers that are subject to National Instrument 51-102 – Continuous Disclosure Obligations, in connection with a meeting of security holders at which directors are being elected, must disclose (a) whether the issuer has adopted a majority voting policy for the election of directors for non-contested meetings; and (b) if not, explain (i) their practices for electing directors; and (ii) why they have not adopted a majority voting policy.~~

Listed issuers must have majority voting for the election of directors at uncontested security holder meetings. In satisfaction of this requirement, a listed issuer may adopt a majority voting policy that requires a director that receives a majority of the total votes cast withheld from him or her to immediately tender his or her resignation to the board of directors, to be effective on acceptance by the board. The policy must also provide that the board shall consider the resignation and disclose by news release the board's decision whether to accept that resignation and the reasons for its decision no later than 90 days after the date of the resignation.

Section 461.4

Following each meeting of security holders at which there is a vote on the election of directors, each listed issuer ~~(a) that has not adopted a majority voting policy for the election of directors must provide notice to TSX by email to disclosure@tsx.com if a director receives a majority of "withhold" votes; and (b)~~ must forthwith issue a news release disclosing the detailed results of the votes received for the election of each director~~s~~[5].

5 If the vote is by show of hands, the issuer will disclose the number of securities voted by proxy in favour or withheld for each director and the outcome of the vote by a show of hands.

### 13.2.3 Notice of Commission Order – ICE Futures Canada, Inc. – Application for Exemptive Relief – Notice of Commission Order

**ICE FUTURES CANADA, INC. (ICE FUTURES CANADA)**

**APPLICATION FOR EXEMPTIVE RELIEF**

**NOTICE OF COMMISSION ORDER**

On September 25, 2012, the Commission issued an order to ICE Futures Canada, Inc. (ICE Futures Canada) exempting ICE Futures Canada from: (1) the requirement to be recognized as an exchange under section 21 of the *Securities Act* (Ontario); (2) the requirement to be registered as a commodity futures exchange under section 15 of the *Commodity Futures Act* (Ontario) (CFA); (3) the registration requirements of section 22 of the CFA with respect to trades in contracts on ICE Futures Canada by "hedgers", as defined in the CFA; and (4) the requirements of section 33 of the CFA for trades in contracts on ICE Futures Canada by registered futures commission merchants (FCMs) and any person or company who trades in a contract solely through an agent who is an FCM (the Order).

The Commission's Previous Order, Director's Exemption Order and the Director's Acceptance Order (as defined in the Order) were also revoked.

The Commission published ICE Futures Canada's application and draft exemption order for comment on June 28, 2012. No comments were received and no amendments were made to the draft exemption order published for comment.

A copy of the Order is published in Chapter 2 of this bulletin.

# Index