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ONTARIO SECURITIES COMMISSION

The Ontario Securities Commission

OSC Bulletin

October 25, 2012

Volume 35, Issue 43

(2012), 35 OSCB

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

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Published under the authority of the Commission by:
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ISSN 0226-9325

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Notices / News Releases

1.1 Notices

1.1.1 Current Proceedings Before The Ontario Securities Commission

October 25, 2012

CURRENT PROCEEDINGS

BEFORE

ONTARIO SECURITIES COMMISSION

- -

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

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Christopher Portner	—	CP
Judith N. Robertson	—	JNR
Charles Wesley Moore (Wes) Scott	—	CWMS

SCHEDULED OSC HEARINGS

October 29 – November 5, 2012 10:00 a.m.	**MBS Group (Canada) Ltd. and Balbir Ahluwalia** s. 37, 127 and 127.1 C. Rossi in attendance for staff Panel: CP
October 29, 2012 10:00 a.m.	**Nest Acquisitions and Mergers, IMG International Inc., Caroline Myriam Frayssignes, David Pelcowitz, Michael Smith, and Robert Patrick Zuk** s. 37, 127 and 127.1 C. Price in attendance for Staff Panel: JDC/MCH
October 29, October 31 and November 1, 2012 10:00 a.m.	**Shallow Oil & Gas Inc., Eric O'Brien, Abel Da Silva and Abraham Herbert Grossman aka Allen Grossman and Kevin Wash** s. 127 H. Craig/S. Schumacher in attendance for Staff Panel: JEAT
October 31 – November 5, November 7-9, December 3, December 5-17 and December 19, 2012 10:00 a.m.	**Rezwealth Financial Services Inc., Pamela Ramoutar, Justin Ramoutar, Tiffin Financial Corporation, Daniel Tiffin, 2150129 Ontario Inc., Sylvan Blackett, 1778445 Ontario Inc. and Willoughby Smith** s. 127(1) and (5) A. Heydon in attendance for Staff Panel: EPK

November 2, 2012 10:00 a.m.	**Caroline Frayssignes Cotton** s. 127 C. Price in attendance for Staff Panel: JEAT
November 5, November 7-19, November 21-27 and November 29-30, 2012 10:00 a.m. November 28, 2012 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.** s. 127 B. Shulman in attendance for Staff Panel: MGC
November 7, 2012 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** s. 127 Y. Chisholm in attendance for Staff Panel: CP/PLK
November 8, 2012 10:00 a.m.	**Global RESP Corporation and Global Growth Assets Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT
November 8, 2012 3:00 p.m.	**Vincent Ciccone and Cabo Catoche Corp. (a.k.a. Medra Corp. and Medra Corporation)** s. 127 M. Vaillancourt in attendance for Staff Panel: VK
November 12-19 and November 21, 2012 10:00 a.m.	**Sandy Winick, Andrea Lee McCarthy, Kolt Curry, Laura Mateyak, Gregory J. Curry, American Heritage Stock Transfer Inc., American Heritage Stock Transfer, Inc., BFM Industries Inc., Liquid Gold International Inc., and Nanotech Industries Inc.** s. 127 J. Feasby in attendance for Staff Panel: JDC
November 13, 2012 10:00 a.m.	**Knowledge First Financial Inc.** s. 127 M. Vaillancourt/D. Ferris in attendance for Staff Panel: JEAT
November 15, 2012 9:00 a.m.	**Sage Investment Group, C.A.D.E Resources Group Inc., Greenstone Financial Group, Fidelity Financial Group, Antonio Carlos Neto David Oliveira, and Anne Marie Ridley** s. 127 C. Watson in attendance for Staff Panel: TBA

November 16, 2012 10:00 a.m.	**Roger Carl Schoer** s. 21.7 C. Johnson in attendance for Staff Panel: JEAT
November 21 – December 3 and December 5-14, 2012 10:00 a.m.	**Bernard Boily** s. 127 and 127.1 M. Vaillancourt/U. Sheikh in attendance for Staff Panel: TBA
November 22, 2012 11:30 a.m.	**Heritage Education Funds Inc.** s. 127 M. Vaillancourt/D. Ferris in attendance for Staff Panel: JEAT
November 23, 2012 10:00 a.m.	**New Found Freedom Financial, Ron Deonarine Singh, Wayne Gerard Martinez, Pauline Levy, David Whidden, Paul Swaby and Zompas Consulting** s. 127 A. Heydon/S. Horgan in attendance for Staff Panel: JDC
November 27-28, 2012 10:00 a.m.	**Simply Wealth Financial Group Inc., Naida Allarde, Bernardo Giangrosso, K&S Global Wealth Creative Strategies Inc., Kevin Persaud, Maxine Lobban and Wayne Lobban** s. 127 and 127.1 C. Johnson in attendance for Staff Panel: JDC
November 29-30, 2012 10:00 a.m.	**Mohinder Ahluwalia** s. 37, 127 and 127.1 C. Rossi in attendance for Staff Panel: JEAT
December 4, 2012 3:30 p.m.	**Global Consulting and Financial Services, Crown Capital Management Corporation, Canadian Private Audit Service, Executive Asset Management, Michael Chomica, Peter Siklos (Also Known As Peter Kuti), Jan Chomica, and Lorne Banks** s. 127 H. Craig/C. Rossi in attendance for Staff Panel: CP
December 5, 2012 10:00 a.m.	**Irwin Boock, Stanton Defreitas, Jason Wong, Saudia Allie, Alena Dubinsky, Alex Khodjaiants Select American Transfer Co., Leasesmart, Inc., Advanced Growing Systems, Inc., International Energy Ltd., Nutrione Corporation, Pocketop Corporation, Asia Telecom Ltd., Pharm Control Ltd., Cambridge Resources Corporation, Compushare Transfer Corporation, Federated Purchaser, Inc., TCC Industries, Inc., First National Entertainment Corporation, WGI Holdings, Inc. and Enerbrite Technologies Group** s. 127 and 127.1 D. Campbell in attendance for Staff Panel: VK
December 6, 2012 10:00 a.m.	**Children's Education Funds Inc.** s. 127 D. Ferris in attendance for Staff Panel: JEAT

December 11, 2012 9:00 a.m.	**Systematech Solutions Inc., April Vuong and Hao Quach** s. 127 D. Ferris in attendance for Staff Panel: EPK
December 20, 2012 10:00 a.m.	**New Hudson Television Corporation, New Hudson Television L.L.C. & James Dmitry Salganov** s. 127 C. Watson in attendance for Staff Panel: TBA
December 20, 2012 10:00 a.m.	**New Hudson Television LLC & Dmitry James Salganov** s. 127 C. Watson in attendance for Staff Panel: TBA
January 14, January 16-28, January 30 – February 11 and February 13-22, 2013 10:00 a.m.	**Jowdat Waheed and Bruce Walter** s. 127 J. Lynch in attendance for Staff Panel: TBA
January 17, 2013 10:00 a.m.	**Sino-Forest Corporation, Allen Chan, Albert Ip, Alfred C.T. Hung, George Ho, Simon Yeung and David Horsley** s. 127 H. Craig in attendance for Staff Panel: TBA
January 17, 2013 2:00 p.m.	**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: EPK
January 18, 2013 10:00 a.m.	**Oversea Chinese Fund Limited Partnership, Weizhen Tang and Associates Inc., Weizhen Tang Corp., and Weizhen Tang** s. 127 and 127.1 H. Craig in attendance for Staff Panel: TBA
January 21-28 and January 30 – February 1, 2013 10:00 a.m.	**Moncasa Capital Corporation and John Frederick Collins** s. 127 T. Center in attendance for Staff Panel: TBA
January 23-25 and January 30-31, 2013 10:00 a.m.	**Sage Investment Group, C.A.D.E Resources Group Inc., Greenstone Financial Group, Fidelity Financial Group, Antonio Carlos Neto David Oliveira, and Anne Marie Ridley** s. 127 C. Watson in attendance for Staff Panel: TBA
February 1, 2013 10:00 a.m.	**Ground Wealth Inc., Armadillo Energy Inc., Paul Schuett, Doug DeBoer, James Linde, Susan Lawson, Michelle Dunk, Adrion Smith, Bianca Soto and Terry Reichert** s. 127 S. Schumacher in attendance for Staff Panel: TBA

February 4-11 and February 13, 2013 10:00 a.m.	**Alexander Christ Doulis (aka Alexander Christos Doulis, aka Alexandros Christodoulidis) and Liberty Consulting Ltd.** s. 127 J. Feasby in attendance for Staff Panel: TBA
February 11, February 13-15, February 19-25 and February 27 – March 6, 2013 10:00 a.m.	**David Charles Phillips and John Russell Wilson** s. 127 Y. Chisholm in attendance for Staff Panel: TBA
February 27, 2013 10:00 a.m.	**Global Energy Group, Ltd., New Gold Limited Partnerships, Christina Harper, Howard Rash, Michael Schaumer, Elliot Feder, Vadim Tsatskin, Oded Pasternak, Alan Silverstein, Herbert Groberman, Allan Walker, Peter Robinson, Vyacheslav Brikman, Nikola Bajovski, Bruce Cohen and Andrew Shiff** s. 127 C. Watson in attendance for Staff Panel: TBA
March 18-25, March 27-28, April 1-5 and April 24-25, 2013 10:00 a.m.	**Peter Sbaraglia** s. 127 J. Lynch in attendance for Staff Panel: CP
March 18-25 and March 27-28, 2013 10:00 a.m.	**2196768 Ontario Ltd carrying on business as Rare Investments, Ramadhar Dookhie, Adil Sunderji and Evgueni Todorov** s. 127 D. Campbell in attendance for Staff Panel: TBA
April 8, April 10-16, April 22, April 24, April 29-30, May 6 and May 8, 2013 10:00 a.m.	**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
April 11-22 and April 24, 2013 10:00 a.m.	**Morgan Dragon Development Corp., John Cheong (aka Kim Meng Cheong), Herman Tse, Devon Ricketts and Mark Griffiths** s. 127 J. Feasby in attendance for Staff Panel: TBA
April 29 – May 6 and May 8-10, 2013 10:00 a.m.	**North American Financial Group Inc., North American Capital Inc., Alexander Flavio Arconti, and Luigino Arconti** s. 127 M. Vaillancourt in attendance for Staff Panel: TBA
May 9, 2013 10:00 a.m.	**New Solutions Capital Inc., New Solutions Financial Corporation, New Solutions Financial (II) Corporation, New Solutions Financial (III) Corporation, New Solutions Financial (VI) Corporation and Ron Ovenden** s. 127 Y. Chisholm in attendance for Staff 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 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** s. 127 J, Waechter/U. Sheikh in attendance for Staff Panel: TBA
TBA	**Yama Abdullah Yaqeen** s. 8(2) J. Superina in attendance for Staff Panel: TBA
TBA	**Microsourceonline Inc., Michael Peter Anzelmo, Vito Curalli, Jaime S. Lobo, Sumit Majumdar and Jeffrey David Mandell** s. 127 J. Waechter in attendance for Staff Panel: TBA
TBA	**Frank Dunn, Douglas Beatty, Michael Gollogly** s. 127 K. Daniels in attendance for Staff Panel: TBA
TBA	**MRS Sciences Inc. (formerly Morningside Capital Corp.), Americo DeRosa, Ronald Sherman, Edward Emmons and Ivan Cavric** s. 127 and 127(1) D. Ferris in attendance for Staff Panel: TBA
TBA	**Gold-Quest International, 1725587 Ontario Inc. carrying on business as Health and Harmoney, Harmoney Club Inc., Donald Iain Buchanan, Lisa Buchanan and Sandra Gale** s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	**Gold-Quest International, Health and Harmoney, Iain Buchanan and Lisa Buchanan** s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	**Brilliante Brasilcan Resources Corp., York Rio Resources Inc., Brian W. Aidelman, Jason Georgiadis, Richard Taylor and Victor York** s. 127 H. Craig in attendance for Staff Panel: TBA
TBA	**Paul Azeff, Korin Bobrow, Mitchell Finkelstein, Howard Jeffrey Miller and Man Kin Cheng (a.k.a. Francis Cheng)** s. 127 T. Center/D. Campbell in attendance for Staff Panel: TBA
TBA	**Uranium308 Resources Inc., Michael Friedman, George Schwartz, Peter Robinson, and Shafi Khan** s. 127 H. Craig/C.Rossi in attendance for Staff Panel: TBA

TBA **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 **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 **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

TBA

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

s. 127

H. Craig in attendance for Staff

Panel: TBA

TBA

Portus Alternative Asset Management Inc., Portus Asset Management Inc., Boaz Manor, Michael Mendelson, Michael Labanowich and John Ogg

s. 127

H Craig in attendance for Staff

Panel: TBA

TBA **AMTE Services Inc., Osler Energy Corporation, Ranjit Grewal, Phillip Colbert and Edward Ozga**

s. 127

C. Rossi in attendance for Staff

Panel: TBA

ADJOURNED SINE DIE

Global Privacy Management Trust and Robert Cranston

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

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

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

1.1.2 CSA Consultation Paper 33-403 – The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients

CANADIAN SECURITIES ADMINISTRATORS
CONSULTATION PAPER 33-403:
THE STANDARD OF CONDUCT FOR ADVISERS AND DEALERS:
EXPLORING THE APPROPRIATENESS OF INTRODUCING
A STATUTORY BEST INTEREST DUTY WHEN ADVICE IS PROVIDED TO RETAIL CLIENTS

October 25, 2012

Administering the Canadian Securities Regulatory System
Les autorités qui réglementent le marché des valeurs mobilières au Canada

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* * * * *

1) INTRODUCTION

The purpose of this Canadian Securities Administrators (**CSA**) consultation paper (the **Consultation Paper**) is to provide a forum for stakeholder consultation of the desirability and feasibility of introducing a statutory best interest duty to address potential investor protection concerns regarding the current standard of conduct that advisers and dealers in Canada owe to their clients. While this Consultation Paper describes a possible statutory best interest standard for purposes of consultation, no decision has been made whether a statutory best interest standard should be adopted (and on what terms), whether another policy solution would be more effective or whether the current Canadian standard of conduct framework is adequate. No such decisions will be made without broad public consultation and discussion. This Consultation Paper is the initial step in soliciting comments from all interested stakeholders on these important issues.

The Consultation Paper is comprised of eight additional parts. Part 2 of the Consultation Paper summarizes certain of the background of the fiduciary duty debate. Part 3 describes what a fiduciary duty is and when it arises at common law. Part 4 discusses the current standard of conduct for registrants in Canada (including both statutory and common law requirements). Part 5 reviews what the United States (**U.S.**), the United Kingdom (**U.K.**), Australia and the European Union (**E.U.**) are doing in this area. Part 6 identifies the five key investor protection concerns with the current standard of conduct applicable to advisers and dealers in Canada. Part 7 seeks input on one possible articulation of a statutory best interest standard for advisers and dealers. Part 8 reviews the potential benefits and competing considerations of imposing the best interest standard described in Part 7. Part 9 describes the process for making submissions as part of this consultation.

We welcome comments or clarifications on any of the issues raised in this Consultation Paper.

2) BACKGROUND

The 2008 global financial crisis and its aftermath have generated significant debate on the standard of conduct that advisers and dealers owe to their clients when they provide advice on investing in financial products. The principal question is whether advisers and dealers should have an obligation to act in the best interests of their clients when providing advice to them. Several related questions have featured prominently in this debate, including:

- What are the current obligations of an adviser/dealer when providing advice to a client?
- Do investors and advisers/dealers understand the nature of their relationship?
- Do investors believe (and expect) that their advisers and dealers act in their best interests?
- Would a best interest standard affect the different compensation structures of advisers and dealers?
- What problems would be solved by the introduction of a statutory best interest standard for advisers and dealers?
- If a best interest standard were imposed, in what circumstances should it apply?

Against this backdrop, several international securities regulators are reconsidering the relationship between clients and the advisors who provide them with advice on investing in securities. This has included an examination of the standard of conduct applicable to advisers and dealers and/or consideration of some of the core elements of this relationship, such as how conflicts of interest, compensation structures and proficiency should be addressed and whether a statutory fiduciary (or best interest) duty should be imposed. In this respect, the U.K. and E.U. already impose a qualified best interest standard on their advisors, Australia has passed legislation making such a standard mandatory by July 1, 2013, and in the U.S., staff of the U.S. Securities and Exchange Commission (**SEC**) has recommended such a uniform standard be introduced for broker-dealers and investment advisers although both a detailed SEC cost-benefit analysis and an SEC draft rule have yet to be completed.

The standard of conduct debate occurring in other international jurisdictions has also arisen in Canada. There have been several Canadian conferences on the topic of whether Canada should, or should not, impose a statutory fiduciary duty on advisers and dealers. At an early such conference hosted by Canadian Foundation for Advancement of Investor Rights (**FAIR Canada**) and the Hennick Centre for Business and Law (York University),[1] there appeared to be a lack of consensus on many of the important issues surrounding the possible imposition of a fiduciary duty. For example, the panellists did not agree on what a fiduciary duty encompasses, when it should apply and whether the current regulatory regime for advisers and dealers is functionally equivalent to such a standard, in any event. Regardless, most of the experts agreed that if a fiduciary duty is imposed, it is important to clearly address the expectations around the standard of conduct expected of advisers and dealers in providing advice.[2]

The fiduciary duty debate in Canada is an important one. The debate has highlighted the need to consider enhancements to investor protection where advice is being given to investors since it is the advice that will often determine a client's decision to invest.

The fiduciary duty debate in Canada is not a new issue. In 2004, the Ontario Securities Commission (the **OSC**) published the Fair Dealing Model consultation paper which included, in part, a proposal exploring the application of a statutory fiduciary duty to advisers and dealers in certain circumstances.[3] Although the Fair Dealing Model did not proceed in its original form, it evolved into the Client Relationship Model (**CRM**) policy initiative that is currently being pursued by the CSA and the two Canadian securities self-regulatory organizations (**SRO**s): the Investment Industry Regulatory Organization of Canada (**IIROC**) and The Mutual Fund Dealers Association of Canada (**MFDA**). Key CRM features such as conflicts of interest disclosure and relationship disclosure feature prominently in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**).[4] The CSA and the SROs are pursuing a variety of additional CRM initiatives, such as improved cost and compensation disclosure and performance reporting. A statutory best interest standard for advisers and dealers providing advice was not, however, introduced under NI 31-103.

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1 Hennick Centre for Business and Law & FAIR Canada, The Fiduciary Standard and Beyond: Rethinking the Financial Advisor-Client Relationship, March 25, 2010 (http://hennickcentre.ca/Fiduciarystandardconference.html).

2 Megan Harman, "Opinions divided over whether fiduciary standard should apply to Canadian advisors" *Investment Executive* (March 28, 2010), online: http://www.investmentexecutive.com/-/news-52967.

3 Ontario Securities Commission, *The Fair Dealing Model* (January 2004), online: (http://www.osc.gov.on.ca/documents/en/Securities-Category3/cp_33-901_20040129_fdm.pdf.

4 (2009) 32 OSCB (Supp-2) (July 17, 2009).

For the purposes of this Consultation Paper, when we refer to a "statutory" fiduciary duty or best interest standard, we mean any such duty that may be imposed under the securities laws, regulations, instruments or rules of a jurisdiction of Canada (**Securities Legislation**).

3) FIDUCIARY DUTY: WHAT IT IS AND WHEN IT ARISES AT COMMON LAW

Fiduciary Duty – An Overview

A fiduciary duty is a duty of a person to act in another person's *best interests*.[5] For our purposes, a fiduciary duty applicable to an adviser or dealer means that the adviser or dealer (the **fiduciary**) would have to act in the best interests of her client. In general, acting in your client's best interest means that the fiduciary must ensure that:

- Client interests are paramount,
- Conflicts of interest are avoided,
- Clients are not exploited,
- Clients are provided with full disclosure, and
- Services are performed reasonably prudently.

We discuss each of these elements below.

Elements of a General Fiduciary Duty at Common Law

Client interests are paramount

Fiduciaries must ignore all considerations other than single-mindedly serving the interests of their clients in all matters related to the service provided – they must place their clients' interests ahead of their own.[6] This is sometimes referred to as the duty of loyalty[7] or duty of "utmost good faith" and "imports a requirement that the fiduciary act toward the beneficiary with a heightened sense of loyalty and fidelity."[8] This means that a fiduciary cannot balance her own interests (or the interests of her employer) against her client's interests if it means that her client's interests are in any way compromised. All other fiduciary obligations emanate from this foundation duty.[9]

Conflicts of interest are avoided

Fiduciaries must scrupulously avoid placing themselves in a possible or potential conflict of interest with their beneficiaries.[10] This is sometimes referred to as the "no conflict" rule. If an actual or potential conflict of interest is unavoidable, it cannot be cured by disclosure alone. Rather, the client must explicitly consent to allow a fiduciary to place herself in an actual or potential conflict of interest. This requires that the fiduciary provide full and frank disclosure of the nature of the conflict to the client and may require that she advise the client to seek independent advice before the client decides whether to give their consent. Regardless of disclosure to a client of an actual or potential conflict, the fiduciary must always ensure that the client's interests remain paramount.

Clients are not exploited

Fiduciaries must carefully avoid any personal pursuit inconsistent with the best interests of the client.[11] This is sometimes referred to as the "no profit" rule. If fiduciaries learn of an opportunity as a result of acting as a fiduciary for a client, the fiduciary must not take advantage of the opportunity even if the client cannot take advantage of it themselves. A fiduciary must not be rewarded for pursuing interests other than single-mindedly serving the interests of their clients in all matters related to the service provided.[12]

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5 Leonard I. Rotman, *Fiduciary Law* (Toronto: Thomson-Carswell, 2005) at 309. See also *Galambos v. Perez*, [2009] 3 S.C.R. 247 at para. 66, online: http://scc.lexum.org/en/2009/2009scc48/2009scc48.html [*Galambos*].

6 *Ibid*. at 339. See also *Shelanu Inc. v. Print Three Franchising Corp.* (2003), [2003] O.J. No. 1919 (Ont. C.A.).

7 *Galambos*, *supra* note 5 at para. 75.

8 Mark Vincent Ellis, *Fiduciary Duties in Canada*, looseleaf (Toronto: Carswell, 1988) at section 4 of Chapter 1.

9 Rotman, *supra* note 5 at 305.

10 See Ellis, *supra* note 8 at Chap 1, s. 4(2)(a)

11 *Ibid*. at subpar. 4(2)(b), (c) and (d)(iii) of Chapter 1.

12 CSA staff recognizes that this element of a unqualified common law fiduciary duty may need to be qualified if securities regulators wish to apply it to advisers and dealers in Canada.

Clients are provided with full disclosure

Fiduciaries must provide full disclosure of any material information related to the service provided.[13] Being in a position of highest confidence, the fiduciary is obliged to make the client aware of all relevant matters regarding the provision of the services. This means that fiduciaries must take reasonable steps to ensure that clients are aware of the available options and the potential benefits and risks associated with them.

Services are performed reasonably prudently

Fiduciaries must ensure that they perform their services with the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.[14]

Almost as important as understanding the content of a fiduciary duty is to understand what it does *not* include. Canadian courts have been clear that a fiduciary duty does not require the fiduciary to act as "guarantor" or "insurer" in respect of his or her advice. Put another way, advisors are "under no duty to offer only successful financial advice"; they "will inevitably make wrong predictions and it is difficult, in hindsight, to question honest investment advice." [15]

When does a fiduciary duty arise at common law?

In addition to the content of a fiduciary duty, it is important to understand *when* a fiduciary duty arises at common law. To understand this, one must understand the underlying purpose of fiduciary law. Canadian courts have recognized that the underlying purpose of fiduciary law is to "maintain the integrity of socially and economically valuable or necessary relationships of high trust and confidence that are essential for the effective interdependent functioning of society."[16]

In certain types of relationships (lawyer/client, doctor/patient, trustee/beneficiary), a fiduciary duty presumptively arises at common law (these are called *per se* fiduciary relationships). In all other kinds of relationships (including investor advisory relationships[17]), whether the relationship is fiduciary in nature depends on the nature of the relationship. Courts will determine whether a fiduciary relationship exists based on the factual circumstances of the relationship (these are called *ad hoc* fiduciary relationships).[18]

Canadian courts have identified five interrelated factors to be considered when determining whether "financial advisors" stand in a fiduciary relationship to their clients:[19]

1. **Vulnerability**: the degree of vulnerability of the client due to such things as age or lack of language skills, investment knowledge, education or experience in the stock market.[20]

2. **Trust**: the degree of trust and confidence that a client reposes in the advisor and the extent to which the advisor accepts that trust.

3. **Reliance**: whether there is a history of relying on the advisor's judgment and advice and whether the advisor holds him or herself out as having special skills and knowledge upon which the client can rely.

4. **Discretion**: the extent to which the advisor has power or discretion over the client's account or investments.

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13 Ellis, *supra* note 8 at subpart 4(2)(d)(i) of Chapter 1. See also *Capobianco v. Paige* (2007), [2007] O.J. No. 3423 (Ont. S.C.J.) at para. 238; *Burns v. Kelly Peters & Associates Ltd.* (1987), 16 B.C.L.R. (2d) 1 (C.A.).

14 See, e.g., Rotman, *supra* note 5 at 352-355. Note that in certain situations, this duty is separated from the best interest duty, as is the case under the corporate law requirements. Some commentators take the position that because this duty of care is not unique to a fiduciary duty, it is not substantive component of what constitutes a fiduciary duty.

15 *Mills v. Merrill Lynch Canada Inc.*, 2005 CarswellBC 219, 2005 BCSC 151 (B.C. S.C.) at para. 129. Other jurisdictions have also been careful not to suggest that a fiduciary duty would be tantamount to a guarantor. For example, Australia states that in introducing a statutory fiduciary duty for advisers, "the focus of the duty should be on how a person has acted in providing advice rather than the outcome of that action." (Australian Government, *Future of Financial Advice Information Pack* (April 28, 2011) at 12, online: http://ministers.treasury.gov.au/Ministers/brs/Content/pressreleases/2011/attachments/064/064.pdf).

16 Rotman, s*upra* note 5 at 13.

17 *Varcoe v. Sterling* (1992), 7 O.R. (3d) 204 (Gen. Div.) at 234 [*Varcoe*]; affirmed (1992), 10 O.R. (3d) 574 (C.A.); leave to S.C.C. denied. See also *Hodgkinson v. Simms* [1994] 3 S.C.R. 377 [*Hodgkinson*].

18 *Ibid*. See also *LAC Minerals Ltd. v. International Corona Resources Ltd.*, [1989] 2 S.C.R. 574. Galambos, *supra* note 7, provides a more recent discussion of this distinction.

19 *Hunt v. TD Securities Inc.* (2003), 2003 CarswellOnt 3141 (Ont. C.A.).

20 While vulnerability in the broad sense resulting from factors external to the relationship is a relevant consideration, a more important one is the extent to which vulnerability arises *from* the relationship: see *Hodgkinson*, *supra* note 17 at 406.

5. **Professional Rules or Codes of Conduct**: such rules and codes help to establish the duties of the advisor and the standards to which the advisor will be held.

These five factors are not intended to be exhaustive and evidence relevant to one factor may be relevant to a consideration of one or more of the other factors.[21]

Fiduciary duty created by statute

A fiduciary duty can be created by statute. Securities Legislation imposes a fiduciary duty on investment fund managers in respect of the funds that they manage. For more information about this duty, see the section entitled "Statutory best interest standard for investment fund managers" in Part 4 below.

Another example is the fiduciary duty owed by a director to a corporation as set out in applicable corporate statutes. In exercising her powers and discharging her duties, a director is required to:[22]

"(a) act honestly and in good faith *with a view to the best interests* of the corporation; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances." (italics added)

The duty referred to in (a) above is generally referred to as the duty of loyalty and is at the core of the fiduciary duty owed by directors. The duty referred to in (b) above is referred to as the duty of care.

We believe that a statutory fiduciary duty would likely support a private law cause of action for damages by a beneficiary against a fiduciary for breach of the duty, because it establishes the nature of the relationship and therefore eliminates the need to prove the existence of a fiduciary duty. For additional discussion on this, see the section entitled "Strengthens legal remedy to retail clients for breach of fiduciary duty" in Part 8 below.

Conclusion

We believe that imposing a statutory duty on an adviser or dealer to "act in the best interests" of clients constitutes imposing a fiduciary duty. It is a separate question whether certain of the elements of a fiduciary duty referred to above should be qualified to take into account the particular circumstances and business models of advisers and dealers. Any statutory best interest duty imposed under Securities Legislation should address such issues. For further discussion, see Part 8 below.

Because acting in a client's "best interests" is at the heart of a fiduciary duty, we will generally refer in this Consultation Paper to a fiduciary duty as a "best interest" standard or duty.

4) WHAT IS THE CURRENT STANDARD OF CONDUCT OF REGISTRANTS?

In this section, we will review the Canadian registration regime and address the following elements of the standard of conduct required of registrants:

- Current statutory standard of conduct requirements,
- Common law fiduciary duty in some cases,
- Suitability obligations,
- Responding to conflicts of interest, and
- Other requirements.

The registration regime in Canada

A person or company can be registered under Securities Legislation as an adviser, dealer and/or investment fund manager, depending on the nature of their activities. In general terms, only advisers and dealers can provide advice on investing in securities. Investment fund managers direct the business, operations or affairs of one or more investment funds; they do not provide advice on investing in securities unless they are also registered as an adviser (i.e., portfolio manager) or dealer.

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21 *Hunt*, *supra* note 19 at para. 41.

22 See subsection 122(1) of the *Canada Business Corporations Act*.

The standard of conduct applicable to registrants is defined by reference to a number of different Securities Legislation requirements. Advisers and dealers that are members of an SRO are also subject to the separate rules of the SRO that apply to them. Those rules are based on similar principles underlying the equivalent Securities Legislation requirements.

Current statutory standard of conduct requirements

Duty to act fairly, honestly and in good faith

Securities Legislation in Canada imposes a duty on registered advisers and dealers to deal fairly, honestly and in good faith with their clients.[23] This duty applies to advisers and dealers broadly in all dealings with their clients.[24]

A threshold question is whether the obligation to act fairly, honestly and in good faith creates, or is equivalent to, a best interest standard. Many commentators believe that it is not (by itself) equivalent to, and falls short of, a best interest standard.[25] Others disagree.[26] We are not aware of any court or regulatory decision that has concluded that this duty creates, or is equivalent to, a fiduciary duty.[27]

Statutory best interest standard for investment fund managers

Investment fund managers (**IFMs**) are currently subject to a general *statutory* best interest standard of conduct. Every IFM must (i) exercise the powers and discharge the duties of their office honestly, in good faith and in the *best interests* of the investment fund, and (ii) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.[28] The articulation of that duty is consistent with the duty imposed on directors under applicable corporate law.

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23 See section 2.1 of OSC Rule 31-505 *Conditions of Registration*; section 14 of the *Securities Rules*, B.C. Reg. 194/97 [**B.C. Regulations**] under the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418 [**B.C. Act**]; section 75.2 of the *Securities Act* (Alberta) R.S.A. 2000, c.S-4 [**Alberta Act**]; section 33.1 of the *Securities Act* (Saskatchewan), S.S. 1988-89, c. S-42.2 [**Saskatchewan Act**]; subsection 154.2(3) of *The Securities Act* (Manitoba) C.C.S.M. c. S50 [**Manitoba Act**]; section 160 of the *Securities Act* (Québec), R.S.Q., c. V-1.1 **[Québec Act]**; section 39A of the *Securities Act* (Nova Scotia), R.S.N.S. 1989, c. 418 [**N.S. Act**]; subsection 54(1) of the *Securities Act* (New Brunswick) S.N.B. 2004, c. S-5.5 [**N.B. Act**]; section 90 of the *Securities Act* (Prince Edward Island), R.S.P.E.I. 1988, c. S-3.1 [**P.E.I. Act**]; subsection 26.2(1) of the *Securities Act* (Newfoundland and Labrador), R.S.N.L.1990, c. S-13 [**Newfoundland Act**]; section 90 of the *Securities Act* (Nunavut), S.Nu. 2008, c. 12 [**Nunavut Act**]; section 90 of the *Securities Act* (Northwest Territories), S.N.W.T. 2008, c. 10 [**N.W.T. Act**]; and section 90 of the *Securities Act* (Yukon), S.Y. 2007, c. 16 [**Yukon Act**].

24 Regulatory decisions involving a breach of the duty to deal with clients fairly, honestly and in good faith have involved various situations, including: dealer did not disclose conflict of interest and charged excessive mark-ups (*Arlington Securities Inc. v. Ontario Securities Commission*, 2002 CSLR ¶900-035, 25 O.S.C.B. 4247); excessive mark-up when selling securities to client (*Re Curia*, 2000 CSLR ¶ 900-005, 23 O.S.C.B. 7505); unauthorized trades (*Hayward v. Hampton Securities Limited*, 2004 CSLR ¶ 900-086 (Ont.C.A.); unsuitable investment recommendations (*Re Daubney and Littler*, 2008 CSLR ¶ 900-259); used client's money to support dealer's own lifestyle (*Re Kinlin*, 2000 CSLR ¶ 900-014, 23 O.S.C.B. 6535); artificially inflated NAV estimates and discriminated among investors in honouring redemption requests (*Re Norshield Asset Management*, 2010 CSLR ¶900-344 (Ontario Securities Commission); took control of client's accounts and changed investment objectives so that funds could be allocated to aggressive trading (*Sidiropoulos v. Manitoba Securities Commission*, 1999 CSLR ¶900-047 (Manitoba Securities Commission).

25 See, e.g., Edward Waitzer, "Make advisors work for investors" *Financial Post* (February 14, 2011), online: http://opinion.financialpost.com/2011/02/14/make-advisors-work-for-investors/; Ken Kivenko, "Why A Fiduciary Standard For Investment Advisers Is Urgent And Crucial" *Canadian MoneySaver* (June 2012), online: http://faircanada.ca/wp-content/uploads/2012/06/Why-A-Fiduciary-Standard_-Kivenko.pdf.

26 Laura Paglia, a partner at Torys LLP specializing in securities litigation, has stated that "the core principles being debated in the U.S., which revolve around disclosure of conflicts of interest and putting the client's interest first, were already generally accepted in Canada under the duty of care owed by all financial advisers to their clients." (Michael McKiernan, "Lawyers clash over imposing statutory fiduciary duties for financial advisers" *Law Times* (April 4, 2010), online: http://www.lawtimesnews.com/201004056641/Headline-News/Lawyers-clash-over-imposing-statutory-fiduciary-duties-for-financial-advisers). In addition, Philip Anisman, a leading Canadian securities lawyer and commenter, noted that "[a]lthough our courts have not yet recognized that it does so, this rule arguably imposes a fiduciary obligation on … registrants with respect to their clients." Mr. Anisman's recommendation is that "[o]ur regulators may be better advised to ... enforce [the duty to deal fairly, honestly and in good faith with their clients] rigorously." (Philip Anisman, "FP Letters to the Editor: Existing rule requires 'good faith'" *Financial Post* (February 15, 2011), online: http://opinion.financialpost.com/2011/02/15/fp-letters-to-the-editor-existing-rule-requires-%E2%80%98good-faith%E2%80%99/).

27 CSA staff is aware of certain decisions where the OSC stated that a dealer or adviser had a duty to act in the client's best interest. For example, see *Re Gordon-Daly Grenadier Securities*, (2000) 23 O.S.C.B. 5512. Notwithstanding these decisions, it is Staff's view that the OSC was likely referring to the common law duty that the OSC felt the registrant owed to the client, rather than concluding that the duty to act fairly, honestly and in good faith created, or was equivalent to, a best interest standard.

28 See section 116 of the *Securities Act* (Ontario) R.S.O. 1990, c. S.5; section 159.3 of the Québec Act; section 125 of the B.C. Act; subsection 75.2(3) of the Alberta Act; subsection 33.1(2) of the Saskatchewan Act; subsection 154.2(1) of the Manitoba Act; subsection 26.2(3) of the Newfoundland Act; subsection 90(1) of the P.E.I. Act; subsection 39A(3) of the N.S. Act; subsection 54(3) of the N.B. Act; subsection 90(2) of the Yukon Act, N.W.T. Act and Nunavut Act. This statutory duty was recommended at least as early as 1969 when the *Report of the Canadian Committee on Mutual Funds and Investment Contracts - Provincial and Federal Study*, 1969 (Ottawa: Queen's Printer, 1969) made this recommendation at page 293.

Statutory best interest standard for advisers and dealers in four provinces when discretionary authority present

Four provinces (Alberta, Manitoba, Newfoundland and Labrador, and New Brunswick) have a statutory requirement that when advisers or dealers have discretionary authority over their clients' investments, the adviser or dealers must act in the clients' best interests.[29] This is consistent with, as discussed above, the common law where an adviser or dealer that has discretionary authority over a client's assets virtually always owes the client a fiduciary duty.[30]

Québec

In Québec, according to both the general civil law and the *Securities Act* (Québec), registered dealers and advisers are currently subject to a duty of loyalty and a duty of care and must act in the client's best interest.

The 1994 reform of the *Civil Code of Québec*[31] (the **Civil Code**) led to the introduction of these standards for specific legal relationships, namely, the administration of the property of others, the contract for services and the mandate.

In addition to remaining subject to the general regime of contractual liability under the Civil Code, the relevant doctrine and jurisprudence indicate that a relationship between an adviser or a dealer and a client is governed by the rules underlying those legal relationships (the determination of the applicable rules depends on the nature and scope of the relationship).

In any case, a duty of loyalty and, at a minimum, a duty to act in the best interests of a client as well as a duty of care are provided for in sections 1309, 2100 and 2138, respectively, of the Civil Code:

> "**1309.** An administrator shall act with prudence and diligence.
>
> He shall also *act honestly and faithfully in the best interest* of the beneficiary or of the object pursued.
>
> **2100.** The contractor and the provider of services are bound *to act in the best interests* of their client, with prudence and diligence.
>
> **2138.** A mandatary is bound to fulfill the mandate he has accepted, and he shall act with prudence and diligence in performing it.
>
> He shall also *act honestly and faithfully in the best interests* of the mandator, and avoid placing himself in a position that puts his own interest in conflict with that of his mandator." (italics added)

It is worth noting that according to the authors Crête, Brisson, Naccarato and Létourneau, this obligation to act with loyalty (or "faithfully") is comparable to that of the common law fiduciary standard:

> "As Professor Naccarato mentioned in his study on the legal nature of trust, the higher degree of trust in contractual relationships develops when a person entrusts (rooted in the word "trust") property or a portion of his or her estate to another person who will act in the name or on behalf of the client. Such a higher degree of trust is also reflected in the complexity of services offered that require specialized knowledge as well as specific skills and abilities. The greater the imbalance between the respective parties' degree of knowledge, the more the vulnerable party will rely on the competency and honesty of the co-contractor. Under the civil law of Québec, this type of relationship, characterized by the presence of this higher degree of trust, could underpin a contract of mandate or other form of administration of the property of others, while under common law, the contractual relationship could be described as a 'fiduciary relationship' to which fiduciary duties are connected."[32]

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29 See subsection 75.2(2) of the Alberta Act; section 154.2 of the Manitoba Act; subsection 26.2(2) of the Newfoundland Act; and section 54 of the N.B. Act.

30 There are other isolated examples of narrow statutory best interest duties arising in certain situations. For example, unregistered foreign-based sub-advisers to Canadian registered advisers are required in certain circumstances to act in the best interests of the Canadian registered adviser as well as such Canadian adviser's clients and the Canadian registered adviser must contractually agree with its clients that it is liable for any loss by its clients resulting from a breach of this standard of care by the unregistered foreign-based sub-adviser. See, e.g., section 7.3 of OSC Rule 35-502 *Non-Resident Advisers* and section 2.10 of National Instrument 81-102 *Mutual Funds*. In both cases, it is expressly stated that the client cannot relieve the Canadian registrant from its contractual liability described above. CSA staff believes the intention in applying the best interest standard in this context was to codify the Canadian common law practice of advisers for managed accounts owing a fiduciary duty to their clients.

31 S.Q. 1991, c. 64.

32 R. Crête, G. Brisson, M. Naccarato and A. Létourneau, « La prévention dans la distribution de services de placement » [Prevention in the distribution of investment services], colloquium proceedings: *La confiance au coeur de l'industrie des services financiers* [Confidence at the heart of the financial services industry] edited by Raymonde Crête, Marc Lacoursière, Mario Naccarato and Geneviève Brisson, Cowansville, Éditions Yvon Blais, 2009, at 259 [translated by CSA].

The extent of these obligations under the Civil Code varies depending on the legal context and nature of the investment advisory relationship (e.g. discretionary account or non-discretionary account, executing broker only), taking into account the degree of trust, dependence and vulnerability of the client. The Supreme Court of Canada has acknowledged the higher degree of these obligations in the case of a portfolio manager as well as the prevailing role of trust in the mandate regime:

> "As in the case of any mandate, the mandate between a manager and his client is imbued with the concept of trust, since the client places his trust in the manager — the mandatary — to manage his affairs. … This spirit of trust is reflected in the weight of the obligations that rest on the manager, which will be heavier where the mandator is vulnerable, lacks specialized knowledge, is dependent on the mandatary, and where the mandate is important. The corresponding requirements of fair dealing, good faith and diligence on the part of the manager in relation to his client will thus be more stringent."[33]

Most importantly and as mentioned previously, sections 160 and 160.1 of the *Securities Act* (Québec) also require that all registered dealers and advisers and their representatives "deal fairly, honestly, *loyally* and in good faith with their clients" (italics added) and "[i]n their dealings with clients and in the execution of the mandates entrusted to them by their clients, … act with all the care that may be expected of a knowledgeable professional acting in the same circumstances."

Common law fiduciary duty in some cases

As discussed above, depending on the nature of the relationship between the client and their adviser or dealer, Canadian courts (except in Québec, where the common law does not exist in respect of private law matters) may find that an adviser or dealer stands in a common law fiduciary relationship to their clients. As we have seen, Canadian courts have identified five non-exclusive and interrelated factors to assist in this determination: vulnerability, trust, reliance, discretion (over the client's account or investments), and professional rules or codes of conduct (see "When does a fiduciary duty arise at common law?" in Part 3 above).

The fourth factor, discretion, is an especially important element in the context of an investment advisory relationship because the advisory industry generally distinguishes between clients based on whether they have discretionary accounts or non-discretionary accounts. A discretionary account (also known as a managed account) is a type of client account for which an adviser or dealer has the discretion to make investment decisions and transact in securities without the client's express consent to each transaction; in a non-discretionary account, the client must consent to each transaction.

Accordingly, a common law fiduciary duty will virtually always arise where the client has a discretionary account. A fiduciary duty may also arise where the client has a non-discretionary account depending on the actual power or influence that the adviser or dealer has over the client, and the extent to which the client relies on the adviser or dealer. On this point, the Supreme Court of Canada recently stated that:

> "[t]he nature of this discretionary power to affect the beneficiary's legal or practical interests may, depending on the circumstances, *be quite broadly defined*. *It may arise from power conferred* by statute, agreement, perhaps from a unilateral undertaking or, in particular situations *by the beneficiary's entrusting the fiduciary with information or seeking advice in circumstances that confer a source of power*"[34] (italics added).

This statement builds on previous caselaw that suggested that with regard to unsophisticated clients especially, the court will find that a fiduciary relationship exists even if "the ultimate discretion or power in the disposition of funds remained with the beneficiary."[35]

Canadian courts explain this approach by noting that advisers and dealers fall into a continuum in providing advice, with discount brokers at one end (who provide no advice but simply execute transactions on a client's express instructions and who therefore are not subject to a common law fiduciary duty standard) and advisers or dealers with clients in discretionary accounts at the other end (who have complete discretionary trading authority and who therefore would be subject to a common law fiduciary duty). Whether a common law fiduciary duty applies to a relationship that falls somewhere in between in this continuum is a question of fact to be determined based on the nature of the client relationship in all the circumstances.[36]

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33 *Laflamme v. Prudential-Bache Commodities Canada Ltd.*, [2000] 1 S.C.R. 638 at para. 28. This interpretation has been reaffirmed in *Loevinsohn c. Services Investors ltée*, 2007 QCCS 793 (CanLII) at para. 41:

> "The contract of mandate is a relationship based upon the trust that a client is entitled to have in the competence and professional integrity of the mandatary. The sense of trust is characteristic of a contract of mandate and has an impact on the state of mind of a client convinced of the professional qualifications of the person upon whom the client relies."

34 *Galambos*, *supra* note 5 at para. 84. See also *Frame v. Smith*, [1987] 2 S.C.R. 99 at 136 (Wilson J. – dissenting).

35 *Hodgkinson*, *supra* note 17 at 182.

36 See *Kent v. May* (2001), 298 A.R. 71 (Alta Q.B. at paras 51 – 53). See also, e.g., *875121 Ontario Ltd. v. Nesbitt Burns Inc.*, [1999] O.J. No. 3825 (Sup. Ct.); *Hunt v. TD Securities Inc.* (2003), 66 O.R. (3d) 481 (Ont. C.A.); and *Young Estate v. RBC Dominion Securities* (2008), [2008] O.J. No. 5418 (Ont. S.C.J.).

The following table summarizes when a statutory or common law fiduciary duty currently arises based on a registrant's activities:

Type	Category	Registerable Activity	Account Types[37]	Does a Fiduciary Duty Apply?		Direct Regulatory Oversight
				Statutory or rules based[38]	Common law	
Adviser	Portfolio manager (**PM**)	Advising others on the buying or selling of, and investing in, securities.	Discretionary	No[39]	Yes	CSA
			Non-discretionary	No	It depends	
Dealer	Full-service investment dealer (**ID**)	Trading (and advising) in any kind of securities as principal or agent.	Discretionary	No[40]	Yes	IIROC
			Non-discretionary	No	It depends	
			Discount brokerage	No	No	
	Mutual fund dealer (**MFD**)	Trading (and advising in) mutual fund (or labour-sponsored fund) securities as principal or agent.	Non-discretionary	No	It depends	MFDA
	Exempt market dealer (**EMD**)	Trading (and advising) in exempt market securities as principal or agent.	Non-discretionary	No	It depends	CSA
	Scholarship plan dealer (**SPD**)	Trading (and advising) in scholarship or educational plan securities as principal or agent.	Non-discretionary	No	It depends	CSA
Investment fund manager	Investment fund manager (**IFM**)	Directing the business, operations or affairs of an investment fund.	N/A	Yes[41]	Likely	CSA

The question that is discussed in this Consultation Paper is whether a statutory best interest standard should be introduced that applies to all categories of advisers and dealers referred to above. As discussed below, we recognize that any fiduciary duty imposed on dealers would likely need to be qualified to take into account the circumstances and business models of particular categories of dealers. See the discussion below in Part 8 for more information and related consultation questions.

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37 A discretionary account, also known as a managed account, is a type of client account for which an adviser or dealer has to sole discretion to make investment decisions and buy or sell securities without the client's express consent to each transaction.

38 As discussed previously, a duty of loyalty and a duty of care currently apply in Québec for all registered advisers and dealers.

39 Four provinces (Alberta, Manitoba, Newfoundland and Labrador, and New Brunswick) have a statutory requirement that when advisers or dealers have discretionary authority over their clients' investments, the adviser or dealers must act in the clients' best interests.

40 *Ibid*.

41 *Supra* note 28.

Suitability Obligations

In general, advisers and dealers must collect "know-your-client" (**KYC**) information, and, prior to:

- making a recommendation, or accepting an instruction from a client, to buy or sell a security for a client's non-discretionary account, or
- buying or selling a security for a client's discretionary account,[42]

take reasonable steps to ensure that the purchase or sale of the security is suitable for the client. They cannot delegate their suitability obligations to anyone else or satisfy the suitability obligation by simply disclosing the risks involved with a transaction.

According to the companion policy to NI 31-103, in some cases, an adviser or dealer will need extensive KYC information, for example, if they have discretionary authority over a client account.[43] In these cases, the adviser or dealer should have a comprehensive understanding of the client's:

- investment needs and objectives, including the client's time horizon for their investments,
- overall financial circumstances, including net worth, income, current investment holdings and employment status, and
- risk tolerance for various types of securities and investment portfolios, taking into account the client's investment knowledge.

In other cases, the adviser or dealer may need less KYC information. For example, if they only occasionally deal with a client who makes small investments relative to their overall financial position.[44]

The suitability obligation requires advisers and dealers to determine, based on the KYC information of the client, whether a proposed purchase or sale of a security for the client is suitable. In determining suitability, advisers and dealers must understand:

(i) the KYC information relating to their client and any other factors necessary for them to be able to determine whether a proposed purchase or sale is suitable, and

(ii) the attributes and associated risks of the investment products they are recommending to clients (known as "know-your-product" or **KYP**).

If a client has more than one account, the adviser or dealer should indicate whether the client's investment objectives and risk tolerance apply to a particular account or to the client's whole range of accounts.

A Canadian securities regulator has described the suitability obligation as:

> "the obligation of a registrant to determine whether an investment is *appropriate* for a particular client. Assessment of suitability requires both that the registrant understands the investment product and knows enough about the client to assess whether the product and the client are a *match*."[45] (italics added)

Conversely, an unsuitable investment and/or recommendation is one that is not appropriate for the client. IIROC states that this means that the investment and/or recommendation:

> "is inconsistent with the client's personal circumstances including current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the current investment portfolio composition and risk level of the other investments within the client's account or accounts at the time of the investment and/or recommendation."[46]

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42 Note that IIROC and the MFDA have both revised their suitability rules so that the suitability analysis would have to be conducted not just on a buy/sell basis but also upon the occurrence of certain triggering events (e.g., change in representative servicing the account or a material change in the client's KYC information).

43 See heading "KYC information for suitability depends on circumstances" in section 13.3 of Companion Policy to NI 31-103, *supra* note 4.

44 *Ibid*.

45 *Re Daubney* (2008), 31 O.S.C.B. 4817 at 4819, para. 16.

46 IIROC, *IIROC Notice 12-0109: Know your client and suitability – Guidance* (March 26, 2012), online: http://www.iiroc.ca/Documents/2012/d21b2822-bcc3-4b2f-8c7f-422c3b3c1de1_en.pdf.

The suitability obligation requires that a dealer or adviser ensure that an investment is suitable or appropriate. This does not necessarily mean that the product must be the "best" product for the client.

It is generally accepted that, in some circumstances, an adviser or dealer providing advice can comply with its suitability obligation and yet not provide investment recommendations that are in the best interest of the client. We would describe that concept as follows: there may be a large number of potentially suitable investment products, but the question is whether the advice to the client must identify a smaller range of products that are, in the adviser's view, in the client's best interest. One consideration in giving that advice would be the relative cost to the client of the product.

Recent SRO Developments

IIROC has recently amended its rules to expand the obligation of IIROC member firms to undertake suitability assessments beyond assessing suitability at the time a transaction recommendation is made.[47] The amended provisions require that a review of account suitability must be conducted within one day of the firm becoming aware of any of the following triggering events:

- a transfer or deposit of securities into the account;
- a change in representative on the account; or
- a material change to the "know your client" information.

A suitability determination will not be required following a triggering event if the transaction is executed on the instructions of another IIROC member firm, portfolio manager, exempt market dealer, bank, trust company or insurer. For both retail and institutional clients, suitability determinations will not be required if the account is an order execution-only account.

IIROC has also published draft guidance stating that, when its members are determining the suitability of account types for their clients, "one of the key factors that [members] should consider is the account's compensation structure."[48]

The MFDA has also similarly amended its suitability requirements.[49]

Conflicts of Interest

In general, registrants must identify and respond to material existing and potential conflicts of interest by avoiding, controlling or disclosing them. The CSA provides principle-based guidance in the companion policy to NI 31-103 about how registered firms should apply these rules:

- The registrant should ***avoid*** the conflict if it is sufficiently contrary to the interests of a client (or the integrity of the capital markets) that there can be no other reasonable response.
- The registrant should ***control*** the conflict if it can be effectively managed by internal controls such as organizational structures, lines of reporting and physical locations.
- The registrant should ***disclose*** the conflict to their clients if a reasonable investor would expect to be informed about it, in addition to any other methods the registered firm may use to control the conflict.

Although the general rule is that advisers and dealers are able to decide for themselves how to apply these principles, Securities Legislation also contains specific prohibitions and restrictions. For example, NI 31-103 prohibits a registered adviser from engaging in certain transactions in investment portfolios for managed accounts where the relationship may give rise to a conflict of interest or a perceived conflict of interest.[50] The prohibited transactions include transactions in securities in which a responsible person or an associate of a responsible person may have an interest or over which they may have influence or control.[51] NI 31-103 also requires disclosure in most cases in order for a firm to recommend the buying, selling or holding of a security of a related or connected issuer.[52]

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47 *Ibid*.

48 IIROC, *IIROC Notice 12-0253: Request for comments on draft guidance regarding compensation structures for retail investment accounts* (August 14, 2012), online: http://www.iiroc.ca/Documents/2012/cdb04cab-2ff1-4e60-898c-0738df8d8ccd_en.pdf, at 6.

49 MFDA, *MFDA Bulletin #0459: Transition Periods for MFDA Rule and Policy Amendments Implementing the Client Relationship Model Proposals* (December 3, 2010), online: http://www.mfda.ca/regulation/bulletins10/Bulletin0459-P.pdf.

50 NI 31-103, *supra* note 4 at s. 13.5.

51 Section 13.5 of the Companion Policy to NI 31-103, *supra* note 4.

52 NI 31-103, *supra* note 4 at s. 13.6.

Client Relationship Model

IIROC also recently amended its rules to adopt the core elements of the Client Relationship Model for investment dealers.[53] These rule amendments address, among many matters, the responsibility of a dealer to address conflicts of interest between the dealer and its clients. In this respect, IIROC rule 42.3(2) provides as follows:

> 42.3. **Dealer Member responsibility to address conflicts of interest**
>
> (2) The Dealer Member must address the existing or potential material conflict of interest in a fair, equitable and transparent manner, *and considering the best interests of the client or clients.*(italics added)

In response to a comment that the reference to the "best interests of the client" may be interpreted as creating a fiduciary duty, IIROC staff stated as follows:

> "IIROC does not believe that the phrase 'best interests of the client' on its own creates a fiduciary duty relating to existing or potential material conflicts of interest, and it is not IIROC's intention to do so. Whether or not a fiduciary duty exists in an account relationship depends on the facts of each case, including, among other things, the services being provided to the client and the degree to which the client relies on the firm/adviser in making investment decisions. While the standard of conduct established by the proposal is not as high as the fiduciary standard, it is intended to strengthen investor protection by clarifying IIROC's expectations on how existing or potential material conflicts of interest are to be addressed as between the Approved Person and the client, as well as between the Dealer Member and clients generally."[54]

The IIROC rule requires only that the Dealer Member "consider" the best interests of the client in addressing conflicts of interest.[55] While that may not create a fiduciary duty, IIROC believes that it does impose a higher standard intended to "strengthen investor protection."

In response to the IIROC consultation on the changes adopted to its rules, a number of comments were made with respect to the costs versus the benefits of the proposed amendments. In response to those comments, IIROC staff stated as follows:

> "Although it is difficult to quantify with any degree of precision, comments received from investors indicate that a significant benefit of these proposals will be to enhance investors protection through greater disclosure of account relationship, firm/advisor conflict of interest and account performance information and through more frequent assessment of the suitability of the account assets. IIROC staff have received considerable input on cost issues throughout the rule-making process. We believe that we understand and have fully considered the cost issues noted in the comments. Wherever possible, IIROC has developed its proposals to achieve the investor protection goals of the CRM project while minimizing the potential implementation costs and ongoing costs of compliance."[56]

The MFDA's rules on conflicts of interest are similar to IIROC's.[57]

Other Requirements Applicable to Advisers and Dealers

There are a number of additional principle-based and rule-based requirements under securities law currently applicable to advisers and dealers that directly affect the client relationship, including:

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53 IIROC, *IIROC Notice 12-0107: Client Relationship Model – Implementation* (March 26, 2012), online: http://docs.iiroc.ca/DisplayDocument.aspx?DocumentID=C168CD670F80468EB38BC6EF773ECC41&Language=en.

54 *Ibid*. at 25.

55 Interestingly, subsection 42.2(2) of IIROC Dealer Member Rule 42 states that an "Approved Person must address all existing or potential material conflicts of interest between the Approved Person and the client in a fair, equitable and transparent manner, and *consistent with the best interests of the client or clients*." (italics added) Subsection 42.2(3) states that "[a]ny existing or potential material conflict of interest between the Approved Person and the client that cannot be addressed in a fair, equitable and transparent manner, and *consistent with the best interests of the client or clients*, must be avoided." (italics added) Although IIROC has stated that its intention is not to create a fiduciary duty, the conflict of interest rule applicable to Approved Persons suggests a higher standard than the rule applicable to the Dealer Member (which only requires "considering" the client's best interest).

56 *Supra* note 53 at 17-18.

57 See section 2.1.4 of the rules of the MFDA (MFDA, *Rules*, online: http://www.mfda.ca/regulation/rules.html).

(i) Relationship disclosure information[58]

Advisers and dealers must provide clients with all information that a reasonable investor would consider important about their relationship with the adviser/dealer. This includes all costs for the client of operating the account, the costs that the client will incur in buying, holding and selling investments, and the compensation paid to the adviser or dealer for securities purchased through the adviser or dealer.

(ii) Referral arrangement disclosure[59]

Advisers and dealers must disclose to their clients details about all referral arrangements, whether or not they relate to the firms' regulated activities.

(iii) Dispute resolution service[60]

Advisers and dealers must document, and effectively and fairly respond to, each complaint made about any product or service offered by the firm or its representatives and ensure that independent dispute resolution services or mediation services are made available to a client at the firm's expense.[61]

(iv) Compensation and incentive restrictions for most mutual funds[62]

For most mutual funds, there are restrictions and prohibitions on practices related to commissions, trailing commissions and internal dealer incentive practices, such as prohibitions against volume-based increases in commission rates paid by mutual funds to their participating dealers.

5) RECENT DEVELOPMENTS IN THE U.S., U.K., AUSTRALIA AND THE E.U.

Recent developments in the U.S., U.K., Australia and the E.U. regarding the investment advisory relationship are relevant to the issues discussed in this Consultation Paper. All four jurisdictions have either implemented, or are proposing to implement, a qualified statutory best interest standard. The following is a general description of the initiatives in each jurisdiction.

United States

As mandated by the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010* (**Dodd-Frank Act**),[63] staff of the SEC released a report on January 21, 2011, summarizing the findings of a study it conducted of the obligations of brokers,[64] dealers,[65] and investment advisers[66] (the **SEC Study**).[67] The SEC Study was meant to inform the SEC's decision whether to introduce a statutory, uniform best interest standard on broker-dealers and advisers when providing personalized investment advice about securities to retail investors.

Currently, all U.S. investment advisers are subject to a fiduciary standard (note that investment advisers exclude any broker or dealer whose performance of such services is solely incidental to the conduct of her business as a broker or dealer and who receives no special compensation as a result thereof).[68] In contrast, broker-dealers are generally subject to a suitability

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58 NI 31-103, *supra* note 4 at Division 2 of Part 14.

59 *Ibid*. at Division 3 of Part 13.

60 *Ibid*. at Division 5 of Part 13.

61 Note that this requirement (which does not apply in Québec by reason of the existing regime in that jurisdiction) is not yet in force for firms that were registered on the date that NI 31-103 came into force. See CSA Staff Notice 31-330 *Omnibus/Blanket Orders Extending Certain Transition Provisions Relating to the Investment Fund Manager Registration Requirement and the Obligation to Provide Dispute Resolution Services* (July 5, 2012), online: http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20120705_31-330_dispute-resolution.htm.

62 See National Instrument 81-105 *Mutual Fund Sales Practices* (1998) 21 O.S.C.B. 2713 (May 1, 1998).

63 H.R. 4173, 111th Cong. (2010).

64 A "broker" is anyone engaged, as agent, in the business of effecting transactions in securities for the account of others.

65 A "dealer" is anyone engaged, as principal, in the business of buying and selling securities for a person's own account through a broker or otherwise. The term "broker-dealer" is often used because of the frequent overlap of their duties.

66 An "investment adviser" is anyone who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

67 Securities and Exchange Commission (Staff), *Study on Investment Advisers and Broker-Dealers - As Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (January 2011), online: http://www.sec.gov/news/studies/2011/913studyfinal.pdf.

68 Although the *Investment Advisers Act of 1940* (the **Advisers Act**) does not use the word "fiduciary" or the phrase "best interest" to apply to the standard of conduct to which an investment adviser is held, the U.S. Supreme Court has held that an investment adviser in fact has a fiduciary duty; see, e.g., Michael V. Seitzinger (Congressional Research Service), *The Dodd-Frank Wall Street Reform and*

standard, along with a broader duty of fair dealing and other requirements.[69] While broker-dealers are generally not subject to a fiduciary duty under federal securities laws, courts have found broker-dealers to have a fiduciary duty under certain circumstances. Generally, courts have held that broker-dealers that exercise discretion or control over customer assets, or have a relationship of trust and confidence with their customers, owe customers a fiduciary duty.[70]

In the SEC Study, staff noted that investment advisers and broker-dealers are regulated extensively under different regulatory regimes. However, many retail investors do not understand and are confused by the roles played by investment advisers and broker-dealers. SEC staff noted that many investors are also confused by the standards of care that apply to investment advisers and broker-dealers when providing personalized investment advice about securities. The SEC Study further stated that retail investors should not have to parse through legal distinctions to determine the type of advice they are entitled to receive. Instead, retail customers should be protected uniformly when receiving personalized investment advice about securities regardless of whether they choose to work with an investment adviser or a broker-dealer. At the same time, SEC staff noted that retail investors should continue to have access to the various fee structures, account options, and types of advice that investment advisers and broker-dealers provide.[71]

Based on the comments it received as well as research that it commissioned prior to the financial crisis, the SEC staff recommended in the SEC Study that the SEC establish a fiduciary standard that is at least as stringent as the current fiduciary standard applicable to investment advisers under the Advisers Act. The SEC Study recommended that the uniform fiduciary standard of conduct:

> "for all brokers, dealers, and investment advisers, when providing *personalized investment advice about securities to retail customers* (and such other customers as the Commission may by rule provide), shall be to act in the *best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser* providing the advice." (italics added)

SEC staff made a number of other implementation-related recommendations in the SEC Study related to its recommended best interest standard, including that its Commission should:

- prohibit certain conflicts and facilitate the provision of uniform, simple and clear disclosures to retail investors about the terms of their relationships with broker-dealers and investment advisers, including any material conflicts of interest;
- address through interpretive guidance and/or rulemaking how broker-dealers should fulfill the uniform fiduciary standard when engaging in principal trading;
- consider specifying uniform standards for the duty of care owed to retail investors, through rulemaking and/or interpretive guidance (minimum baseline professionalism standards could include, for example, specifying what basis a broker-dealer or investment adviser should have in making a recommendation to an investor);
- engage in rulemaking and/or issue interpretive guidance to explain what it means to provide "personalized investment advice about securities"; and
- consider additional investor education outreach as an important complement to the uniform fiduciary standard.[72]

The SEC Study also included some detailed yet preliminary cost-benefit analysis.[73]

The release of the SEC Study was not without controversy. Two Republican SEC Commissioners jointly published a statement criticizing what they viewed as the SEC Study's analytical shortcomings, citing in particular a lack of (i) evidence of investor harm caused by the current regulatory regime, and (ii) a reasonable cost-benefit analysis of imposing the proposed standard.[74]

Consumer Protection Act: Standards of Conduct of Brokers, Dealers, and Investment Advisers (August 19, 2010), online: www.fas.org/sgp/crs/misc/R41381.pdf, for additional detail.

69 See SEC Study, *supra* note 67 at 46-83. We note that the fair dealing obligation on broker-dealers is not statutory in that it is derived from the antifraud provisions of the U.S. federal securities laws. This suggests that there are technically no equivalent statutory provisions to the statutory provisions currently in place in Canada.

70 *Ibid.*, 54-55.

71 SEC, *Press Release 2011-20: SEC Releases Staff Study Recommending a Uniform Fiduciary Standard of Conduct for Broker-Dealers and Investment Advisers* (January 22, 2012), online: http://www.sec.gov/news/press/2011/2011-20.htm.

72 SEC Study, *supra* note 67 at vii.

73 *Ibid*. at Part V.

74 SEC, *Statement by SEC Commissioners: Statement Regarding Study On Investment Advisers And Broker-Dealers* (January 21, 2012), online: http://www.sec.gov/news/speech/2011/spch012211klctap.htm.

Reaction in the U.S. to the possibility of a statutory best interest standard has been mixed. On one hand, the main U.S. securities self-regulatory organization (the Financial Industry Regulatory Authority (**FINRA**)) as well as key industry organizations (e.g. Securities Industry and Financial Markets Association (**SIFMA**) and the Investment Adviser Association (**IAA**)) all *support* the introduction of a uniform best interest standard of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers.[75] On the other hand, FINRA and SIFMA (but not the IAA) also vigorously argue that such a standard should be *applied differently* to broker-dealers and investment advisers to take into account their different business models and, at least in the case of broker-dealers, to allow the standard to be modified in part by the contract between the broker-dealer and the client.[76] They argue that it would be a mistake to simply export to broker-dealers the regulatory scheme currently applied to investment advisers. This concern was also articulated by one of the namesakes of the Dodd-Frank Act, Congressman Barney Frank, in his own letter to the SEC on May 31, 2011.[77] The IAA and other U.S. stakeholders have been critical of the position taken by FINRA and SIFMA, essentially suggesting that they are encouraging a watered-down, less authentic fiduciary standard.[78]

One of the reasons why broker-dealers are sensitive about how a fiduciary duty would apply to them in practice relates to the uncertainty regarding whether such a duty would restrict or prohibit certain of their current transaction-based compensation practices. This uncertainty was reinforced by the Dodd-Frank Act, which explicitly provides that the receipt of commission-based compensation, or other standard compensation, for the sale of securities would not, in and of itself, violate the uniform fiduciary standard of conduct applied to a broker-dealer;[79] however, the Dodd-Frank Act also states that the SEC can prohibit or restrict certain sales practices, conflicts of interest and compensation schemes for brokers, dealers and investment advisers that the SEC deems contrary to the public interest and the protection of investors.[80] In response, a group of leading consumer and adviser industry organizations supporting a uniform fiduciary duty provided the SEC with a roadmap for resolving the debate about how to create a uniform statutory fiduciary duty.[81] This roadmap was noteworthy for various reasons, not least because the organizations recognized the possibility of broker-dealers maintaining many of the compensation practices currently in place even if a fiduciary duty was imposed.

The best interest standard as recommended in the SEC Study provides an example of a foreign regulator developing a qualified best interest standard applicable to advisers and dealers:

- First, it would only apply to firms when they provide "personalized investment advice"[82] and not in other interactions between a firm and its client. SEC staff believes that such a definition, at a minimum, should encompass the making of a "recommendation" as developed under applicable broker-dealer regulation and should not include "impersonal investment advice" as developed under the Advisers Act.[83]

- Second, it would only apply to retail investors, which would be defined as natural persons using investment advice primarily for personal, family, or household purposes.

- Third, although there is a request from industry in the U.S. to clarify this,[84] the duty would only apply to broker-dealers when the advice is provided and thus would likely not constitute an on-going duty with respect to advice previously given.

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75 See, e.g., http://www.finra.org/web/groups/industry/@ip/@reg/@guide/documents/industry/p121983.pdf, http://www.sifma.org/issues/private-client/fiduciary-standard/position/, and http://www.sec.gov/comments/4-606/4606-2563.pdf. (**IAA Letter**).

76 *Ibid*.

77 http://media.advisorone.com/advisorone/files/ckeditor/Barney%20Frank%20Letter.pdf.

78 IAA Letter, *supra* note 75.

79 *Dodd-Frank Act*, *supra* note 63 at s. 913.

80 *Ibid*., para. 913(h)(2).

81 http://www.consumerfed.org/pdfs/SIFMA-FrameworkResponse3-29-12.pdf.

82 SEC staff states that it "recommends that the Commission engage in rulemaking and/or issue interpretive guidance to define and/or interpret 'personalized investment advice about securities' to provide clarity to broker-dealers, investment advisers, and retail investors. SEC staff believes that such a definition at a minimum should encompass the making of a 'recommendation,' as developed under applicable broker-dealer regulation, and should not include 'impersonal investment advice' as developed under the Advisers Act. Beyond that, the Staff believes that the term also could include any other actions or communications that would be considered investment advice about securities under the Advisers Act (such as comparisons of securities or asset allocation strategies), except for 'impersonal investment advice' as developed under the Advisers Act." SEC Study, *supra* note 67 at 27.

83 The SEC has defined some services that investment advisers may provide as "impersonal investment advice," which means "investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts": *ibid*. at 123.

84 See http://thomsonreuters.com/content/corporate/docs/informer-article.pdf at page 43 and SIFMA's May 2012 letter to the SEC (http://www.sec.gov/comments/4-606/4606-2977.pdf in Scenario 2 of Appendix A.

Although rulemaking in this area seems to remain a priority for SEC staff (the draft rule was originally supposed to be published in the spring of 2011), the SEC has been significantly delayed in releasing a rule because of its attempts to conduct a robust cost-benefit analysis at this stage. As part of this process, the SEC is planning to ask investment advisers and others to provide data about the costs and benefits of the recommended best interest standard.[85] It is unclear at this time when the SEC will move forward on this initiative.

Recent U.S. Research Studies on the Possible Impact of a Fiduciary Duty Standard

There are two prominent studies that have attempted to determine the impact that a statutory fiduciary duty would have when applied to broker-dealers in the U.S.

The first study, published in October 2010 and entitled *Standard of Care Harmonization: Impact Assessment for SEC*, was commissioned by SIFMA and conducted by Oliver Wyman (the **SIFMA Study**).[86] The SIFMA Study was meant to examine the likely impact of the wholesale adoption of the Advisers Act for all brokerage activity in the U.S. Oliver Wyman collected data from a broad selection of retail brokerage firms to assess the impact of significant changes to the existing standard of care for broker-dealers and investment advisors. A total of 17 firms provided data. These firms serve 38.2 million households and manage $6.8 trillion in client assets. According to Oliver Wyman, that means that its study captures approximately 33% of households and 25% of retail financial assets in the U.S.[87]

According to the SIFMA Study, retail investors would experience "reduced product and service availability and higher costs" under a uniform standard of care for investment advisors and broker-dealers "that does not appropriately recognize the important distinctions among business models." [88] In particular, the SIFMA Study stated that a uniform standard of care for investment advisers and broker-dealers would lead to reduced access to:

- an investor's preferred investment and advisory model;
- investment products distributed primarily through broker-dealers; and
- the most affordable investment options.

In sum, the SIFMA Study concludes that the wholesale adoption of the Advisers Act for all brokerage activity is likely to have a negative impact on consumers (particularly smaller investors) across each of the following dimensions: choice, product access, and affordability of advisory services.

The second study, published in March 2012 and entitled *The Impact of the Broker-Dealer Fiduciary Standard on Financial Advice*, was sponsored by the Roger and Brenda Gibson Family Foundation, Fi360, the Committee for the Fiduciary Standard, and the Financial Planning Association and was conducted by Michael Finke (Texas Tech University) and Thomas Patrick Langdon (Roger Williams University) (the **Academic Study**).[89] The Academic Study summarises the results of the authors' study of the impact and effect of a fiduciary duty on U.S. broker-dealers and their relationship with clients. The study is based on the fact that a fiduciary duty is already imposed on broker-dealers under state law in four different U.S. states.

As discussed above, the SEC Study recommended the adoption of a uniform fiduciary standard for investment advisers and broker-dealers advising retail customers. The authors were trying to determine what impact this would have on broker-dealers. The Academic Study describes the study undertaken by the authors and the conclusions reached as follows:

> "This study explores the regulation of registered representatives of broker-dealers in order to estimate whether the proposed application of a universal fiduciary standard will have a significant impact on the financial adviser industry. We take advantage of differences in the application of a fiduciary standard to representatives among states in order to test whether representatives already subject to a stricter fiduciary requirement are affected by the higher standard. We conduct a survey of 207 representatives within the four states that apply a strict fiduciary standard and the 14 states that apply no fiduciary standard and find no statistical differences between the two groups in the percentage of lower-income and high-wealth clients, the

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85 See, e.g., Liz Skinner, "SEC wants industry data as it shapes fiduciary proposal" *Investment News* (February 24, 2012), online: http://www.investmentnews.com/article/20120224/FREE/120229945.

86 Oliver Wyman, *Standard of Care Harmonization - Impact Assessment for SEC* (October 2010), online: http://www.sifma.org/issues/item.aspx?id=21999.

87 *Ibid*. at 3.

88 SIFMA, *Press Release: Study Shows Negative Impact on Retail Investors if Fiduciary Standard Does Not Recognize Different Business Models* (November 1, 2010), online: http://www.sifma.org/news/news.aspx?id=21910.

89 Michael S. Finke & Thomas Patrick Langdon, *The Impact of the Broker-Dealer Fiduciary Standard on Financial Advice* (March 9, 2012), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2019090.

> ability to provide a broad range of products including those that provide commission compensation, the ability to provide tailored advice, and the cost of compliance.
>
> …
>
> Empirical results provide no evidence that the broker-dealer industry is affected significantly by the imposition of a stricter legal fiduciary standard on the conduct of registered representatives. The opposition of the industry to the application of stricter regulation suggests that agency costs that exist when brokers are regulated according to suitability are significant. Imposition of a universal fiduciary standard among financial advisers may result in a net welfare gain to society, and in particular to consumers who are ill equipped to reduce agency costs on their own by more closely monitoring an adviser with superior information, although this will likely occur at the expense of the broker-dealer industry. These results provide evidence that the industry is likely to operate after the imposition of fiduciary regulation in much the same way it did prior to the proposed change in market conduct standards that currently exist for brokers."

In sum, the Academic Study concludes that "[e]mpirical results provide no evidence that the broker-dealer industry is affected significantly by the imposition of a stricter legal fiduciary standard on the conduct of registered representatives." In part, that is because broker-dealers are already subject to suitability requirements that have the effect of imposing significant costs on the industry.

United Kingdom

Since late 2007, all U.K. securities firms (whether advising or dealing) have been subject to a statutory requirement to "act honestly, fairly and professionally in accordance with the best interests of its clients."[90] Our understanding is that the U.K. Financial Services Authority (**FSA**) interprets this standard as not an absolute requirement for advisors to act in accordance with the best interests of their clients (and thus not a "pure" best interest standard) but rather a qualified standard. The FSA's fundamental principles for investment firms support the conclusion that the FSA's best interest standard is not an unqualified fiduciary duty standard.[91] Instead, it is qualified to accommodate the various business models of the U.K. investment advisory industry.

In addition to the U.K. qualified best interest standard, rules focused on various tiers of advice that retail clients can be offered have been finalized and are awaiting introduction. In June 2006, the FSA launched its "Retail Distribution Review" (**U.K. Reforms**) with a view to examining how investments were distributed to retail consumers in the U.K.[92]

In the course of its review, the FSA identified various long-running problems that affected the quality of advice and consumer outcomes, as well as confidence and trust, in the U.K. investment market. Specifically, the FSA was concerned that:

- The ways in which firms that advise on investment products describe their services to consumers was unclear;
- The professional standards required of investment advisers were too low; and
- There was significant potential for adviser remuneration to distort consumer outcomes.

The U.K. reforms have introduced various rules focused specifically on retail investors, including:

(i) Clearer tiers of advice. Retail investors can be offered two broad tiers of advice:

- *Independent advice* is advice that considers all products and providers that could meet an investor's needs and is thus free from any restrictions or bias when making recommendations. Firms providing such advice must (a) consider a broader range of products (retail investment products), (b) provide unbiased and unrestricted advice based on a comprehensive and fair analysis of the relevant market,

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90 U.K. Financial Services Authority, *Conduct of Business Sourcebook*, online: http://fsahandbook.info/FSA/html/handbook/COBS at s. 2.1.1. This requirement was introduced in 2007 as part of the broader E.U.'s *Markets in Financial Instruments Directive*. For additional information about this directive and the proposed reforms thereof that are underway, see the section below in this part of the Consultation Paper on the proposed European Union reforms.

91 Further support can be found in the request by the U.K.'s leading investor protection group for advisers and dealers to be made subject to a fiduciary duty: see http://www.fs-cp.org.uk/publications/pdf/fiduciary-duty.pdf. The Financial Services Consumer Panel (**FSCP**) is established by the FSA under the *Financial Services and Markets Act* to represent the interests of consumers. The FSCP is independent of the FSA and can speak out publicly on issues where it considers this appropriate. See also John Kay, *The Kay Review of UK Equity Markets and Long-Term Decision Making – Final Report* (July 2012), online: http://www.bis.gov.uk/assets/biscore/business-law/docs/k/12-917-kay-review-of-equity-markets-final-report.pdf.

92 See FSA, Retail Distribution Review Website, online: http://www.fsa.gov.uk/rdr.

and (c) inform its clients, before providing advice, that it provides independent advice (i.e., advice without restrictions or qualifications).[93]

- *Restricted advice* is advice that is restricted in some way (e.g. by offering only proprietary products or certain kinds of products). Firms providing restricted advice must disclose in writing and orally, before providing advice, that they provide restricted advice and explain the nature of the restriction. "Basic advice"[94] and "simplified advice"[95] are specific forms of advice within the broader restricted advice category.

(ii) **Prohibition on embedded commissions.** Advisors that offer independent or most kinds of restricted advice (but not "basic advice"[96]) must set their own charges in an agreement with their retail investor clients before they identify suitable products for the customer. Product providers will be banned from offering pre-determined levels of commission to independent and restricted advisors. However, the cost of the advisory services can be incorporated into payments made by the client for the financial product purchased.

(iii) **Professionalism.** Advisors will need to:[97]

- subscribe to a code of ethics;
- hold an appropriate qualification;
- carry out at least 35 hours of continuing professional development a year; and
- hold a Statement of Professional Standing from an accredited body.

These standards will be maintained and enforced by the FSA. If existing advisers do not meet these standards they will not be able to make personal recommendations to retail customers from January 1, 2013.[98]

Significant cost-benefit and market impact analysis of the U.K. Reforms was conducted by the FSA and external consultants.[99] The FSA has indicated it will be conducting a post-implementation review of the U.K. Reforms.[100]

The FSA provides another example of how a foreign regulator has developed a qualified approach:

- First, our understanding is that the FSA's best interest standard is not an absolute requirement for advisors to act in accordance with the best interests of their clients (and thus not a "pure" best interest standard) but rather a qualified standard.
- Second, depending on the nature of the advice provided to retail investors (independent or restricted), advisors will be subject to a tailored suite of regulatory requirements.

The UK Reforms will come into effect on January 1, 2013, and will apply to all advisors in the retail investment market, regardless of the type of firm for which they work (e.g. banks, product providers, independent financial advisers or wealth managers).[101]

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93 See FSA, *Retail Distribution Review: Independent and restricted advice – finalized guidance* (June 2012), online: http://www.fsa.gov.uk/static/pubs/guidance/fg12-15.pdf.

94 Basic advice is a short, simple form of financial advice where advisors use pre-scripted questions to identify the investor's financial priorities and decide whether a product from within their range of low-cost, highly regulated saving and investment "stakeholder products" is suitable for the customer.

95 *Supra* note 93 at 8.

96 *Ibid*.

97 See, e.g., http://www.fsa.gov.uk/about/what/rdr/firms/professionalism.

98 *Ibid*.

99 See, e.g., FSA, *Distribution of retail investments: Delivering the RDR - feedback to CP09/18 and final rules* (March 2010), online: http://www.fsa.gov.uk/pubs/policy/ps10_06.pdf at Part 6; Deloitte LLP, *Firm Behaviour and Incremental Compliance Costs: Research for the Financial Services Authority*, dated May 14, 2009, online: http://www.fsa.gov.uk/pubs/other/fbicc.pdf; Oxera, *Retail Distribution Review Proposals: Impact on Market Structure and Competition*, Prepared for the Financial Services Authority, dated Mar. 2010, online: http://www.fsa.gov.uk/pubs/policy/oxera_rdr10.pdf.

100 FSA, *RDR post-implementation review - Measuring progress and impact* (November 2011), online: http://www.fsa.gov.uk/pubs/RDR-baseline-measures.pdf.

101 http://www.fsa.gov.uk/about/what/rdr/firms.

Australia

In November 2009, the Australian Parliamentary Joint Committee on Corporations and Financial Services released a report that (i) examined the high-profile collapse of two Australian securities firms, and (ii) made several recommendations for regulatory changes (the **JPC Report**).[102] The JPC Report found that stricter regulation of financials advisers was required and put forward 11 recommendations, including a recommendation that a fiduciary duty be imposed on advisers that would require them to place their clients' interests ahead of their own.

Currently, the Australian *Corporations Act 2001* (**Corporations Act**)[103] sets out a number of conditions or obligations applying to securities licence holders and their representatives, including the obligation to provide relevant financial services efficiently, honestly and fairly.[104] In addition, advisors providing personal financial advice must ensure that there is a reasonable basis for that advice, often referred to as the 'suitability rule'.[105] Subsection 945A(1) of the Corporations Act stipulates that:

> (1) The providing entity must only provide the advice to the client if:
>
> (a) the providing entity:
>
> (i) determines the relevant personal circumstances in relation to giving the advice; and
>
> (ii) makes reasonable inquiries in relation to those personal circumstances; and
>
> (b) having regard to information obtained from the client in relation to those personal circumstances, the providing entity has given such consideration to, and conducted such investigation of, the subject matter of the advice as is reasonable in all of the circumstances; and
>
> (c) the advice is appropriate to the client, having regard to that consideration and investigation.

In other words, the adviser must know their client, know the product and/or the strategy they are recommending, and ensure that the product and/or strategy is appropriate to the clients' particular needs. This standard does not require that personal advice needs to be 'ideal, perfect or best'.[106]

As a result of the findings and recommendations from the JPC Report, on April 26, 2010, the Australian Government announced its "Future of Financial Advice" reform initiative.[107] This initiative culminated in two separate bills[108] passed by the Australian government in late June 2012 that contain three key reforms (**Australian Reforms**):

- **Introduction of a qualified best interest standard**. The Australian Reforms introduce a statutory best interest standard for advisors requiring them, when providing personal advice[109] to retail clients,[110] to act in the

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102 Parliamentary Joint Committee on Corporations and Financial Services, Inquiry into financial products and services in Australia (November 2009), online: http://www.aph.gov.au/binaries/senate/committee/corporations_ctte/fps/report/report.pdf.

103 Cth.

104 *Ibid*. at paragraph 912A(1)(a).

105 This summary of the current standard of conduct for advisers in Australia was taken from JPC Report, *supra* note 102 at paras. 2.20 and 2.21.

106 *Ibid*. at para. 2.21.

107 See http://futureofadvice.treasury.gov.au/Content/Content.aspx?doc=home.htm.

108 *Corporations Amendment (Future of Financial Advice) Bill 2012* (http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4689) (**FoFa Bill 1**); *Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012* (http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4739) (**FoFA Bill 2**).

109 Currently in Australia, a "recommendation or a statement of opinion, or a report of either of those things constitutes financial product advice if:

(a) it is, or could reasonably be regarded as being, intended to influence a person or persons in making a decision about a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products (s766B); and

(b) it is not exempted from being a financial service (e.g. where reg 7.1.29 of the Corporations Regulations 2001 (Corporations Regulations) applies)."

Financial advice triggers suitability obligation. See ASIC Regulatory Guide 175, pages 8 and 34 http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg175-010411.pdf/$file/rg175-010411.pdf.

best interests of their clients and to place the interests of their clients ahead of their own. The duty would include a prescribed reasonable steps "safe harbour"[111] so that advisers are only required to take reasonable steps to discharge the duty. In addition, according to draft guidance published by the Australian Securities and Investments Commission (**ASIC**),[112] ASIC considers that the concept of leaving the client in a better position is key in determining whether the best interest duty has been complied with.[113] Whether the advice provider has in fact left the client in a better position should be assessed objectively, based on the facts existing at the time the advice is provided and by reference to the subject matter of the advice sought by the client.[114]

The best interest standard (and associated "safe harbour") was also explicitly designed to accommodate "scaled" advice. In the context of the Australian Reforms, scaled advice is advice that only considers a specific issue (for example, single issue advice on retirement planning) whereas "holistic" or comprehensive advice looks at all the financial circumstances of the client.[115] For example:

"the client might prefer to receive more targeted advice on a matter that is particularly concerning them rather than comprehensive advice. As long as the provider acts reasonably in this process and bases the decision to narrow the subject matter of the advice on the interests of the client, the provider will not be in breach of their obligation to act in the client's best interests. The scaling of advice by the provider must itself be in the client's best interests, especially since the client's instructions may at times be unclear or not appropriate for his or her circumstances."[116]

The Australian Reforms require that if, in considering the subject matter of the advice sought, it would be reasonable to consider recommending a financial product, the advice provider must (i) conduct a reasonable investigation into the financial products that might achieve the objectives and meet the needs of the client that would reasonably be considered as relevant to advice on that subject matter, and (ii) assess the information gathered in this investigation.[117] This "reasonable investigation" does not require an investigation into every financial product available;[118] however, it would include any specific financial products that the client requests the advice provider to consider in her or his advisory analysis.[119]

- **Prohibition on embedded commissions**. The Australian Reforms contain a broad, comprehensive ban on conflicted remuneration structures involving retail investors, including commissions and any form of volume based payment. In addition, percentage-based fees (known as assets under management fees) can be charged only on unleveraged products or investment amounts.

- **Investor payment to adviser**. The Australian Reforms include the introduction of an adviser payment regime, which retains a range of flexible options through which consumers can pay for advice and includes a

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110 In Australia, there are current rules setting out minimum investment (AUS$500,000), income (AUS$250,000) and net asset (AUS$2.5 million) thresholds under which investors are considered "retail clients" (See Australian Government, *Wholesale and Retail Clients - Future of Financial Advice* (January 2011), online: http://futureofadvice.treasury.gov.au/content/consultation/wholesale_retail_OP/downloads/Wholesale_and_Retail_Options_Paper.pdf at para. 2.3 and para. 2.5.)

111 Corporations Act, s. 961B(2).

112 ASIC, *Consultation Paper 182: Future of Financial Advice: Best interests duty and related obligations—Update to RG 175* (August 2012), online: http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/CP182-published-9-August-2012.pdf/$file/CP182-published-9-August-2012.pdf.

113 *Ibid*. at 37-38.

114 *Ibid*. at 39.

115 Australian Parliament, *Revised Explanatory Memorandum - Corporations Amendment (Further Future of Financial Advice Measures) Bill 2012*, online: http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4739_ems_c1902f04-f76c-455d-87bf-763755860827/upload_pdf/368171rem.pdf;fileType=application%2Fpdf at para. 1.34 (**Revised Explanatory Memorandum**). For additional explanation and guidance, see ASIC, *Consultation Paper 183: Giving information, general advice and scaled advice* (August 2012), online: http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/CP183-published-9-August-2012.pdf/$file/CP183-published-9-August-2012.pdf.

116 Revised Explanatory Memorandum, *ibid*.

117 FoFA Bill 2, *supra* note 108 at para. 961B(2)(e).

118 Revised Explanatory Memorandum, *supra* note 115 at para. 1.41. The advice provider is expected to exercise professional judgement to determine whether this requires going beyond the provider's approved product list (if the provider operates using such a list). This is will ultimately depend on the nature and range of products on their approved product list and the needs and objectives of the specific client: *ibid*.

119 FoFA Bill 2, *supra* note 108 at para. 961D(2).

requirement for retail clients to agree to the fees and to annually renew (by opting in) an adviser's continued services.

Significant cost-benefit and market impact analysis of the Australian Reforms were conducted by ASIC and external consultants.[120]

The Australian Reforms provide another example of how a foreign regulator has developed a qualified best interest standard applicable to intermediaries that provide advice:

- First, the best interest duty only applies to advisors when dealing with retail clients.
- Second, the standard is balanced with a statutory safe harbour that clarifies that the advisor does not need to provide perfect advice[121] and does not need to canvass the whole universe of products.[122]

The Australian government introduced the reform bills in the fall of 2011 and established a hard deadline of July 1, 2012, as its effective date. However, since the legislation only received royal assent on June 27, 2012, there is 12-month transition period, giving firms the option to voluntarily comply with the reforms before they are made mandatory on July 1, 2013.[123]

European Union

Since November 2007, all firms based in E.U. member states (whether advising or dealing) have been subject to a statutory requirement to "act honestly, fairly and professionally in accordance with the best interests of its clients."[124] This requirement was introduced as part of the E.U.'s *Markets in Financial Instruments Directive* (**MiFID**).[125] MiFID has been in force since November 2007 and is the cornerstone of the E.U.'s regulation of financial markets.

On October 20, 2011, the European Commission adopted a legislative proposal for the revision of MiFID. The proposals take the form of a revised directive[126] and a new regulation[127] which together are commonly referred to as "MiFID II" (the **E.U. Reforms**). The new proposals are designed to take into account developments in the trading environment since the implementation of MiFID in 2007, including advances in technology and gaps in transparency to investors and regulators. Specific proposals involving a standard of conduct for intermediaries include:

- Firms providing investment advice will be required to disclose whether (i) the advice is provided on an independent basis, (ii) it is based on a broad or more restricted analysis of the market, and (iii) the firm will provide the client with an on-going assessment of the suitability of the recommended financial instruments.[128] In order to qualify as "advice provided on an independent basis", the firm must meet certain requirements, such as:
    - assessing a sufficiently large number of financial instruments available in the market. The financial instruments should be diversified with regard to their type and issuers or product providers and should not be limited to financial instruments issued or provided by entities having close links with the investment firm,[129] and

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120 Rice Warner Actuaries, *The Financial Advice Industry Post FoFA*, study commissioned by Industry Super Network (January 2012), online: https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=72479870-5146-4b8e-9688- 35734f9592d4; see also Revised Explanatory Memorandum, *supra* note 115 at chapter 3.

121 *Supra* note 112 at para. 29.

122 *Supra* note 115 at para. 1.41.

123 FoFa Bill 1, *supra* note 108 at division 7; FOFA Bill 2, *supra* note 108 at part 10.18.

124 Article 19(1) of MiFID, *infra* note 125 below.

125 Directive on Markets and Financial Instruments, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, (OJ (2004) L145/1 (April 30, 2004)), online: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:145:0001:0044:EN:PDF.

126 European Commission, *Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council* (October 20, 2011), online: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0656:FIN:EN:PDF.

127 European Commission, *Proposal for a Regulation of the European Parliament and of the Council on markets in financial instruments and amending Regulation [EMIR] on OTC derivatives, central counterparties and trade repositories* (October 20, 2011), online: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0652:FIN:EN:PDF.

128 MiFID II, *supra* note 126 at Article 24(3).

129 *Ibid*. at Article 24(5).

- not accepting or receiving fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients;[130]

- Municipalities and other local authorities do not qualify as professional investors and thus would be afforded more protection;[131] and

- The exception to the know-your-customer requirement for execution-only business will be narrowed with respect to the categories of qualifying financial instruments.[132]

Significant cost-benefit and market impact analysis of the E.U. Reforms were conducted by the European Commission and external consultants.[133]

The E.U. Reforms are now with the European Parliament and the Council of the European Union for discussion. Although a final agreement between the legislative bodies on the Level I proposals is expected by the end of 2012, implementation of MiFID II is not expected until at least 2015.[134]

6) KEY INVESTOR PROTECTION CONCERNS WITH THE CURRENT STANDARD OF CONDUCT IN CANADA

CSA staff has identified the following five key investor protection concerns with the current standard of conduct applicable to advisers and dealers in Canada. The applicability and significance of each concern in each CSA jurisdiction likely depends on the existing standard of conduct existing in each CSA jurisdiction.

Concerns At-a-Glance

1) There may be an inadequate principled foundation for the standard of conduct owed to clients.

2) The current standard of conduct may not fully account for the information and financial literacy asymmetry between advisers and dealers and their retail clients.

3) There is an expectation gap because investors incorrectly assume that their adviser/dealer must always give advice that is in their best interests.

4) Advisers/dealers must recommend suitable investments but not necessarily investments that are in the client's best interests.

5) The application in practice of the current conflicts of interest rules might be less effective than intended.

These concerns are more fully discussed below.

- **Concern 1: Principled foundation**

  This concern is whether the current standard of conduct of advisers and dealers in respect of their clients is based on the most principled foundation. Some commentators believe that the principle underlying the current statutory standard of conduct is that advisory services are just like any other business transaction or interaction where the principles of "buyer beware", supported by prescriptive prohibitions and key disclosure requirements, are sufficient.

  However, advice for investing in securities is arguably *not* just like any other business transaction or interaction (certainly when advisers and dealers are advising retail investors) because:

  - many investors place substantial trust, confidence and reliance on the financial advice they receive (see further discussion below on this point),

130 *Ibid*.

131 *Ibid*. at 3.4.8.

132 *Ibid*. at Article 25(3).

133 *Supra* note 127 at pages 4-5.

134 See, generally, http://www.fsa.gov.uk/about/what/international/mifid.

- there is often information and financial literacy asymmetry between advisers/dealers and their clients (see further discussion below on this point),
- these issues are compounded by the increasing complexity of financial products and the fact that many financial products must be "sold" to, not "bought" by, investors,[135]
- adviser and dealer compensation arrangements can create a conflict of interest between the interests of advisers and dealers and their clients, and
- amounts invested often constitute a major portion of investors' wealth and responsibility for funding the costs of living during old age is shifting more to investors.[136]

- **Concern 2: Information and financial literacy asymmetry**

Despite the CSA's new and proposed rules around disclosure to investors (such as the new "fund facts" disclosure document for mutual funds[137] and, as part of CRM, the cost disclosure and performance reporting initiative[138]), advisers and dealers usually have more knowledge and information about the financial products they recommend to their clients.

Furthermore, the latest research available suggests that the poor financial literacy of investors remains a stubborn problem in Canada[139] even though investors themselves want to improve in this area.[140] This concern is not unique to Canada; securities regulators in other jurisdictions have also noted similar concerns about the poor financial literacy or capabilities of their investors.[141]

Although financial literacy is a problem in and of itself, it becomes of greater concern when combined with (i) the information asymmetry referred to above, (ii) a general conflict of interest regime that relies heavily on disclosure, (iii) tacit approval by investors of compensation practices based on disclosure, (iv) the explicit or implicit suggestion by

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135 See, e.g., Henry T.C. Hu, "Too Complex to Depict? Innovation, 'Pure Information,' and the SEC Disclosure Paradigm", *Texas Law Review*, Vol. 90, No. 7, 2012, online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2083708&download=yes; see also Stephen Lumpkin, "Innovation: A Few Basic Propositions", *OECD Journal: Financial Market Trends*, vol 2010:1, online: http://www.oecd.org/finance/financialeducation/46010844.pdf.

136 See, e.g., BMO Retirement Institute, *Report - Perfecting the workplace pension: The quest continues* (January 2012), online: http://www.bmo.com/pdf/11-1832%20BMO%20Retirement%20Institute%20Report_E_FINAL.pdf. In a related news release (http://newsroom.bmo.com/press-releases/bmo-retirement-institute-report-are-employer-pens-tsx-bmo-201201310762221001), the authors state that this report "explores the shift in Canada from the traditional defined benefit model to the defined contribution model. As a result of this change, the responsibility for properly managing one's pension now lies primarily with the employee rather than the employer."

137 http://www.osc.gov.on.ca/en/InvestmentFunds_point-of-sale_index.htm.

138 http://www.osc.gov.on.ca/en/SecuritiesLaw_ni_20110622_31-103_rfc-pro-amd.htm.

139 See, for example, The Brondesbury Group, *Report: Performance Reporting and Cost Disclosure* (September 17, 2010), online: http://www.osc.gov.on.ca/documents/en/Securities-Category3/rpt_20110622_31-103_perfomance-rpt-cost-disclosure.pdf; The Brondesbury Group, *Focus Groups with Retail Investors on Investor Rights and Protection* (April 7, 2011), online: http://www.osc.gov.on.ca/en/SecuritiesLaw_com_20110427_11-765_ananda.htm; CSA Investor Index (2009), online: http://www.getsmarteraboutmoney.ca/Investor-research/Related-research/Pages/2009-CSA-Investor-Study.aspx, Investor Education Fund, *Investor knowledge: A study of financial literacy* (2011), online: http://www.getsmarteraboutmoney.ca/Investor-research/Our-research/Pages/financial-literacy-research.aspx; The Investment Funds Institute of Canada, *The Value of Advice: Report* (July 2010), online: https://www.ific.ca/Content/Document.aspx?id=5906. SEC staff has recently published a study on U.S. investor financial literacy that concludes that, among other things, U.S retail investors lack basic financial literacy (SEC Staff, *Study Regarding Financial Literacy Among Investors* (August 2012), online: http://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf at iii).

140 See Editorial, "Canadians bothered by their level of financial literacy" *Investment News* (November 9, 2011), online: http://www.investmentexecutive.com/-/canadians-bothered-by-their-level-of-financial-literacy?utm_source=newsletter&utm_medium=nl&utm_content=investmentexecutive&utm_campaign=INT-EN-morning.

141 See, e.g., Securities and Exchange Commission (Staff), *Study Regarding Financial Literacy Among Investors – As Required by Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (August 2012), online: http://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf; Financial Services Authority, *Feedback Statement: Retail Distribution Review – Including feedback on DP07/1 and the Interim Report* (November 2008), online: http://www.fsa.gov.uk/pubs/discussion/fs08_06.pdf, at para. 5.1; Australian Securities & Investments Commission, *Financial literacy and behavioural change* (March 2011), online: http://www.financialliteracy.gov.au/media/218309/financial-literacy-and-behavioural-change.pdf.

some advisers and dealers that they act in their client's best interests when they may not have a legal obligation to do so, and (v) cognitive biases on the part of investors that impair rational decision making.[142]

- **Concern 3: Standard of conduct expectation gap**

  The Investor Education Fund (**IEF**) recently completed an extensive study of approximately 2,000 Canadian investors that receive investment advice in respect of a non-discretionary account from an adviser or dealer (the **IEF Study**).[143] The IEF identified a number of issues that are important for understanding the expectations and needs of investors in an advisory relationship.

  The IEF Study provides strong evidence that most investors already believe that their adviser or dealer is required to act in their best interests. In the IEF Study, 70% of investors surveyed indicated that they believed that their adviser or dealer has a legal duty to put the client's best interests ahead of their own. Further, 76% of investors surveyed stated that they can trust their adviser or dealer to give them the best possible advice they can, with most investors believing that their adviser or dealer would identify the investments that are best for them. Finally, 62% of investors surveyed believed that their adviser or dealer would recommend the product that is best for the investor even if it resulted in less compensation for the adviser or dealer.

  These findings are of concern because, as discussed above, advisers and dealers are not always legally required to act in their clients' best interests. These results indicate a significant gap between the expectations of investors and the actual legal protection that exists. Further, these expectations of investors are often created and reinforced by the advertising and promotional statements made by some advisers and dealers.

- **Concern 4: Recommendation of suitable investments versus investments in the client's best interests**

  As noted above, under the current securities regime, advisers and dealers must ensure that, when they advise their clients about investing in securities, the investments are suitable. This is a lower standard than having to ensure that a purchase or sale of securities is in the client's best interests.

  In practice, an adviser or dealer can often reasonably conclude that a large number of investment products are suitable for her client. In the face of so many "suitable" options, the adviser or dealer may be tempted to select a "suitable" product that is not necessarily the best one for the client.

  This may result in investors acquiring a "suitable" investment but at an inflated price. Even slightly higher fees can have a significant negative impact on the value of a client's investment portfolio over the long term.[144] Similarly, a suitability standard could have the effect of the client acquiring an investment that may be suitable but in circumstances in which another investment at the same price may be a better investment for the investor.

- **Concern 5: The application in practice of the current conflicts of interest rules might be less effective than intended**

  The intention of Canadian securities regulators in adopting the current principle-based rules in NI 31-103 regarding conflicts of interest was to ensure that clients receive meaningful disclosure about conflicts of interest without imposing unnecessary regulatory burdens on registrants. CSA staff have the following concerns with the effect of these rules on retail investors in practice:

  a) First, CSA staff in certain jurisdictions have identified (in normal course compliance reviews) certain concerns with how the conflict rules are interpreted by some advisers and dealers in practice. For example, some firms narrowly interpret the current principles-based regulatory approach for dealing with conflicts of interest such that they (i) fail to appropriately identify and respond to conflicts or (ii) rely too heavily on disclosure (especially where the disclosure may be meaningless for the client).

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142 For an interesting discussion of the weaknesses that behavioural psychology identifies in the reliance on disclosure generally, and the treatment of conflicts of interest in particular, in the broader fiduciary duty debate, see Robert A. Prentice, "Moral Equilibrium: Stock Brokers and the Limits of Disclosure" *Wisconsin Law Review* 2011:1059, online: http://wisconsinlawreview.org/wp-content/files/1-Prentice.pdf. See also Steven J. Choi & A.C. Pritchard, "Behavioral Economics and the SEC", 56 *Stanford Law Review* 1, 22 (2003), online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=500203; Onnig H. Dombalagian, "Investment Recommendations and the Essence of Duty", *American University Law Review*, 2011, Vol 60, Issue 5 at 1279 (and footnotes 61 and 64), online: http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1627&context=aulr.

143 The Brondesbury Group, *Investor behaviour and beliefs: Advisor relationships and investor decision-making study* (March 2012), online: http://www.getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf.

144 See, e.g., Financial Consumer Agency of Canada, *Frequently Asked Questions – What is a Management Expense Ratio*, online: http://www.fcac-acfc.gc.ca/eng/resources/faq/qaview-eng.asp?id=342.

Further, some firms take the position that once disclosure is provided, the adviser or dealer need not comply with the general standard of conduct that would otherwise apply. This in turn can lead to situations where the interests of advisers and dealers are not aligned with the interests of their clients.

b) Second, commissions paid by issuers (or their agents) to advisers and dealers for recommending the issuer's securities may constitute such a fundamental conflict of interest that regulators should consider how best to mitigate this risk (e.g. prohibiting some or all "embedded" commissions; requiring more effective disclosure). The UK and Australia have directly addressed this issue in their reforms described above.[145] The CSA is currently considering fee arrangements in the mutual fund industry as a separate policy initiative.

c) Third, how advisers and dealers respond to conflicts of interest involving their recommendations to buy, hold or sell securities in related or connected issuers could be strengthened. For example, a common business model for exempt market dealers is that they exclusively distribute the securities of related or connected issuers. Another example is the common practice of advisers and dealers recommending the purchase of securities of mutual funds that are related or connected. While NI 31-103 does currently include rules in this regard,[146] these rules only apply to clients in managed accounts and/or rely on disclosure to manage the conflict. Further consideration is required to determine whether a stronger, more prescriptive approach is appropriate.

Consultation Questions on Investor Protection Concerns

Question 1: **Do you agree, or disagree, with each of the key investor protection concerns discussed above with the current standards applicable to advisers and dealers in Canada? Please explain and, if you disagree, please provide specific reasons for your position.**

Question 2: **Are there any other key investor protection concerns that have not been identified?**

Question 3: **Is imposing a statutory best interest standard on advisers and dealers the most effective way of addressing these concerns? If not, would another policy solution (e.g., changes to one or more of the existing statutory standard of conduct requirements) offer a more effective solution?**

Question 4: **Do you believe that some or all of these concerns are inapplicable (or less significant) in any CSA jurisdiction as a result of its current standard of conduct for advisers and dealers?**

7) CONSULTATION ON THE APPROPRIATENESS OF INTRODUCING A STATUTORY BEST INTEREST DUTY WHEN ADVICE IS PROVIDED TO RETAIL CLIENTS

Why a statutory best interest standard?

Having considered all of the issues discussed above in this Consultation Paper, CSA staff has decided to undertake a formal consultation on the desirability and feasibility of imposing a statutory best interest standard on advisers and dealers that provide investment advice to retail investors.

Our rationale for considering the imposition of a fiduciary duty at this stage, rather than another policy tool, is that a statutory best interest standard may be the best way to address the five investor protection concerns identified in Part 6 above and appears to offer the benefits, and may be flexible enough to address most or all of the competing considerations, identified in Part 8 below.

We note that each of the foreign jurisdictions that we have reviewed (U.S., U.K., Australia and the E.U.) have identified similar policy concerns and have either adopted a qualified statutory best interest standard (i.e., in the U.K., E.U. and Australia) or are considering adopting one (i.e., in the U.S.). Further, international bodies such as the International Organization of Securities Commissions (**IOSCO**) and the Organisation for Economic Co-operation and Development (**OECD**) are clear that financial

145 ASIC has also published draft guidance on (i) incentive scheme features that increase the risk of mis-selling, and (ii) managing the risks and governance of incentive schemes (ASIC, *Guidance Consultation: Risks to customers from financial incentives* (September 2012), online: http://www.fsa.gov.uk/static/pubs/guidance/gc12-11.pdf.

146 NI 31-103, *supra* note 4 at s. 13.5.

intermediaries, such as advisers and dealers providing advice, should act in their clients' best interest.[147] While these international developments should not determine Canada's policy direction in this matter, they do support the conclusion that it is time to revisit the standard of conduct framework currently in place for advisers and dealers providing advice to retail investors and determine whether changes are required.

Possible Statutory Best Interest Standard for Consultation Purposes

CSA staff is seeking comment on the desirability and feasibility of introducing a statutory best interest standard for advisers and dealers when providing investment advice to retail investors. For consultation purposes, one possible articulation of this standard would be as follows:

> **Every adviser and dealer (and each of their representatives) that provides advice to a retail client with respect to investing in, buying or selling securities or derivatives shall, when providing such advice,**
>
> **(a) act in the best interests of the retail client, and**
>
> **(b) exercise the degree of care, diligence and skill that a reasonably prudent person or company would exercise in the circumstances.[148]**

Although other articulations of statutory "best interest" duties already exist in certain CSA jurisdictions, as in Québec, we are exploring the possibility of harmonizing the appropriate standard of conduct for advisers and dealers that should apply across Canada. Common law and civil law remain distinct legal regimes, but both cover the same advisory services provided by advisers and dealers to their clients. If such a new harmonized standard of conduct for advisers and dealers in Canada is identified by the CSA, further work would be required, as necessary, to reflect it appropriately in each CSA jurisdiction (including in Québec).

We note that while no decision has been made whether a statutory best interest standard should be adopted, whether another policy solution is preferable, or whether the current regulatory regime is adequate, we believe that a public consultation will be more productive if that consultation focuses on and addresses a specific articulation of a best interest standard. Accordingly, the balance of this Consultation Paper will address the implications of a best interest standard as described above.

General Scope

For the purpose of this Consultation Paper, we will assume that the best interest standard articulated above would have the following terms:

(i) a "retail client" would mean any person or company that is not a "permitted client" (as such term is defined in section 1.1 of NI 31-103). As a result, a "retail client" would include individuals that have net financial assets of $5 million or less and companies that have net assets of less than $25 million;

(ii) a retail client would retain complete discretion whether to follow any advice received; an adviser or dealer who disagrees with the investment decision of a retail client and who has so advised the client, would have no further obligation to dissuade the client or to refuse to facilitate an order;[149]

(iii) the duty would apply only when an adviser or dealer gives advice to a retail investor with respect to investing in securities. Thus, for instance, the duty would not apply to discount brokers who act as mere order takers;

(iv) the duty would be an on-going duty in the case of advisers and dealers other than exempt market dealers and scholarship plan dealers. The duty would terminate only upon the termination of the client relationship;

(v) the best interest standard could not be waived by a retail client as a contractual matter if advice is given to that client;[150]

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147 See IOSCO, *International Conduct of Business Principles* (July 9, 1990), online: http://riskinstitute.ch/19900701.htm; OECD, *G20 High-Level Principles On Financial Consumer Protection* (October 2011), online: http://www.oecd.org/dataoecd/58/26/48892010.pdf at 6.

148 This best interest standard is drafted with certain qualifiers. However, no qualifiers have been included that might address concerns about the negative impact on certain business models and compensation practices. Further, no qualifiers have been included that overcome the common law prohibition that a fiduciary cannot take advantage of opportunities learned of as a fiduciary, which CSA Staff recognize may need to be qualified in this context. We ask specific questions below intended to assist us in determining what additional qualifiers may be necessary or appropriate.

149 This is consistent with the current suitability requirement set out in subsection 13.3(2) of NI 31-103, *supra* note 4.

150 We note that this is consistent with the duty as it applies to directors under the *Canada Business Corporations Act* in that the best interest duty and duty of care cannot be contracted out of (see s. 122(3) of the CBCA).

(vi) a common law retail client would be entitled to enforce the best interest standard as a private law right of action;

(vii) a non retail client would still be entitled to pursue a private law right of action based on the common law (in all Canadian jurisdictions except Québec) and the Civil Code of Québec would not be amended to deprive non retail clients of a right of action; and

(viii) the existing suitability requirement would continue to apply to advisers and dealers (and their representatives).

Consultation Questions on the Statutory Best Interest Standard Described Above

Question 5: **Should securities regulators impose a best interest standard applicable to advisers and dealers that give advice to retail clients? Why or why not?**

Question 6: **If such a duty is imposed, are the terms of the best interest duty described above appropriate (for example, should there also be an on-going obligation regarding the suitability of advice previously given or investments held by a client)? What changes, if any, would you suggest to the terms of the best interest duty described above?**

Question 7: **Are there other general issues related to imposing the best interest standard described above that should be addressed?**

We note that there are further consultation questions set out below with respect to the potential benefits and competing considerations in imposing a statutory best interest standard.

8) POTENTIAL BENEFITS AND COMPETING CONSIDERATIONS IN IMPOSING A STATUTORY BEST INTEREST STANDARD

This section of the Consultation Paper identifies the potential benefits and competing considerations related to the imposition of the statutory best interest standard described above. The following chart summarizes these elements and each one will be discussed in more detail below.

Potential Benefits	Potential Competing Considerations
• Provides a more principled foundation for client relationship	• Current regime may be functionally equivalent to a fiduciary duty
• Principle-based approach alleviates need for detailed prescriptive rules	• May impose greater costs on providing advice
• Retail clients expect that their adviser or dealer already has a duty to act in their best interest	• Possible negative impact on investor access to, and choice and affordability of, advisory services
• Recommended products that are in the client's best interest rather than just suitable	• Possible negative impact on certain business models
• Further mitigates information and financial literacy asymmetry	• Uncertain impact on capital raising
• Eliminates any legal uncertainty whether a fiduciary duty exists	• Uncertain effect on compensation practices
• Strengthens legal remedy to retail clients for breach of fiduciary duty	• May require more guidance with respect to its application and operation in specific circumstances
• Limited application of a statutory duty	• Whether duty should only apply to retail clients
	• How the duty applies to "advice"

Consultation Question on Potential Benefits and Competing Considerations Generally

Question 8: Do you agree, or disagree, with each of the potential benefits and competing considerations of the statutory best interest standard described above? Please explain and, if you disagree, please provide reasons for your position. Are there any other key potential benefits or competing considerations that have not been identified?

(a) Potential Benefits

Provides a more principled foundation for client relationship

The introduction of a statutory best interest duty may establish a more principled foundation for the advisor-client relationship by requiring that the adviser or dealer must always act in the client's best interests and put the client's interest ahead of their own. It seems to address the issues discussed under "Concern 1: Principled foundation" in Part 6 above and could assist in reversing any deterioration of client trust with their financial adviser or dealer (whether such deterioration of trust is deserved or not).[151]

Principle-based approach alleviates need for detailed prescriptive rules

The imposition of a statutory best interest standard constitutes a principle-based approach to the concerns identified in this Consultation Paper. The advantage of any principle-based approach to regulation is that regulators do not have to introduce detailed rules for every element of a relationship being regulated. This advantage is magnified by the inherent flexibility and fluidity of the fiduciary duty doctrine at common law,[152] which is why it is applied so often by judges in various circumstances.[153] An over-arching best interest standard would be a principled foundation that could support the existing body of regulatory rules while at the same time addressing behaviour that may not be in the client's best interest but that falls outside specific rules. Any such principle-based approach may bring with it, however, the need for regulators to provide appropriate guidance as to the application of the standard.

Retail clients expect that their adviser or dealer already has a duty to act in their best interest

The adoption of a best interest duty for advisors and dealers would likely align an adviser's or dealer's standard of conduct with most investors' current understanding that an adviser or dealer already has a duty to act in the client's best interests and to provide advice that is in the investor's best interests. That understanding may not be unreasonable for some investors given that some advisers and dealers market their services on the explicit or implicit basis that the advice they are providing is in the client's best interests.

Recommended products that are in the client's best interest rather than just suitable

A best interest standard may result in advisers and dealers recommending investments that are in a client's best interests, not only investments that are suitable. This may have the effect of investors acquiring an appropriate investment at a lower price or acquiring a better investment at the same price. This does not mean that there is necessarily only one "best" investment for a client. Nor does it mean that advisers or dealers would assume liability for the success of the investment; they would not. Stakeholder consultation will be important to explore the benefits, costs and challenges of shifting the suitability standard to a best interest standard.

Further mitigates information and financial literacy asymmetry

The adoption of a best interest standard may help to further mitigate concerns with information asymmetry and financial literacy by ensuring that the adviser has the obligation to act in the best interests of the client. This places an appropriate obligation on the party to the relationship that is arguably the most knowledgeable and financially literate, namely the adviser or dealer.

Eliminates any legal uncertainty whether a fiduciary duty exists

Currently, a fiduciary duty arises at common law only in certain circumstances (see Part 3 above for further discussion). Determining whether that duty exists requires an analysis of the particular circumstances and, in any event, it may be unclear

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151 See, e.g., Editorial, "The business of trust" *Investment Executive* (August 2012), online: http://www.investmentexecutive.com/-/the-business-of-trust?redirect=%2Fsearch%3Fp_p_id%3Dsearch_WAR_search10%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1%26_search_WAR_search10_search%3Dgeneric; see also Ian Russell, "Should advisors become fiduciaries?" *Investment Executive* (April 6, 2010), online: http://www.iiac.ca/resources/1262/should%20advisors%20become%20fiduciaries,%20investment%20executive%20-%2004-01-2010.pdf.

152 See Ellis, *supra* note 8 at Chapter 1, s. 4(2).

153 See, e.g., Rotman, *supra* note 5 at 37.

whether such a duty arises. A statutory best interest standard may clarify that such a duty applies in most instances when an adviser or dealer provides advice to a retail investor. This may help clarify some of the uncertainty currently experienced by both clients and their advisers and dealers regarding what standard of conduct the adviser or dealer will be held to. The statutory best interest standard described above makes clear that the duty cannot be waived as a contractual matter.

Strengthens legal remedy to retail clients for breach of fiduciary duty

Although Securities Legislation contains express civil liability for misrepresentations in a variety of distribution-related and secondary market disclosure documents, there is no express statutory civil right of action for breach of Securities Legislation for most requirements. However, because a best interest standard would establish the nature of the relationship between an adviser or dealer with the client to whom advice is given, the best interest standard described in this Consultation Paper contemplates that breach of a best interest standard may strengthen civil liability at common law without creating a separate statutory right of action. Eliminating the need to prove the existence of a fiduciary duty between a retail client and her adviser or dealer would likely strengthen the recourse that the client has if she wishes to pursue private law recourse for a breach of that duty. A statutory best interest standard could be directly enforced by an investor as a private law matter. There would seem to be limited benefit in establishing a best interest standard if it does not give rise to any such civil liability on the part of the adviser or dealer. Most advocates for imposing a best interest standard assume that it would give rise to such liability.

Limited application of a statutory duty

A statutory best interest standard does not have to impose an unqualified common law fiduciary duty on all advisers and dealers in respect of all facets of the client relationship. Distinctions can be made among the constituent elements of a fiduciary duty and addressed in different ways to meet the needs of all stakeholders. That is to say, the elements of a statutory fiduciary duty can be qualified to accommodate specific circumstances including the particular circumstances and business model of the adviser or dealer. It could be made explicit, for example, that conflicts of interest can be addressed as currently provided in Securities Legislation (including NI 31-103). Similarly, it could be made clear that the principle that an adviser or dealer cannot take advantage of an opportunity learned of as a fiduciary should have limited application; that common law concept may not be appropriate in the context of the advice of an adviser or dealer.

The benefits set out above represent CSA staff's observations in the context of the possible statutory best interest standard described in this Consultation Paper. Additional benefits, or variations to the benefits referred to above, may emerge as part of this consultation.

Consultation Questions on the Potential Benefits of a Statutory Best Interest Standard

Question 9: **What are the criteria that should be used to identify an investment that is in a client's best interest?**

Question 10: **Should breaches of a best interest standard give rise to civil liability at common law?**

Question 11: **If so, is it necessary to state expressly that a best interest duty will give rise to civil liability on the part of the adviser or dealer or is it sufficient if that standard is a statutory duty?**

(b) Potential Competing Considerations

Current regime may be functionally equivalent to a fiduciary duty

As discussed above, some commentators argue that the duty of an adviser or dealer to act fairly, honestly and in good faith when dealing with clients, coupled with the existing rules related to suitability and conflicts of interest, may already impose a standard of conduct that is functionally equivalent to a fiduciary duty.[154] As a result, the introduction of a best interest standard could be unnecessary and could lead to additional complexity and/or uncertainty.

[154] It is interesting to note that in one of the leading Canadian cases on the content of a fiduciary duty in the client-advisor context, the court stated that when an adviser or dealer undertakes to advise the client, he or she must "do so fully, honestly and in good faith": *Varcoe*, *supra* note 17 at para. 86. This is very similar to the existing statutory requirement for advisers and dealers to "deal fairly, honestly and in good faith" with their clients. See also *Davidson v. Noram Capital Management Inc.* (2005), 2005 CarswellOnt 7243, 13 B.L.R. (4th) 35 at paras. 49-50.

Consultation Questions on Functional Equivalency

Question 12: **Does the duty of an adviser or dealer to act fairly, honestly and in good faith when dealing with clients, coupled with the existing rules related to suitability and conflicts of interest, already impose a standard of conduct that is functionally equivalent to a fiduciary duty?**

Question 13: **If so, should it be made clear that investors can enforce that duty as a private law matter?**

Question 14: **If you believe that the existing standard of conduct for advisers and dealers already imposes a standard of conduct that is functionally equivalent to a fiduciary duty, what impact (if any) would the introduction of a statutory best interest standard have? For example, would it be desirable for investors to have the benefit of a statutory best interest standard that has long been recognized and interpreted under fiduciary duty common law principles?**

Question 15: **Do you think the investor protection concerns raised in this Consultation Paper could be addressed by issuing guidance about current business conduct requirements, including the duty to deal fairly, honestly and in good faith with clients? Please provide specifics about the type of enhanced guidance that would be most effective.**

Question 16: **Do you think that the concerns raised in this paper could be addressed by increased enforcement of current business conduct rules, including fair dealing, suitability and conflict of interest requirements?**

May impose greater costs on providing advice

Some industry stakeholders have suggested that the introduction of a statutory best interest standard would result in increased costs for advisers and dealers providing advice to retail clients. This is a significant concern of advocates against imposing a statutory best interest standard.

Although CSA staff is mindful that potential cost increases for such advisers and dealers may occur, the extent of any such cost increases would depend on a number of factors, including:

- the scope of the standard that is eventually adopted (if any),
- the way advisers and dealers respond to the new standard, and
- the extent to which any of these costs are passed on to retail clients (which is discussed in the next item below, "Possible negative impact on investor access to, and choice and affordability of, advisory services").

Although the Consultation Paper is not making a policy recommendation, if the CSA were to make a policy recommendation to introduce a statutory best interest standard, the consultation process will provide the opportunity for the CSA to seek comment on potential costs and benefits associated with such specific proposal. Although a precise cost-benefit analysis is not feasible at this stage, we believe it is still worthwhile to gather input on potential costs if the statutory best interest standard described above were introduced. Ultimately, the costs to introduce a statutory best interest standard should be proportionate to the regulatory objectives to be achieved as a result of any change.

Consultation Questions on Potential Increased Costs

Question 17: **Would the statutory best interest standard described above increase ongoing costs for advisers and dealers in Canada? If so, please identify the areas in which you believe there would be increased costs for advisers and dealers and provide any relevant qualitative arguments or quantitative data. In responding, please consider potential costs in the following areas:**

(i) **regulatory assessment (client information required to meet standard)**

(ii) **compliance/IT systems**

(iii) **supervision**

(iv) ensuring representative proficiency

(v) client documentation/disclosures

(vi) insurance

(vii) litigation/complaint handling

(viii) other (please identify)

Question 18: If yes, given that a fiduciary duty is already owed to a client in certain circumstances, why do you think that clarifying the circumstances in which such a duty is owed will affect ongoing costs of advisers and dealers in Canada?

Question 19: Are the computer systems advisers and dealers use today to support their compliance mandate able to support a statutory best interest standard? If no, what types of investment do advisers and dealers anticipate needing to make to improve their IT systems in order to ensure compliance with a best interest standard?

Question 20: We note that cost-benefit and/or market impact analysis has been conducted to varying extents on the proposed reforms in each of the U.S., U.K., Australia and E.U. Do you believe that this international analysis is relevant to the possible introduction of a statutory best interest standard for advisers and dealers in Canada? If so, please explain.

Possible negative impact on investor access to, and choice and affordability of, advisory services

A concern raised by industry stakeholders in the adoption of a statutory best interest standard is that there could be a negative impact on the choice, access and/or affordability of advisory services for investors to whom the standard applies. As noted above, two U.S. focused studies seem to reach opposite conclusions on this question.

It is unclear whether a qualified best interest standard would have these negative consequences in Canada, given that in many cases a fiduciary duty may exist as a common law matter in any event and given the current standard of conduct imposed on advisers and dealers as well as suitability requirements.

Consultation Question on Investor Choice, Access and Affordability

Question 21: Do you believe that the statutory best interest duty described above would have a negative, positive or neutral impact on retail clients across each of the following dimensions: choice, product access, and affordability of advisory services?

Possible negative impact on certain business models

The introduction of an unqualified statutory best interest duty could have a significantly negative impact on advisers and dealers whose business involves advice that is specialized or restricted in some way (e.g., some mutual fund dealers, exempt market dealers and scholarship plan dealers). The concern is that there may be practical difficulties in implementing a strict “one size fits all” standard of conduct for all advisers and dealers. We note that this concern may be addressed by customizing the nature of a best interest standard as it applies to different business models.

The introduction of a statutory best interest standard would likely require tailoring of any duty to relevant business models. For example, the application of a statutory best interest standard to a typical mutual fund dealer, exempt market dealer or scholarship plan dealer raises different issues. In each case, the dealer’s advice is restricted in two ways. First, it is restricted because legally such dealers are only allowed to advise on the financial products for which they are registered. Second, many of these dealers only advise on products of related or connected entities. We note that a statutory best interest standard would not apply to discount brokers who, by definition, do not offer advice on which investments their clients should invest in.

Both the UK Reforms and the Australian Reforms were specifically developed with the intention of allowing restricted advice and scaled advice, respectively.

Consultation Questions on Impact on Certain Business Models

Question 22: How should a statutory best interest standard apply to mutual fund dealers, exempt market dealers and scholarship plan dealers?

Question 23: Are there any adviser or dealer business models that could not continue if the best interest standard described above was adopted?

Question 24: Do you agree with the approach reflected in the Australian Reforms or UK Reforms to accommodate restricted advice and scaled advice, respectively?

Question 25: What specific qualifications to the best interest standard described in this Consultation Paper are required (please provide proposed statutory language where possible)?

Question 26: Will the qualifications required to make a best interest standard work in Canada result in retail clients receiving only advice on a narrow range of investment products?

Uncertain impact on capital raising

One of the areas that has not generated much commentary in Canada has been what impact a statutory best interest duty to retail clients may have on capital raising. There is, for instance, a question of what effect a statutory best interest standard would have on exempt market dealers and their role in raising venture capital for smaller Canadian issuers. That issue may be addressed in formulating a best interest standard that is qualified to take into account the business model of exempt market dealers.

Consultation Question on Impact on Capital Raising

Question 27: Would imposing a statutory best interest standard as described above affect capital raising?

Uncertain effect on compensation practices

The statutory best interest duty described above could have an uncertain impact on current compensation structures, especially those involving embedded commissions paid by third parties to advisers and dealers. This area has been considered by Canadian securities regulators before, including in the Fair Dealing Model published by the OSC in 2004.

The U.K. and Australia are moving towards models where most of the embedded commissions payable by third parties to firms providing advice to retail clients will be banned. As a result, firms that offer advisory services will be compensated by their retail clients directly.

The direction the SEC seems to be taking is that it will evaluate any broker-dealer compensation practice on its merits to determine whether or not it meets the proposed fiduciary standard. The SEC Study states that "[w]hile the duty of loyalty requires a firm to eliminate or disclose material conflicts of interest, it does not mandate the absolute elimination of any particular conflicts, absent another requirement to do so".[155] The SEC Study concludes by stating that "Staff's recommendations are intended to minimize cost and disruption and assure that retail investors continue to have access to various investment products and *choice among compensation schemes to pay for advice*."[156] (italics added) In addition, Chairman Schapiro has stated that the SEC's fiduciary rule would be business-model neutral and would allow brokers working with retail investors to sell proprietary products and *charge commissions*.[157] (italics added)

Interestingly, lawmakers in the U.S.[158] and Australia[159] have both stated that any particular compensation structure does not, in and of itself, necessarily need to be abandoned as a result of the introduction of a best interest standard.

155 SEC Study, *supra* note 67 at 113.

156 *Ibid*. at 166.

157 See Melanie Waddell, "Reaction to Schapiro Comments on Fiduciary Rule Are Quick and Varied" (December 9, 2011), *AdvisorOne*, online: http://www.advisorone.com/2011/12/09/reaction-to-schapiro-comments-on-fiduciary-rule-ar.

158 See *Dodd-Frank Act*, *supra* note 63 at section 913.

This position seems to be supported by the Academic Study[160] in the U.S. that concluded that the existence of such a duty did not affect compensation arrangements.

Accordingly, imposing a best interest duty does not necessarily mean a change must be made in compensation structures.

Consultation Questions on Effect on Compensation Practices

Question 28: Do you believe that the statutory best interest duty described above would affect the current compensation practices of advisers and dealers? If so, in what way?

Question 29: Should a best interest duty expressly address adviser and dealer compensation practices? If so, in what way?

Question 30: Could volume based payments or embedded commissions continue if the statutory best interest standard described in this paper is introduced? If so, should such compensation structures be specifically prohibited?

Question 31: What compensation structures that exist today among advisers and dealers do you think would be prohibited by the statutory best interest standard articulated in this Consultation Paper? Please consider compensation received by advisers and dealers both from clients and from product manufacturers. For each structure you mention, please provide your reasons.

Question 32: Should any statutory best interest standard be modified in any way to preserve various compensation structures?

May require more guidance with respect to its application and operation in specific circumstances

Although there are benefits to a principle-based approach, such principles may not provide enough guidance to advisers and dealers. As a result, if the best interest standard described above was adopted, securities regulators may need to provide qualification in securities legislation or issue guidance setting out their expectations as to specific adviser and dealer behaviour under such a duty. This would assist advisers and dealers in determining how they should operationalize their obligation in practice and how it would apply in different circumstances. Although some of these topics are discussed in this Consultation Paper, other topics may not be explicitly covered.

Consultation Questions on Required Guidance

Question 33: If the statutory best interest duty described above is introduced, what areas of guidance would be most useful to advisers and dealers?

Question 34: Are there specific circumstances or activities, such as principal trading, that should be addressed?

Question 35: Are there any categories of registrants today whose minimum proficiency requirements would need to change in order to comply with the statutory best interest standard described in this Consultation Paper?

Current rules applicable to advisers and dealers should be reviewed to determine whether they are consistent with the best interest duty described above. If they are consistent, no change is required. While it is unlikely that current rules would be inconsistent with the statutory best interest duty described in this paper, if there are any such rules, we should consider how they should be addressed. We should also consider whether any new rules are required or whether any existing rules will be unnecessary if a best interest standard is introduced. As discussed above, if a best interest standard is imposed, we can apply some or all of the constituent elements of a fiduciary duty in a qualified way that still meets regulatory objectives.

159 Revised Explanatory Memorandum, *supra* note 115 at para. 1.47.

160 *Supra* note 89.

Consultation Questions on Interaction with Existing Regulatory Regime

Question 36: Are there any advisory relationships between an adviser or dealer and a retail client where a fiduciary duty would not be appropriate?

Question 37: Would the introduction of a best interest duty as described above require the introduction of any new rules?

Question 38: Would the introduction of a best interest duty as described above require any existing rules be revised or repealed?

Question 39: Are any existing regulatory rules inconsistent with the best interest standard described above?

Under traditional fiduciary principles, fiduciaries must scrupulously avoid all actual or potential conflicts of interest involving their beneficiaries.[161] The possible introduction of a statutory best interest standard raises the question of whether changes should be made to the current regulatory regime regarding conflicts of interest or whether there should be new rules addressing conflicts (e.g. how disclosure is made, when disclosure is appropriate, and, if required, the nature of informed consent).

Consultation Questions on Implications for Rules on Conflict of Interest

Question 40: Would the statutory best interest duty described above require revisions to the rules that govern how firms address conflicts of interest with their clients?

Question 41: If changes are required to the rules on conflicts of interest, what changes do you recommend?

Consultation Questions on Targeted Best Interest Standard

Question 42: Should the CSA consider only imposing a best interest standard in respect of certain requirements, such as conflicts of interest or suitability requirements?

Question 43: If so, how would more targeted best interest standards address the key investor protection concerns raised in this paper? Please provide specifics.

Whether duty should only apply to retail clients

For purposes of this consultation, the best interest standard described above applies only when advice is being given to retail clients. A "retail client" would be defined as a person or company that is not a "permitted client" as that term is defined in NI 31-103. As a result, a retail client would include individuals that have net financial assets of $5 million or less and companies with that have net assets of less than $25 million.

As discussed above, in the U.S. and Australia, the proposed best interest standard only applies when a firm is dealing with retail customers and retail clients. The SEC defines a "retail customer" as "a natural person, or the legal representative of a natural person, who – (i) receives personalized investment advice about securities from a broker, dealer, or investment adviser, and (ii) uses such advice primarily for personal, family or household purposes."[162] In Australia, although there are currently rules setting out minimum investment (AUS$500,000), income (AUS$250,000) and net asset (AUS$2.5 million) thresholds under which investors are considered "retail clients",[163] the Australian government is currently reviewing the definitions of retail client and wholesale client in conjunction with the Australian Reforms.[164]

161 Ellis, *supra* note 8 at paragraph 4(2)(a) of Chapter 1.

162 Dodd-Frank Act, *supra* note 63 at s. 913(g).

163 *Supra* note 110 at para. 2.3 and para. 2.5.

164 *Ibid*.

Currently under Securities Legislation, there is no definition of what constitutes a "retail client". There are, however, certain threshold criteria that classify different kinds of clients for Securities Legislation purposes. One of the most well known is the "accredited investor" definition. Accredited investors include individuals with financial assets of $1,000,000 or more or incomes of at least $200,000 per year. Our intention is to include in the definition of retail clients all individuals including accredited investors who are not permitted clients We note that the CSA is currently conducting a policy review of the accredited investor exemption.[165] We will consider the outcomes of that review on the issues and questions posed in this Consultation Paper.

Consultation Questions on Application of Duty on Retail Clients

Question 44: Should a best interest standard apply only to advisers and dealers when dealing with "retail clients"?

Question 45: If so, is the definition of a "retail client" appropriate? Should any such duty apply to other clients in addition to retail clients?

Question 46: Should certain kinds of permitted clients (e.g., municipalities) have the benefit of a statutory best interest standard?

Question 47: Are there certain kinds of retail clients that do not require the benefit of a statutory best interest standard?

Question 48: If the best interest standard described above was introduced, should advisers and dealers be permitted to modify or negate the standard by contract with their clients? If so, what limitations (if any) should be placed on that ability?

Question 49: If a best interest standard is introduced, should the existing duty on advisers and dealers to deal with their clients fairly, honestly and in good faith continue to apply whenever the best interest standard does not?

How the duty applies to "advice"

For purposes of the consultation, the best interest standard would apply when an adviser or dealer provides *advice* to a retail client. The meaning of "advice" would be quite broad and would include any advice relating to the investing in or the buying or selling of securities or derivatives.

Other jurisdictions have taken a narrower approach. The fiduciary duty proposals in the U.S. and Australia are restricted to "personalized investment advice" and "personal advice", respectively.

In the U.S., personalized investment advice has not yet been defined by the SEC. As stated in the SEC Study, SEC staff believes that such a definition at a minimum should encompass the making of a "recommendation", as developed under applicable broker-dealer regulation, and should not include "impersonal investment advice" as developed under the Advisers Act. Beyond that, SEC staff believes that the term also could include any other actions or communications that would be considered investment advice about securities under the Advisers Act (such as comparisons of securities or asset allocation strategies), except for "impersonal investment advice" as developed under the Advisers Act.

In Australia, "personal advice" means financial product advice that is given or directed to a person in circumstances where (a) the provider of the advice has considered one or more of the person's objectives, financial situation and needs (otherwise than for anti-money laundering rules purposes) or (b) a reasonable person might expect the provider to have considered one or more of those matters.

[165] Canadian Securities Administrators, *CSA Staff Consultation Note 45-401 - Review of Minimum Amount and Accredited Investor Exemptions* (November 10, 2011), online: http://www.osc.gov.on.ca/en/33950.htm.

Consultation Questions on Duty Applying to Advice

Question 50: Should the best interest duty described above apply when any advice is provided to a retail client or only when personalized advice is provided to a retail client?

Question 51: If a best interest duty should apply only when personalized advice is provided to a retail client, what should "personalized advice" mean in this context?

Question 52: Should it be triggered in the same circumstances in which the suitability requirement arises? Does this include advice to *hold* securities (as opposed to buying or selling securities)?

The competing considerations described above represent CSA staff's observations in the context of the possible statutory best interest standard articulated in this Consultation Paper. Additional competing considerations, or variations to those above, may emerge as part of this consultation.

9) REQUEST FOR COMMENTS

The CSA is publishing this Consultation Paper for a 120-day comment period. Please send your comments in writing on or before February 22, 2013. All submissions should refer to "CSA Consultation Paper 33-403". This reference should be included in the subject line if the submission is sent by e-mail. Regardless of whether you are sending your comments by email, you should also send or attach your submissions in an electronic file in Microsoft Word format.

Please address your submission to the following securities regulators:

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

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

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Fax: 514-864-6381
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John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8
Fax: 416-593-2318
e-mail: jstevenson@osc.gov.on.ca

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

Questions

Please refer your questions to any of:

Chris Besko
Legal Counsel, Deputy Director
The Manitoba Securities Commission
Tel: 204-945-2561
Toll Free (Manitoba only) 1-800-655-5244
chris.besko@gov.mb.ca

Isabelle Boivin
Analyste en réglementation - pratiques de distribution
Direction des pratiques de distribution et des OAR
Autorité des marchés financiers
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Sonne Udemgba
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Securities Division, Financial and Consumer Affairs Authority of Saskatchewan
Tel: 306-787-5879
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1.2 Notices of Hearing

1.2.1 AMTE Services Inc. 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
AMTE SERVICES INC.,
OSLER ENERGY CORPORATION, RANJIT GREWAL,
PHILLIP COLBERT AND EDWARD OZGA

NOTICE OF HEARING
(Subsections 127(7) and (8) of the Securities Act)

WHEREAS on October 15, 2012, the Ontario Securities Commission (the "Commission") issued a temporary order pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5., as amended (the "Act"), ordering the following (the "Temporary Order"):

(a) all trading by and in the securities of AMTE shall cease;

(b) all trading by and in the securities of Osler shall cease;

(c) all trading by Grewal shall cease;

(d) all trading by Colbert shall cease; and

(e) all trading by Ozga shall cease;

AND WHEREAS IT WAS FURTHER ORDERED that pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to any of the Respondents;

TAKE NOTICE THAT the Commission will hold a hearing pursuant to subsections 127(7) and (8) of the Act at the offices of the Commission at 20 Queen Street West, Toronto, Ontario, 17th Floor Hearing Room on October 25, 2012 at 2:00 p.m. or as soon thereafter as the hearing can be held;

TO CONSIDER whether, in the opinion of the Commission, it is in the public interest for the Commission:

(a) to extend the Temporary Order, pursuant to subsections 127(7) and (8) of the Act, until the final disposition of this matter or until such time as the Commission considers appropriate; and

(b) 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 FUTHER NOTICE THAT any party to the proceeding may be represented by counsel at the hearing;

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

DATED at Toronto this 16h day of October, 2012.

"John Stevenson"
Secretary to the Commission

1.3 News Releases

1.3.1 Canadian Securities Regulators Seek Comment on Amendments Relating to Direct Electronic Access

FOR IMMEDIATE RELEASE
October 25, 2012

CANADIAN SECURITIES REGULATORS SEEK
COMMENT ON AMENDMENTS TO DIRECT ELECTRONIC ACCESS RULE

Toronto – The Canadian Securities Administrators (CSA) announced today it is seeking feedback on proposed amendments to NI 23-103 *Electronic Trading* (NI 23-103), which would provide a framework for the provision of direct electronic access (DEA).

NI 23-103 outlines the risk and supervisory policies, procedures and controls that must be put in place for dealers to manage the risks associated with electronic trading, including the use of algorithms and high frequency trading. NI 23-103 will be implemented on March 1, 2013.

The proposed changes introduce a framework for the provision of DEA, a critical piece in managing the risks of electronic trading. The proposed DEA provisions include standards for DEA clients, written agreements and a requirement for adequate training.

"Today's proposals are an important step in establishing a framework for direct electronic access and greater controls to mitigate and manage the risks created by high-speed automated trading," said Bill Rice, Chair of the CSA and Chair and CEO of the Alberta Securities Commission. "As technological innovations evolve, it is imperative that securities regulators continue to focus on this area in order to maintain fair and efficient capital markets in Canada."

The proposed DEA amendments were initially published for comment in April 2011, but were not finalized with NI 23-103 in order to develop CSA requirements that are complemented by the Investment Industry Regulatory Organization of Canada's (IIROC) Universal Market Integrity Rules (UMIR). IIROC published amendments to UMIR today which include amendments relating to DEA and to trading by dealers through other dealers.

Investors and market participants are encouraged to submit comments on the proposed amendments by January 23, 2013. For more information visit the websites of the CSA members.

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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Ontario Securities Commission
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Autorité des marchés financiers
514-940-2176

Ainsley Cunningham
Manitoba Securities Commission
204-945-4733

Tanya Wiltshire
Nova Scotia Securities Commission
902-424-8586

Janice Callbeck
PEI Securities Office
Office of the Attorney General
902-368-6288

Helena Hrubesova
Office of Yukon Superintendent of Securities
867-667-5466

Donn MacDougall
Northwest Territories Securities Office
867-920-8984

Mark Dickey
Alberta Securities Commission
403-297-4481

Richard Gilhooley
British Columbia Securities Commission
604-899-6713

Wendy Connors-Beckett
New Brunswick Securities Commission
06-643-7745

Dean Murrison
Saskatchewan Financial and Consumer Affairs Authority
306-787-5879

Doug Connolly
Financial Services Regulation Div.
Newfoundland and Labrador
709-729-2594

Louis Arki
Nunavut Securities Office
867-975-6587

1.3.2 Canadian Regulators Publish Consultation Paper on a Statutory Best Interest Duty

FOR IMMEDIATE RELEASE
October 25, 2012

CANADIAN REGULATORS PUBLISH CONSULTATION PAPER ON A STATUTORY BEST INTEREST DUTY

Toronto – The Canadian Securities Administrators (CSA) today published for comment CSA Consultation Paper 33-403 *The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients*. The Consultation Paper explores the potential benefits and competing considerations of introducing a statutory fiduciary, or 'best interest', standard for advisers and dealers when they provide advice to retail clients.

"The application of such a standard has been the subject of much debate in Canada and internationally, and requires careful consideration to determine the right solution for the Canadian context," said Bill Rice, Chair of the CSA and Chair and CEO of the Alberta Securities Commission. "Today's Consultation Paper demonstrates Canadian securities regulators' commitment in examining opportunities to improve the relationship between clients and their advisers and dealers in order to ensure effective protection for Canadian investors."

The Consultation Paper looks at it from a number of perspectives and examines whether a statutory best interest standard should be adopted, whether another policy solution would be more effective or whether the current Canadian standard of conduct framework is adequate.

The CSA welcome feedback from investors and market participants on the Consultation Paper. All comments will be reviewed carefully and will inform the CSA's decision and next steps. The Consultation Paper can be found on CSA members' websites. The comment period is open until February 22, 2013.

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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Janice Callbeck
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Helena Hrubesova
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867-920-8984

Mark Dickey
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Richard Gilhooley
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Wendy Connors-Beckett
New Brunswick Securities Commission
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Dean Murrison
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306-787-5879

Doug Connolly
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709-729-2594

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1.4 Notices from the Office of the Secretary

1.4.1 Jowdat Waheed and Bruce Walter

FOR IMMEDIATE RELEASE
October 17, 2012

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

AND

IN THE MATTER OF
JOWDAT WAHEED AND BRUCE WALTER

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

1. The dates of January 7 to 11, 2013 inclusive set down for the hearing on the merits are vacated;

2. The hearing on the merits shall commence on January 14, 2013 and shall continue until February 22, 2013 inclusive, with the exception of January 15, 2013, January 29, 2013, February 12, 2013 and February 18, 2013; and

3. A confidential pre-hearing conference will be held on November 19, 2012 at 10:00 a.m.

A copy of the Order dated October 12, 2012 is available at **www.osc.gov.on.ca**.

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416-593-8307

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

1.4.2 AMTE Services Inc. et al.

FOR IMMEDIATE RELEASE
October 17, 2012

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

AND

IN THE MATTER OF
AMTE SERVICES INC.,
OSLER ENERGY CORPORATION, RANJIT GREWAL,
PHILLIP COLBERT AND EDWARD OZGA

TORONTO – The Office of the Secretary issued a Notice of Hearing on October 16, 2012 setting the matter down to be heard on October 25, 2012 at 2:00 p.m. to consider whether it is in the public interest for the Commission:

(1) to extend the Temporary Order, pursuant to subsections 127(7) and (8) of the Act, until the final disposition of this matter or until such time as the Commission considers appropriate; and

(2) to make such further orders as the Commission considers appropriate.

A copy of the Notice of Hearing dated October 16, 2012 and Temporary Order dated October 15, 2012 are available at **www.osc.gov.on.ca**.

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1.4.3 Paul Azeff et al.

FOR IMMEDIATE RELEASE
October 17, 2012

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

AND

IN THE MATTER OF
PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER
AND MAN KIN CHENG (a.k.a. FRANCIS CHENG)

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

1. in respect of the Third Party Records Motion, the request for a summons to compel the production of certain records of a third party and any motion to quash such summons shall proceed in accordance with Rule 4.7 of the Rules; and

2. a pre-hearing conference shall be held on January 16, 2013 at 10:00 a.m., at which time the Commission shall consider scheduling the Disclosure Motion and shall consider scheduling the hearing on the merits.

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

A copy of the Order dated October 2, 2012 is available at **www.osc.gov.on.ca**.

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1.4.4 Sandy Winick et al.

FOR IMMEDIATE RELEASE
October 19, 2012

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

AND

IN THE MATTER OF
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.

TORONTO – The Commission issued an Order in the above named matter which provides that pursuant to Rule 11.5, the Hearing on the Merits shall proceed as a written hearing, in accordance with the following schedule:

(1) Staff shall file evidentiary briefs in the form of affidavits, as well as written submissions on the relevant facts and law, with the Secretary's Office no later than November 30, 2012;

(2) The Respondents shall file any responding materials by January 11, 2013;

(3) Staff shall file any reply submissions or evidence by January 25, 2013;

(4) Staff and any participating Respondents will attend at a date appointed by the panel after January 25, 2013, to answer questions, make submissions or make any necessary witnesses available for cross-examination:

A copy of the Order dated October 17, 2012 is available at **www.osc.gov.on.ca**.

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1.4.5 Sage Investment Group et al.

FOR IMMEDIATE RELEASE
October 19, 2012

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

AND

IN THE MATTER OF
SAGE INVESTMENT GROUP,
C.A.D.E RESOURCES GROUP INC.,
GREENSTONE FINANCIAL GROUP,
FIDELITY FINANCIAL GROUP,
ANTONIO CARLOS NETO DAVID OLIVEIRA,
AND ANNE MARIE RIDLEY

TORONTO – The Commission issued an Order in the above named matter which provides that the status hearing shall continue on November 15, 2012 at 9:00 a.m.

A copy of the Order dated October 17, 2012 is available at **www.osc.gov.on.ca**.

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1.4.6 David Charles Phillips and John Russell Wilson

FOR IMMEDIATE RELEASE
October 22, 2012

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

AND

IN THE MATTER OF
DAVID CHARLES PHILLIPS AND
JOHN RUSSELL WILSON

TORONTO – The Commission issued an Order in the above named matter which provides that (1) this Pre-Hearing Conference is adjourned to a motion hearing to be held on November 26, 2012, at 10:00 a.m.; and (2) the materials for the Disclosure Motion and any Adjournment Motion shall be served and filed in accordance with Rule 3 of the Rules.

A copy of the Order dated October 12, 2012 is available at **www.osc.gov.on.ca**.

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1.4.7 MBS Group (Canada) Ltd. and Balbir Ahluwalia

FOR IMMEDIATE RELEASE
October 22, 2012

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

AND

IN THE MATTER OF
MBS GROUP (CANADA) LTD. AND
BALBIR AHLUWALIA

TORONTO – Staff of the Ontario Securities Commission filed an Amended Statement of Allegations dated September 21, 2012 with the Office of the Secretary in the above noted matter.

A copy of the Amended Statement of Allegations dated September 21, 2012 is available at **www.osc.gov.on.ca**.

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

AND

**IN THE MATTER OF
MBS GROUP (CANADA) LTD. AND
BALBIR AHLUWALIA**

**AMENDED STATEMENT OF ALLEGATIONS
OF STAFF OF THE
ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission ("Staff") make the following allegations:

I. OVERVIEW

1. This proceeding involves the unregistered trading and illegal distribution of securities of The Electrolinks Corporation ("Electrolinks") by MBS Group (Canada) Ltd. ("MBS Group") and Balbir Ahluwalia ("Balbir") (collectively, the "Respondents").

2. Electrolinks was incorporated in 2004 for the purpose of acquiring Q2 Media Inc. ("Q2 Media") – a privately held corporation that was involved in the development of broadband over powerline communications ("BPL") solutions – and financing the expansion of Q2 Media's business.

3. Electrolinks was marketed as "… the leading powerline communications solutions application developer …" and purported to have rights in Canada to "the only commercially ready technology" to transmit data (both internet and voice) over existing electrical power lines, called "Power Line Communications" ("PLC").

4. From approximately June 2004 to April 2007 (the "Material Time"), the Respondents engaged in or held themselves out as engaging in the business of trading in securities and the Respondents, directly and/or through representatives, sold Electrolinks shares to members of the public in Ontario and other jurisdictions.

5. MBS Group was a company started by brothers Balbir and Mohinder Ahluwalia.

6. According to an agreement dated April 12, 2004, Electrolinks engaged MBS Group as a consultant in connection with the "private offering of shares" of Electrolinks.

7. During the Material Time, the primary function of MBS Group was to sell shares in Electrolinks.

8. During the Material Time, the Respondents, directly and/or through representatives, sold Electrolinks shares to over 89 investors in Ontario and other jurisdictions and collectively raised over $1.5 million from these sales.

9. During the Material Time, Electrolinks was not a reporting issuer and the Electrolinks securities were not qualified by a prospectus.

10. Neither MBS Group nor Balbir were ever registered in any capacity with the Ontario Securities Commission (the "Commission").

II. THE RESPONDENTS

11. MBS Group was incorporated in the Province of Ontario on July 9, 2004. During the Material Time, the registered office of MBS Group was located in Ontario.

12. Balbir is a resident of Ontario. At all times, he was a directing mind and de facto officer and director of MBS Group.

IV. UNREGISTERED TRADING IN SECURITIES OF ELECTROLINKS CONTRARY TO SECTION 25(1) OF THE ACT

13. Staff allege that the Respondents engaged in or held themselves out as engaging in the business of trading in securities of Electrolinks.

14. During the Material Time, Balbir and MBS Group, directly and/or through representatives, sold shares in Electrolinks to members of the public in Ontario and other jurisdictions.

15. The actions of the Respondents in relation to the shares of Electrolinks constituted the trading of securities without registration contrary to section 25(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act")

V. ILLEGAL DISTRIBUTION OF SECURITIES OF ELECTROLINKS CONTRARY TO SECTION 53(1) OF THE ACT

16. Electrolinks has never filed a preliminary prospectus or a prospectus with the Commission or obtained receipts for them from the Director as required by section 53(1) of the Act.

17. The trading of securities of Electrolinks as set out above constituted distributions of those securities by the Respondents in circumstances where there were no exemptions available to them under the Act contrary to section 53 of the Act.

VI. CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND CONTRARY TO THE PUBLIC INTEREST

18. The specific allegations advanced by Staff related to the trades in Electrolinks securities during the Material Time are as follows:

(a) The Respondents traded in securities without being registered to trade in securities, contrary to section 25(1) of the Act and contrary to the public interest;

(b) The actions of the Respondents related to the sale of securities of Electrolinks constituted distributions of securities of Electrolinks where no preliminary prospectus and prospectus were issued nor receipted by the Director, contrary to section 53(1) of the Act and contrary to the public interest; and

(c) Balbir being a director and/or officer of MBS Group did authorize, permit or acquiesce in the commission of the violations of sections 25(1) and 53(1) of the Act, as set out above, by MBS Group or by the salespersons, representatives or agents of MBS Group, contrary to section 129.2 of the Act and contrary to the public interest.

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

DATED at Toronto, September 21, 2012.

1.4.8 Firestar Capital Management Corp. et al.

FOR IMMEDIATE RELEASE
October 22, 2012

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

AND

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

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

1. the hearing be adjourned to January 17, 2013 at 2:00 p.m., or such other date and time as agreed to by the parties and confirmed by the Office of the Secretary, for the purpose of continuing the confidential pre-hearing conference;

2. the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until January 18, 2013, or until further order of the Commission; and

3. following the continuation of the confidential pre-hearing conference on January 17, 2013 at 2:00 p.m., a public hearing will be held to consider whether to continue the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment.

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

A copy of the Order dated October 18, 2012 is available at **www.osc.gov.on.ca**.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Compton Petroleum Corporation – 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).

Citation: Compton Petroleum Corporation, Re, 2012 ABASC 441

October 18, 2012

Sangra Moller LLP
1000 Cathedral Place
925 West Georgia Street
Vancouver, BC V6C 3L2

Attention: Nick Ayling

Dear Sir:

Re: Compton Petroleum Corporation (the Applicant) – Application for a decision under the securities legislation of Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador (the Jurisdictions) that the Applicant is not a reporting issuer

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

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 deemed to have ceased to be a reporting issuer and that the Applicant's status as a reporting issuer is revoked.

"Blaine Young"
Associate Director, Corporate Finance

2.1.2 ING Direct Asset Management Limited et al.

Headnote

NP 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – approval granted for change of control of mutual fund manager under s. 5.5(2) of NI 81-102 – filers have no plans to change the manager of the funds or to amalgamate or to merge the current manager with any other entity in the immediate or foreseeable future.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 5.5(2), 19.1.

October 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
ING DIRECT ASSET MANAGEMENT LIMITED
(THE FILER OR MANAGER)

AND

ING DIRECT STREETWISE BALANCED INCOME FUND
ING DIRECT STREETWISE BALANCED FUND
ING DIRECT STREETWISE BALANCED GROWTH FUND
ING DIRECT STREETWISE EQUITY GROWTH FUND
(THE FUNDS)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Manager for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval of an indirect change of control of the Manager (the **Change of Control of Manager**) of the Funds in accordance with Section 5.5(2) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) (the **Approval Sought**).

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

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

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

Interpretation

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

Representations

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

The Manager

1. The Manager is a corporation incorporated under the laws of Canada and has its head office in Toronto, Ontario.

2. The Manager is the manager, portfolio advisor and trustee of the Funds.

3. The Manager is registered as an investment fund manager (**IFM**) and as a portfolio manager (**PM**) in Ontario.

4. The Funds are reporting issuers in all of the Jurisdictions. The Funds are offered by means of a simplified prospectus in accordance with the requirements of Form 81-101F1 and are marketed and distributed through ING Direct Funds Limited (the **Distributor**), a registered mutual fund dealer in all of the Jurisdictions.

5. The Manager and the Funds are not in default of applicable securities legislation in any of the Jurisdictions.

The Transaction

6. The Manager is a direct, wholly-owned subsidiary of ING Bank of Canada (**ING Bank Canada**). ING Bank Canada is a Schedule II Canadian chartered bank and is an indirect, wholly-owned subsidiary of ING Groep N.V. (**ING Group**).

7. In a press release dated August 29, 2012, ING Group announced that an agreement was reached to sell all of the issued and outstanding shares of ING Bank Canada to The Bank of Nova Scotia (**Scotiabank**) (the **Transaction**).

8. The Transaction is subject to regulatory approvals and is expected to close by or prior to December 14, 2012, but in any event, no later than December 31, 2012 (the **Closing**).

9. Following the Closing, while Scotiabank will become the new owner of the Manager, no substantive changes are expected in the operation or management of the Funds by the Manager.

Scotiabank

10. Scotiabank is a Schedule I Canadian chartered bank having assets of approximately $670 billion as at July 31, 2012.

11. Scotiabank is a reporting issuer in all of the Jurisdictions and its shares are listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange under the symbol “BNS”.

Change of Control of Manager

12. In respect of the impact of the Change of Control of Manager on the Manager and the management and administration of the Funds:

    (a) Scotiabank has confirmed that there is no current intention:

        (i) to make any substantive changes as to how the Manager operates or manages the Funds;

        (ii) to merge the Manager with any other IFM;

        (iii) immediately following the Closing, to change the Manager to Scotiabank or an affiliate of Scotiabank; and

        (iv) within the foreseeable period of time, to change the Manager to Scotiabank or an affiliate of Scotiabank.

    (b) Scotiabank currently intends to maintain the Funds as a separately managed fund family with the Manager as their IFM and PM;

    (c) the Closing is not expected to have any material impact on the business, operations or affairs of the Funds or the securityholders of the Funds;

(d) following the Closing, the directors and officers of the Manager will be unchanged and the Manager will retain the management teams and supervisory personnel that were in place immediately prior to the Closing, and from and after the Closing, the compliance activities of the Manager will be subject to oversight by Scotiabank's compliance group;

(e) it is not expected that there will be any change in the management of the Funds, including investment objectives and strategies of the Funds, or the expenses that are charged to the Funds as a result of the Closing;

(f) there is no current intention to change the name of the Manager or the names of the Funds as a result of the Transaction, immediately after the Closing;

(g) the Closing will not adversely affect the Manager's financial position or its ability to fulfill its regulatory obligations; and

(h) upon the Change of Control of Manager, the members of the Manager's Independent Review Committee (**IRC**) will cease to be IRC members by operation of section 3.10(1)(c) of National Instrument 81-107 *Independent Review Committee for Investment Funds*. Immediately following the change of control, the IRC will be reconstituted.

Notice Requirement

13. The notice to the securityholders of the Funds with respect to the Transaction in accordance with Section 5.8(1)(a) of NI 81-102 was provided electronically or by mail to such securityholders on September 19, 2012, being more than 60 days prior to the Closing.

Decision

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

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

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

2.1.3 Mackenzie Financial Corporation and the Mutual Funds Listed in Schedule A

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to mutual funds subject to NI 81-102, to invest in standardized futures the underlying interest of which is oil or natural gas – relief conditions include the condition that the purchase of a standardized future be effected through the NYMEX or ICE Europe, the standardized future is traded only for cash or an offsetting standardized future contract, and the standardized future is sold at least one day prior to the date on which delivery of the underlying commodity is due under the standardized future – individual limits on net asset value assigned on a per fund basis.

Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.3(h), 19.1.

October 3, 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
MACKENZIE FINANCIAL CORPORATION
(THE FILER)

AND

IN THE MATTER OF
THE MUTUAL FUNDS LISTED
IN SCHEDULE A

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the mutual funds listed in Schedule "A" (the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for:

(a) an exemption from the prohibition in paragraph 2.3(h) of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) to enable each Fund to invest in standardized futures (as such term is defined in section 1.1 of NI 81-102) with underlying interests in sweet crude oil (**oil**) or natural gas (**gas**) in order to hedge the risks associated with each Fund's portfolio investments in oil and gas securities (the **Requested Relief)**; and

(b) revocation of the Decision Documents granted by the principal regulator on November 29, 2007 and November 14, 2007 (the **Existing Decisions**) granted in favour of certain of the Funds (the **Revocation Relief**).

The Requested Relief and the Revocation Relief are collectively, the **Exemption Sough**t.

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation governed by the laws of Ontario and is registered as a portfolio manager and exempt market dealer in each Canadian jurisdiction, and has applied for registration in Ontario as an investment fund manager. The Filer is also registered in Ontario under the *Commodity Futures Act* (Ontario) in the category of commodity trading manager.

2. The Funds' portfolio manager is either the Filer or another portfolio manager registered under the *Commodity Futures Act* (Ontario) or subject to an exemption from that Act.

3. Each Fund is an open-end mutual fund trust or a class of shares of a mutual fund corporation established under the laws of Ontario and managed by the Filer. Each Fund is currently subject to NI 81-102 and is a reporting issuer in all of the provinces and territories of Canada.

4. Neither the Filer nor any Fund is in default of securities legislation in any of the Jurisdictions.

5. The investment objectives and investment strategies of each Fund permit portfolio investments in oil and gas securities. The reference to "oil and gas securities" contemplated by the Requested Relief refers to equity securities of oil and gas companies. In addition, the respective portfolio manager of each Fund may choose to use derivatives to hedge against losses from changes in the prices of the Fund's respective investments.

6. The Funds listed in Schedule A with proposed hedging limits of 75% of net assets are classified as "natural resource" funds and have investment objectives focused on investments primarily in equity securities of companies engaged in the energy and natural resource industries. The Funds listed in Schedule A with proposed hedging limits of 10% and 20% of net assets are not classified as resource funds, but have investment objectives generally focused on investments in global, Canadian or U.S. equity securities. The different hedging limits per Fund set out in Schedule A are reflective of each Fund's expected long position in oil and gas securities.

7. The Funds' portfolio managers have determined that it would be in the best interest of the Funds and their securityholders for the Funds' portfolio managers to have the ability to implement an appropriate risk management strategy to protect the Funds from fluctuations in the prices of oil and gas.

8. The Filer has considered a number of alternative strategies for risk management with respect to the prices of oil and gas, and has determined that a hedging strategy which enables each Fund to invest in standardized futures (as such term is defined in section 1.1 of NI 81-102) with underlying interests in oil or gas in order to hedge the risks associated with each Fund's portfolio investments in oil and gas securities (the **Proposed Strategy)**, is optimal from a number of perspectives including in respect of liquidity, cost and complexity. Accordingly, the Filer seeks the Requested Relief to enable each Fund to engage in the Proposed Strategy.

9. The Proposed Strategy would enable the Funds to trade on the New York Mercantile Exchange (the **NYMEX**) and ICE Futures Europe (**ICE Europe**), where the underlying interests are oil and gas, as a hedge against the prices of related securities held by the Funds.

10. The Filer considers investments in oil and gas standardized futures traded on the NYMEX and ICE Europe to be a means of reducing the volatility that can result from the changing prices of securities of issuers in the oil and gas sector. The Filer proposes to trade standardized futures contracts for cash or an offsetting contract to satisfy the obligations in a standardized futures contract.

11. The Filer has ongoing compliance monitoring in place to ensure that each Fund's long positions in oil and gas securities match the Fund's hedge positions in oil and gas standardized futures.

12. The Filer believes that the oil and gas standardized futures markets on the ICE Europe and NYMEX are highly liquid.

13. The Filer has ongoing monitoring and compliance procedures in place to ensure that there is an appropriate correlation between movements in the price of oil and gas commodities and the share price of related oil and gas securities held within a Fund's portfolio, and that any hedging is carried out in accordance with the requirements of NI 81-102.

14. The Filer obtained relief similar to the Requested Relief in decision documents dated November 14, 2007 and November 29, 2007, respectively (the **Previous Decisions**). The Previous Decisions, however, excluded the Mackenzie Universal Canadian Shield Fund (now listed in Schedule A), included certain of the Funds under their prior names, and did not contemplate the ICE Europe as an exchange on which the Funds could pursue the Proposed Strategy.

15. The Filer has accordingly requested the Exemption Sought to revoke the Previous Decisions, to obtain a new decision which updates the list of Funds and percentage limits subject to the Requested Relief, and which includes the ICE Europe as an additional exchange on which the Funds may pursue the Proposed Strategy.

16. Upon obtaining the Exemption Sought, the Funds will not rely on the Previous Decisions.

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 purchases, uses and sales of standardized futures which have underlying interests in oil or gas are made in accordance with the provisions otherwise relating to the use of specified derivatives for hedging purposes in NI 81-102 and the related disclosure otherwise required in National Instrument 81-101 – *Mutual Fund Prospectus Disclosure* and National Instrument 81-106 – *Investment Fund Continuous Disclosure*;

b) a standardized futures contract will be traded only for cash or an offsetting standardized future contract to satisfy the obligations under the standardized future and will be sold at least one day prior to the date on which delivery of the underlying commodity is due under the standardized future;

c) the purchase of a standardized future will be effected through the NYMEX or ICE Europe;

d) a Fund will not purchase a standardized futures contract with underlying interests in oil or gas for hedging purposes if, immediately following the purchase, the aggregate of such investments would exceed or represent greater than the percentage of the total net assets of the particular Fund at that time, as set out below:

i. Mackenzie Universal Canadian Resource Fund: 75%;

ii. Mackenzie Universal Canadian Resource Class: 75%

iii. Mackenzie Universal World Resource Class: 75%

iv. Mackenzie Growth Fund: 20%

v. Mackenzie Sentinel Registered Strategic Income Fund (formerly Mackenzie Sentinel Registered Strategic Income Fund): 20%

vi. Mackenzie Universal U.S. Dividend Income Fund: 20%

vii. Mackenzie Universal North American Growth Class: 20%

viii. Mackenzie Universal Global Growth Class: 20%

ix. Mackenzie Universal Global Growth Fund: 20%

x. Mackenzie Saxon Explorer Class (formerly Mackenzie Maxxum Global Explorer Class): 20%

xi. Mackenzie Maxxum Dividend Class: 20%

xii. Mackenzie Maxxum Dividend Fund: 20%

xiii. Mackenzie Maxxum Dividend Growth Fund: 20%

xiv. Mackenzie Universal Canadian Value Class (formerly Mackenzie Maxxum Canadian Value Class): 20%

xv. Mackenzie Maxxum Monthly Income Fund: 20%

xvi. Symmetry Equity Class: 20%

xvii. Mackenzie Universal Canadian Shield Fund: 20%

xviii. Mackenzie Cundill Canadian Security Class: 10%

xix. Mackenzie Cundill Canadian Security Fund: 10%; and

xx. Mackenzie Cundill Canadian Balanced Fund: 10%.

e) Each Fund will keep proper books and records of all such purchases and sales concerning the Proposed Strategy; and

f) Each Fund will provide disclosure in its simplified prospectus of (i) the Proposed Strategy (ii) the risks associated with the Proposed Strategy and (iii) this exemptive relief prior to implementing the Proposed Strategy.

“Raymond Chan”
Manager, Investment Funds Branch
Ontario Securities Commission

SCHEDULE A

Mackenzie Universal Canadian Resource Fund: 75%;
Mackenzie Universal Canadian Resource Class: 75%
Mackenzie Universal World Resource Class: 75%
Mackenzie Growth Fund: 20%
Mackenzie Sentinel Registered Strategic Income Fund (formerly Mackenzie Sentinel Registered Strategic Income Fund): 20%
Mackenzie Universal U.S. Dividend Income Fund: 20%
Mackenzie Universal North American Growth Class: 20%
Mackenzie Universal Global Growth Class: 20%
Mackenzie Universal Global Growth Fund: 20%
Mackenzie Saxon Explorer Class (formerly Mackenzie Maxxum Global Explorer Class): 20%
Mackenzie Maxxum Dividend Class: 20%
Mackenzie Maxxum Dividend Fund: 20%
Mackenzie Maxxum Dividend Growth Fund: 20%
Mackenzie Universal Canadian Value Class (formerly Mackenzie Maxxum Canadian Value Class): 20%
Mackenzie Maxxum Monthly Income Fund: 20%
Symmetry Equity Class: 20%
Mackenzie Universal Canadian Shield Fund: 20%
Mackenzie Cundill Canadian Security Class: 10%
Mackenzie Cundill Canadian Security Fund: 10%; and
Mackenzie Cundill Canadian Balanced Fund: 10%.

2.2 Orders

2.2.1 Jowdat Waheed and Bruce Walter

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

AND

IN THE MATTER OF
JOWDAT WAHEED AND BRUCE WALTER

ORDER

WHEREAS on January 9, 2012, the Ontario Securities Commission ("the Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990 c. S.5, as amended (the "Act") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on January 9, 2012 with respect to Jowdat Waheed and Bruce Walter (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing set a hearing in this matter for February 15, 2012;

AND WHEREAS on February 15, 2012, Staff and counsel for the Respondents appeared before the Commission and the Commission ordered that the matter be set down for a hearing on the merits commencing January 7, 2013, and continuing to and including February 5, 2013, or such further or other dates as may be agreed to by the parties and fixed by the Office of the Secretary;

AND WHEREAS on February 15, 2012, the Commission further ordered that a pre-hearing conference take place on April 2, 2012;

AND WHEREAS on April 2, 2012, Staff and counsel for the Respondents appeared and made submissions before the Commission and it was ordered that a pre-hearing conference take place on May 2, 2012;

AND WHEREAS on May 1, 2012, the Commission made an order on the consent of the parties adjourning the pre-hearing conference scheduled for May 2, 2012 to June 6, 2012;

AND WHEREAS on June 6, 2012, Staff and counsel for the Respondents appeared and made submissions before the Commission and it was ordered that a pre-hearing conference take place on September 19, 2012;

AND WHEREAS on September 19, 2012, Staff and counsel for the Respondents appeared and made submissions before the Commission and it was ordered that a pre-hearing conference take place on October 12, 2012;

AND WHEREAS on October 12, 2012, Staff and counsel for the Respondents appeared and made submissions before the Commission;

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

IT IS ORDERED that:

1. The dates of January 7 to 11, 2013 inclusive set down for the hearing on the merits are vacated;

2. The hearing on the merits shall commence on January 14, 2013 and shall continue until February 22, 2013 inclusive, with the exception of January 15, 2013, January 29, 2013, February 12, 2013 and February 18, 2013; and

3. A confidential pre-hearing conference will be held on November 19, 2012 at 10:00 a.m.

DATED at Toronto this 12th day of October, 2012.

"Christopher Portner"

2.2.2 AMTE Services Inc. et al. – ss. 127(1), 127(5)

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

AND

IN THE MATTER OF
AMTE SERVICES INC.,
OSLER ENERGY CORPORATION, RANJIT GREWAL,
PHILLIP COLBERT AND EDWARD OZGA

TEMPORARY ORDER
Sections 127(1) and 127(5)

WHEREAS it appears to the Ontario Securities Commission (the "Commission") that:

1. AMTE Services Inc. ("AMTE") is a Canadian corporation with a business address in Ontario;

2. Osler Energy Corporation ("Osler") is an Ontario corporation;

3. Ranjit Grewal ("Grewal") is an Ontario resident and the sole director of Osler;

4. Phillip Colbert ("Colbert") is an Ontario resident and the sole director of AMTE;

5. Edward Ozga ("Ozga") is an Ontario resident;

6. Osler, Grewal, Colbert and Ozga may have engaged in or held themselves out as engaging in the business of trading in the securities of Osler and distributed Osler's securities to members of the public in Canada from Ontario;

7. AMTE, Grewal, Colbert and Ozga may be engaging in or holding themselves out as engaging in the business of trading in the securities of AMTE and distributing AMTE's securities to members of the public in Canada from Ontario;

8. No preliminary prospectus or prospectus in respect of the AMTE or Osler shares have been filed with the Commission or receipted by the Director as required by subsection 53(1) of the Act;

9. None of AMTE, Osler, Grewal, Colbert and Ozga (the "Respondents") are registered in accordance with Ontario securities law as a dealer or are exempt under Ontario securities law from the requirement to comply with subsection 25(1) of the Act; and

10. Staff are continuing to investigate the conduct described above;

AND WHEREAS the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest as set out in subsection 127(5) of the Act;

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

IT IS ORDERED that pursuant to clause 2 of subsection 127(1) of the Act, that:

(a) all trading by and in the securities of AMTE shall cease;

(b) all trading by and in the securities of Osler shall cease;

(c) all trading by Grewal shall cease;

(d) all trading by Colbert shall cease; and

(e) all trading by Ozga shall cease.

IT IS FURTHER ORDERED that pursuant to clause 3 of subsection 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to any of the Respondents; and

IT IS FURTHER ORDERED that pursuant to subsection 127(6) of the Act, this Order shall take effect immediately and shall expire on the 15th day after its making unless extended by Order of the Commission.

DATED at Toronto this 15th day of October, 2012.

"James E. A. Turner"

2.2.3 Paul Azeff et al. – Rules 4.7 and 6.2 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
PAUL AZEFF, KORIN BOBROW,
MITCHELL FINKELSTEIN, HOWARD JEFFREY MILLER
AND MAN KIN CHENG (a.k.a. FRANCIS CHENG)

ORDER
(Rules 4.7 and 6.2 of the
Ontario Securities Commission's
Rules of Procedure (2010), 33 O.S.C.B. 8017)

WHEREAS on September 22, 2010, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing, pursuant to ss. 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5 (the "*Securities Act*"), accompanied by a Statement of Allegations of Staff of the Commission ("Staff") with respect to the Respondents Howard Jeffrey Miller ("Miller") and Man Kin Cheng ("Cheng") for a hearing to commence on October 18, 2010;

AND WHEREAS the Respondents were served with the Notice of Hearing and Statement of Allegations dated September 22, 2010 on September 22, 2010;

AND WHEREAS at a hearing on October 18, 2010, counsel for Staff, counsel for the Respondent Cheng, and Miller, appearing on his own behalf, consented to the scheduling of a confidential pre-hearing conference on January 11, 2011 at 3:00 p.m.;

AND WHEREAS on November 11, 2010, the Commission issued a Notice of Hearing, pursuant to ss. 127 and 127.1 of the *Securities Act*, accompanied by an Amended Statement of Allegations of Staff which added the Respondents Paul Azeff ("Azeff"), Korin Bobrow ("Bobrow") and Mitchell Finkelstein ("Finkelstein"), for a hearing to commence on January 11, 2011;

AND WHEREAS the Respondents were served with the Notice of Hearing and Amended Statement of Allegations dated November 11, 2010 on November 11, 2010;

AND WHEREAS following a hearing on January 11, 2011, counsel for Staff, counsel for the Respondents Azeff, Bobrow, Finkelstein and Cheng, and Miller, appearing on his own behalf, attended a confidential pre-hearing conference;

AND WHEREAS at the confidential pre-hearing conference on January 11, 2011, all parties made submissions regarding the disclosure made by Staff and it was ordered by the Commission, on the consent of all parties, that Staff and the Respondents would exchange written proposals concerning outstanding disclosure issues and that a motion date would be set for February 22, 2011 regarding disclosure issues, if necessary;

AND WHEREAS at the request of the Respondents, and on the consent of Staff, it was agreed that the February 22, 2011 motion date would be adjourned to April 8, 2011;

AND WHEREAS a disclosure motion was held on April 8, 2011 and, after submissions by the parties, the Panel issued a Confidentiality Order and Adjournment Order dated April 8, 2011, adjourning the Respondents' disclosure motion and the hearing in this matter to a pre-hearing conference, the date of which was to be agreed to by the parties and provided to the Office of the Secretary;

AND WHEREAS on April 18, 2011, Staff filed an Amended Amended Statement of Allegations;

AND WHEREAS the Panel issued an amended Confidentiality Order and Adjournment Order dated April 19, 2011 scheduling, on consent of all parties, a confidential pre-hearing conference on June 2, 2011 at 10:00 a.m.;

AND WHEREAS all parties consented to an adjournment of the confidential pre-hearing conference from June 2, 2011 at 10:00 a.m. to August 17, 2011 at 10:00 a.m. to allow Staff to provide the Respondents with further disclosure in this matter;

AND WHEREAS on July 6, 2011, counsel for Finkelstein served Staff with motion materials seeking a stay of the proceeding against him (the "Stay Motion") and Staff has indicated that: a) it intends to bring a motion that the Stay Motion is premature and should be heard at the hearing on the merits (the "Prematurity Motion"); and b) it intends to bring a motion to seek leave to put before the Panel at the hearing of the Stay Motion certain "without prejudice" communications (the "Privilege Motion");

AND WHEREAS counsel for Azeff and Bobrow indicated that they intend to bring a motion to compel records from a third party (the "Third Party Records Motion");

AND WHEREAS the Respondents have advised that they may seek to continue the hearing of the previous disclosure motion, which had been held on April 8, 2011 and had been adjourned on April 8, 2011 and June 1, 2011, or may bring other motions relating to disclosure issues (the "Disclosure Motion");

AND WHEREAS a pre-hearing conference was held on August 17, 2011 and Staff and the Respondents made submissions regarding the scheduling of the various motions, including the Stay Motion, the Prematurity Motion, the Privilege Motion, the Third Party Records Motion and the Disclosure Motion;

AND WHEREAS on August 30, 2011, the Commission ordered that the Privilege Motion be heard on

September 26, 2011; the Prematurity Motion and the Stay Motion be heard together commencing on November 9, 2011 and continuing on November 10 and 11, 2011, if necessary; the Third Party Records Motion be scheduled to be heard on a date after the Prematurity Motion and the Stay Motion have been heard and decided; the Disclosure Motion be adjourned to a date that will be fixed after the Privilege Motion, the Prematurity Motion, the Stay Motion and the Third Party Records Motion have been heard and decided; and dates for the hearing on the merits be set after the Privilege Motion, the Prematurity Motion, the Stay Motion, the Third Party Records Motion and the Disclosure Motion have been heard and decided (the "Scheduling Order");

AND WHEREAS the Privilege Motion, the Prematurity Motion and the Stay Motion have been heard and decided in accordance with the Scheduling Order;

AND WHEREAS Staff requested a pre-hearing conference to request, among other things, that the Scheduling Order be amended to schedule the Third Party Records Motion, the Disclosure Motion and the hearing on the merits;

AND WHEREAS a pre-hearing conference was held on October 2, 2012, at which time Staff and counsel for the Respondents attended and made submissions;

AND WHEREAS Staff and counsel for the Respondents agreed to adjourn Staff's request to schedule the hearing on the merits to another pre-hearing conference to be held on January 16, 2013;

AND WHEREAS Staff and counsel for Azeff and Bobrow made submissions about the procedure to be followed in respect of the request for a summons to compel the production of certain records of a third party and any motion to quash such summons (Third Party Records Motion);

AND WHEREAS Staff and counsel for the Respondents agreed that at the pre-hearing conference to be held on January 16, 2013, the Disclosure Motion, if necessary, shall be scheduled;

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

IT IS ORDERED THAT:

1. in respect of the Third Party Records Motion, the request for a summons to compel the production of certain records of a third party and any motion to quash such summons shall proceed in accordance with Rule 4.7 of the Rules; and

2. a pre-hearing conference shall be held on January 16, 2013 at 10:00 a.m., at which time the Commission shall consider scheduling the Disclosure Motion and shall consider scheduling the hearing on the merits.

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

"Edward P. Kerwin"

2.2.4 Sandy Winick 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
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.

ORDER
(Sections 127 and 127.1)

WHEREAS on January 27, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") (the "Notice of Hearing") in connection with a Statement of Allegations filed by Staff of the Commission ("Staff") on January 27, 2012, to consider whether it is in the public interest to make certain orders against Sandy Winick ("Winick"), Andrea Lee McCarthy ("McCarthy"), Kolt Curry, Laura Mateyak ("Mateyak"), Gregory J. Curry ("Greg Curry"), American Heritage Stock Transfer Inc. ("AHST Ontario"), American Heritage Stock Transfer, Inc. ("AHST Nevada"), BFM Industries Inc. ("BFM"), Liquid Gold International Inc. ("Liquid Gold"), and Nanotech Industries Inc. ("Nanotech") (collectively, the "Respondents");

AND WHEREAS on February 16, 2012, a first appearance hearing was held and the matter was adjourned to a pre-hearing conference on March 23, 2012;

AND WHEREAS on March 23, 2012, it was ordered that the hearing on the merits in this matter shall commence on November 12, 2012, and continue until November 21, 2012, except that the hearing will not sit on November 20, 2012 (the "Hearing on the Merits").

AND WHEREAS Winick, Greg Curry and Nanotech have never participated in this hearing, although properly served with the Notice of Hearing and Staff's Statement of Allegations;

AND WHEREAS Staff have requested that all or substantially all of the Hearing on the Merits be converted to a Written Hearing, pursuant to Rule 11.5 of the Commission's *Rules of Procedure* (the "Rules"), in accordance with the schedule set out below;

AND WHEREAS counsel for Kolt Curry, Laura Mateyak, AHST Ontario, AHST Nevada, McCarthy, BFM and Liquid Gold have consented to this matter proceeding as a hearing in writing;

AND WHEREAS Winick, Greg Curry and Nanotech have not objected to this matter proceeding as a written hearing, though properly notified by Staff;

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

IT IS HEREBY ORDERED that pursuant to Rule 11.5, the Hearing on the Merits shall proceed as a written hearing, in accordance with the following schedule:

(1) Staff shall file evidentiary briefs in the form of affidavits, as well as written submissions on the relevant facts and law, with the Secretary's Office no later than November 30, 2012;

(2) The Respondents shall file any responding materials by January 11, 2013;

(3) Staff shall file any reply submissions or evidence by January 25, 2013;

(4) Staff and any participating Respondents will attend at a date appointed by the panel after January 25, 2013, to answer questions, make submissions or make any necessary witnesses available for cross-examination.

DATED at Toronto this 17th day of October, 2012.

"James D. Carnwath"

2.2.5 Sage Investment Group et al. – s. 127

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

AND

IN THE MATTER OF
SAGE INVESTMENT GROUP,
C.A.D.E RESOURCES GROUP INC.,
GREENSTONE FINANCIAL GROUP,
FIDELITY FINANCIAL GROUP,
ANTONIO CARLOS NETO DAVID OLIVEIRA,
AND ANNE MARIE RIDLEY

ORDER
(Section 127 of the Securities Act)

WHEREAS on February 1, 2012, the Commission issued a Notice of Hearing pursuant to sections 127 and 127.1 of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") accompanied by a Statement of Allegations dated January 27, 2012, issued by Staff of the Commission ("Staff") with respect to Sage Investment Group ("Sage"), C.A.D.E. Resources Group Inc. ("C.A.D.E."), Greenstone Financial Group ("Greenstone"), Fidelity Financial Group ("Fidelity"), Antonio Carlos Neto David Oliveira ("Oliveira"), and Anne Marie Ridley ("Ridley"), (collectively, the "Respondents");

AND WHEREAS the Notice of Hearing stated that a hearing would be held at the offices of the Commission on February 9, 2012;

AND WHEREAS on February 9, 2012, Staff confirmed that the Commission had received the affidavit of Charlene Rochman affirmed February 9, 2012, which indicated that the Notice of Hearing and Statement of Allegations were served on all Respondents personally, or through their counsel;

AND WHEREAS on February 9, 2012, Staff and Ridley attended the hearing and made submissions, and Staff requested that a pre-hearing conference be scheduled in this matter;

AND WHEREAS on February 9, 2012, the Commission ordered that a pre-hearing conference be scheduled for April 26, 2012 at 2:00 p.m.;

AND WHEREAS on April 26, 2012, Staff and counsel for Oliveira, Greenstone and Fidelity attended before the Commission and no-one appeared on behalf of the remaining Respondents;

AND WHEREAS on April 27, 2012, the Commission ordered that the hearing on the merits shall commence on January 23, 2013 and shall continue on January 24, 25, 30 and 31, 2013 from 10:00 a.m. to 4:00 p.m. or on such further or other dates as may be agreed to by the parties and fixed by the Office of the Secretary;

AND WHEREAS on April 27, 2012, the Commission further ordered that a status hearing take place on June 13, 2012 at 10:00 a.m.;

AND WHEREAS on June 13, 2012, Staff and Ridley attended before the Commission for a status hearing and no-one appeared on behalf of the remaining Respondents;

AND WHEREAS the Commission ordered that the status hearing continue on September 12, 2012 at 9:00 a.m.;

AND WHEREAS on September 12, 2012, Staff and counsel for Oliveira, Greenstone and Fidelity attended before the Commission and no-one appeared on behalf of the remaining Respondents;

AND WHEREAS Staff advised the Commission that Ridley recently retained counsel and that counsel had requested that the status hearing be adjourned to permit him to familiarize himself with the matter;

AND WHEREAS the Commission ordered that the status hearing continue on October 17, 2012;

AND WHEREAS on October 17, 2012, Staff, Ridley and her counsel and counsel for Oliveira, Greenstone, Fidelity attended before the Commission and no-one appeared on behalf of the remaining Respondents;

AND WHEREAS the parties in attendance consented to the adjournment of the status hearing until November 15, 2012;

IT IS HEREBY ORDERED that the status hearing shall continue on November 15, 2012 at 9:00 a.m.

DATED at Toronto this 17th day of October, 2012.

"Edward P. Kerwin"

2.2.6 David Charles Phillips and John Russell Wilson – Rule 6 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
DAVID CHARLES PHILLIPS AND
JOHN RUSSELL WILSON**

**ORDER
(Rule 6 of the Ontario Securities Commission's
Rules of Procedure (2010), 33 O.S.C.B. 8017)**

WHEREAS on June 4, 2012, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and a Statement of Allegations issued by Staff of the Commission ("Staff") against David Charles Phillips ("Phillips") and John Russell Wilson ("Wilson") (together, the "Respondents");

AND WHEREAS pursuant to the Notice of Hearing an attendance in this matter was held on June 25, 2012 at which time the Commission adjourned the matter to Tuesday, August 28, 2012;

AND WHEREAS at an attendance held on August 28, 2012, the Commission ordered that the hearing on the merits shall commence on February 11, 2013 and continue, if necessary, until March 6, 2013, except for February 12, 18 and 26, 2013 (the "Merits Hearing");

AND WHEREAS at a Pre-Hearing Conference held on October 12, 2012, the Commission heard submissions from Staff and from counsel for the Respondents;

AND WHEREAS counsel for the Respondents advised that the Respondents will bring a motion for further disclosure from Staff (the "Disclosure Motion") pursuant to Rule 4.3 of the Commission's *Rules of Procedure* (2010), 33 O.S.C.B. 8017 (the "Rules") and may bring a motion for adjournment of the Merits Hearing pursuant to Rule 9 of the Rules (the "Adjournment Motion");

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

IT IS HEREBY ORDERED THAT:

1. this Pre-Hearing Conference is adjourned to a motion hearing to be held on November 26, 2012, at 10:00 a.m.; and

2. the materials for the Disclosure Motion and any Adjournment Motion shall be served and filed in accordance with Rule 3 of the Rules.

DATED at Toronto this 12th day of October, 2012.

"James D. Carnwath"

2.2.7 Firestar Capital Management Corp. et al. – ss. 127(1, 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
FIRESTAR CAPITAL MANAGEMENT CORP.,
KAMPOSSE FINANCIAL CORP.,
FIRESTAR INVESTMENT MANAGEMENT GROUP,
MICHAEL CIAVARELLA AND MICHAEL MITTON**

**TEMPORARY ORDER
(Subsections 127(1), (7) and (8) of the Securities Act)**

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

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

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

AND WHEREAS a Notice of Hearing pursuant to sections 127 and 127.1 of the Act was issued on December 21, 2004 and a Statement of Allegations in this matter was filed by Staff of the Commission ("Staff") on December 21, 2004;

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

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

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

Temporary Orders were continued until November 24, 2005;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND WHEREAS on March 29, 2012, the Commission ordered that that the hearing be adjourned to June 20, 2012 at 9:00 a.m. for the purposes of continuing the confidential pre-hearing conference and that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until June 21, 2012;

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

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

AND WHEREAS on June 20, 2012, the Commission ordered that that the hearing be adjourned to August 15, 2012 for the purpose of continuing the confidential pre-hearing conference and that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until August 16, 2012;

AND WHEREAS on August 15, 2012, Staff and counsel to Firestar Capital and Firestar Investment appeared and continued the pre-hearing conference, but no one appeared on behalf of Kamposse;

AND WHEREAS on August 15, 2012, Staff requested that the Temporary Orders as against Firestar Capital, Kamposse, and Firestar Investment be extended, which was opposed by counsel to Firestar Capital and Firestar Investment;

AND WHEREAS on August 15, 2012, the Commission ordered that that the hearing be adjourned to October 18, 2012 for the purpose of continuing the confidential pre-hearing conference and that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until October 22, 2012;

AND WHEREAS on October 18, 2012, Staff and counsel to Firestar Capital and Firestar Investment appeared and continued the pre-hearing conference, but no one appeared on behalf of Kamposse;

AND WHEREAS on October 18, 2012, Staff requested that the Temporary Orders as against Firestar Capital, Kamposse, and Firestar Investment be extended, which was opposed by counsel to Firestar Capital and Firestar Investment;

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

IT IS ORDERED that the hearing be adjourned to January 17, 2013 at 2:00 p.m., or such other date and time as agreed to by the parties and confirmed by the Office of

the Secretary, for the purpose of continuing the confidential pre-hearing conference;

IT IS FURTHER ORDERED that the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment be further continued until January 18, 2013, or until further order of the Commission;

IT IS FURTHER ORDERED that following the continuation of the confidential pre-hearing conference on January 17, 2013 at 2:00 p.m., a public hearing will be held to consider whether to continue the Temporary Orders currently in place as against Firestar Capital, Kamposse, and Firestar Investment.

DATED at Toronto this 18th day of October, 2012.

"Edward P. Kerwin"

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Action Energy Inc.	04 Oct 12	16 Oct 12	16 Oct 12	
DiaDem Resources Ltd.	09 Oct 12	22 Oct 12	22 Oct 12	
Liberty Silver Corp.	12 Oct 12	18 Oct 12		18 Oct 12

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE ARE NO ITEMS FOR THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Focus Graphite Inc.	24 Sept 12	05 Oct 12	05 Oct 12		
McVicar Industries Inc.	12 Sept 12	24 Sept 12	24 Sept 12		

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Chapter 6

Request for Comments

6.1.1 Proposed Amendments to NI 23-103 Electronic Trading

CSA NOTICE AND REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-103 ELECTRONIC TRADING

I. INTRODUCTION

Today the Canadian Securities Administrators (CSA or we) are introducing proposed amendments (Proposed Amendments) to National Instrument 23-103 *Electronic Trading* (NI 23-103) and its related Companion Policy 23-103CP (CP) that would, in part, impose requirements on participant dealers that provide direct electronic access (DEA).[1] The Proposed Amendments are being published for a 90-day public comment period. The text of the Proposed Amendments is contained in Annexes A through C of this Notice and will also be available on the websites of various CSA jurisdictions.

We have worked closely with staff of the Investment Industry Regulatory Organization of Canada (IIROC) in developing the Proposed Amendments and we thank them for sharing their knowledge and expertise. IIROC is also publishing amendments to the Universal Market Integrity Rules (UMIR) and its dealer member rules for comment to reflect and support the Proposed Amendments. More information may be found at www.iiroc.ca.

Jurisdictions that are a party to Multilateral Instrument 11-102 *Passport System* (currently all jurisdictions except Ontario) are also republishing for comment amendments to that instrument that permit the use of the passport system for aspects of NI 23-103. The amendments were published for comment on August 19, 2011. No comments were received. These related amendments are found at Annex D of this Notice.

II. BACKGROUND

On April 8, 2011, we published for comment proposed NI 23-103 and CP (2011 Proposal). The 2011 Proposal included requirements and guidance specifically related to DEA.

On June 28, 2012, the CSA published NI 23-103 and the CP in their final form which have now been adopted by each member of the CSA and will come into effect on March 1, 2013. However, the CSA finalized NI 23-103 and the CP without specific DEA provisions. The CSA delayed the DEA provisions in NI 23-103 to ensure that the CSA requirements related to DEA are consistent with IIROC's proposed amendments on DEA and that similar forms of marketplace access would be subject to similar requirements. The Proposed Amendments cover only DEA and are substantially similar to those that were published in the 2011 Proposal but for a few changes that are described in this Notice. The IIROC proposal applies to not only DEA but situations where dealers route orders to other dealers. We are of the view that the proposed package of IIROC and CSA amendments, taken together, will ensure that similar forms of marketplace access and the risks that arise from these forms of access are treated similarly.

III. SUMMARY OF KEY COMMENTS RECEIVED BY THE CSA

We thank all 29 commenters for their submissions in response to the 2011 Proposal. A list of those who submitted comments, a summary of comments related to the DEA-specific provisions contained in the 2011 Proposal and our responses to them are attached at Annex F to this Notice. Copies of the comment letters are posted at www.osc.gov.on.ca. For additional background on the DEA-specific provisions included in the 2011 Proposal, please refer to the CSA notice that was published with the 2011 Proposal.[2]

IV. SUBSTANCE AND PURPOSE OF THE PROPOSED AMENDMENTS

Requirements Specific to Direct Electronic Access

While technology has increased the speed at which trades take place, it has also enabled marketplace participants to facilitate access to marketplaces by their clients, whether large institutions or sophisticated retail clients. Under the Proposed Amendments, DEA exists where a client uses the participant dealer's marketplace participant identifier (MPID) for the purpose of

[1] A participant dealer is defined in NI 23-103 as a marketplace participant that is an investment dealer.
[2] (2011) 34 OSCB 4133.

electronically sending orders to a marketplace. This type of access can include a client using the participant dealer's system for automated onward transmission to a marketplace or a client sending the order directly to a marketplace without going through the participant dealer's systems. Under the Proposed Amendments, DEA would not include an order execution service provided pursuant to IIROC rules.[3]

Whether a participant dealer is trading for its own account, for a customer or is providing DEA, the participant dealer is responsible for all trading activity that occurs under its MPID. Allowing the use of complicated technology and strategies, including high frequency trading strategies, through DEA brings increased risks to the participant dealer. For example, the participant dealer may be held financially responsible for the execution of erroneous trades that occur under its MPID, even when these trades go beyond its financial capability. As well, a participant dealer may be responsible for a lack of compliance with marketplace or regulatory requirements for DEA orders entered using its MPID.

Therefore, appropriate controls are needed to manage the financial, regulatory and other risks associated with providing DEA to ensure the integrity of the participant dealer, the marketplaces and the financial system. To address this need, the Proposed Amendments would provide a framework around the provision of DEA so that a participant dealer providing DEA manages these risks appropriately.

(i) Provision of DEA

Under the Proposed Amendments, only a participant dealer, defined as a marketplace participant that is an investment dealer[4], may provide DEA.[5] We have proposed to limit the registrants that may use DEA to a portfolio manager and restricted portfolio manager.[6] The 2011 Proposal allowed DEA to be provided to a participant dealer as well, however, the rules relating to dealer-to-dealer order routing will be dealt with in the proposed UMIR amendments that IIROC is publishing for comment today. As a result, we have removed this provision from the Proposed Amendments. This is considered to be a significant change from the 2011 Proposal and therefore, we are republishing the provisions of NI 23-103 relating to DEA for comment at this time.

This proposed restriction in the Proposed Amendments would not permit exempt market dealers (EMDs) to use DEA. In our view, dealers should be subject to UMIR if engaging in this type of equity trading.

The 2011 Proposal also proposed that an EMD would be prohibited in the use of DEA. The majority of comments received regarding this provision were not supportive of this proposed prohibition. Commenters cited that many U.S. broker-dealers are registered in Canada as EMDs in order to facilitate part of their business in Canada and that the 2011 Proposal would prevent such U.S. broker-dealers from being a DEA client. Others noted that it is inconsistent to allow unregistered firms or individuals to use DEA yet not allow EMDs to do so.

CSA staff announced in CSA Staff Notice 31-327, published September 2, 2011, that CSA registration staff will examine policy issues relating to firms registered as EMDs that are carrying out brokerage activities (trading securities listed on an exchange in foreign or Canadian markets). CSA Staff Notice 31-327 also stated that in the interim, CSA staff will consider registering these firms in the restricted dealer category with terms and conditions. Subsequently, the CSA published CSA Staff Notice 31-331 as a follow-up to this issue, which introduces IIROC Notice 12-0217 (IIROC Notice). The IIROC Notice proposes that firms registered as EMDs that are conducting brokerage activities become registered as Restricted Dealer member firms and become subject to IIROC oversight.

We therefore continue to think that registered dealers that provide brokerage services similar to those of investment dealers should also be subject to IIROC rules when doing so. Therefore the Proposed Amendments maintain the proposed prohibition on EMDs from using DEA. We note that this restriction would not prevent an EMD from trading, it would only prevent EMDs from trading using DEA.

Some commenters noted that there may be entities that are registered as both a portfolio manager and an EMD. To accommodate for these instances, we have proposed that if a firm is registered as both a portfolio manager and an EMD, it would be eligible for DEA provided that it only uses DEA when acting in its capacity as a portfolio manager and not in its capacity as an EMD. If this firm uses DEA to place trades for its non-advisory clients, then we would consider it to be using DEA in its capacity as an EMD and therefore to be inappropriately using DEA. Similarly, if a foreign dealer is registered as an EMD, it would be eligible for DEA provided that it only uses DEA when acting in its capacity as a foreign dealer and not in its capacity as an EMD for Canadian clients.[7]

The 2011 Proposal did not place any specific limitations on the use of DEA by individuals and we continue to be of the view that certain individuals should not be excluded from obtaining DEA access. While in general we do not think that retail investors

[3] Subsection 1.2(2) of 23-103CP.
[4] Section 1 of NI 23-103.
[5] Subsection 4.2(1) of NI 23-103.
[6] Subsection 4.2(2) of NI 23-103.
[7] Subsection 4.2(2) 23-103CP.

should use DEA, there may be circumstances in which sophisticated individuals that have access to the necessary technology and resources, such as former registered traders or floor brokers, can use DEA appropriately. In this type of circumstance and if a participant dealer establishes and applies appropriate client standards, we would consider it to be acceptable for individuals to use DEA.[8]

(ii) Minimum Standards for DEA Clients

While DEA clients are usually large, institutional investors with regulatory obligations, some DEA clients, as described above, may also be retail clients that have particular sophistication and resources to be able to manage DEA. A participant dealer must understand its risks in providing DEA and address those risks when establishing its minimum standards for providing DEA to each client. It would also be expected that a participant dealer would ensure that it can adequately manage its DEA business. For example, the participant dealer would need to ensure that it has the necessary staffing, technology and other required resources, as well as the financial ability to withstand the increased risks of providing DEA.

The Proposed Amendments prescribe that before granting DEA to a client, a participant dealer must first establish, maintain and apply appropriate standards for providing DEA and assess and document whether each client meets these standards.[9] One of the first steps to addressing the financial and regulatory risks associated with DEA would require a participant dealer to conduct due diligence with respect to clients who are to be granted this type of access. This due diligence is key in managing the risks associated with providing DEA and would necessitate a thorough vetting of potential clients accessing marketplaces under its MPID.

A participant dealer's DEA standards would need to include that the client has:

- sufficient financial resources to meet any financial obligations that may result from the use of DEA by that client,
- reasonable knowledge of and proficiency in the use of the order entry system,
- knowledge of and the ability to comply with all applicable marketplace and regulatory requirements, and
- reasonable arrangements to monitor the entry of orders through DEA.[10]

We would consider the above standards to be the minimum necessary for a participant dealer to properly manage its risks, however the participant dealer should assess and determine whether it needs any additional standards given its business model and the nature of each prospective DEA client. For example, standards that may apply to an institutional client may differ from those that apply to an individual.

Unlike the current rules at the marketplace level related to DEA, the Proposed Amendments would not set out an "eligible client list" that imposes specific financial standards for DEA clients. The CSA is of the view that a participant dealer should have the flexibility to determine the specific levels of the minimum standards in order to accommodate its business model and appetite for risk. This is in keeping with global standards related to DEA.

In order to ensure that the established minimum DEA client standards are maintained, the Proposed Amendments would oblige a participant dealer to confirm at least annually with each DEA client as to whether it continues to meet the DEA client standards established by the participant dealer.[11] Obtaining a written annual certification by the DEA client may be one way to meet this requirement.

(iii) Written Agreement

In addition to the minimum DEA client standards, the CSA think that certain requirements for the provision of DEA should be a part of every DEA arrangement in order to appropriately address the risks that DEA can pose to the Canadian market. Therefore, the Proposed Amendments would require that before providing DEA, a participant dealer must have a written agreement with each DEA client that specifies that:

- the DEA client will comply with marketplace and regulatory requirements,
- the DEA client will comply with the product limits and credit or other financial limits specified by the participant dealer,

[8] Subsection 4.2(3) 23-103CP.
[9] Subsection 4.3(1) of NI 23-103.
[10] Subsection 4.3(2) of NI 23-103.
[11] Subsection 4.3(3) of NI 23-103.

- the DEA client will take all reasonable steps to prevent unauthorized access to the technology that facilitates the DEA,
- the DEA client will fully cooperate with marketplaces or regulation services providers in connection with any investigation or proceeding with respect to the trading conducted pursuant to the DEA provided,
- the DEA client will immediately inform the participant dealer if it fails or expects not to meet the standards set by the participant dealer,
- when the DEA client is trading for the accounts of its clients, the DEA client will take all reasonable steps to ensure that its client orders will flow through the systems of the DEA client and will be subject to reasonable risk management and supervisory controls, policies and procedures,
- the DEA client will inform the participant dealer in writing of all individuals acting on the DEA client's behalf that it has authorized to use its DEA client identifier, and
- the participant dealer has the authority, without prior notice, to reject, vary, correct or cancel orders and discontinue accepting orders.[12]

While these requirements are expected to address many of the risks associated with providing DEA, a participant dealer may add provisions to the written agreement it thinks are necessary to manage its specific risks.

(iv) Training of a DEA Client

A participant dealer would also need to be satisfied that a prospective DEA client has reasonable knowledge of marketplace and regulatory requirements before providing DEA.[13] This proposed requirement is meant to specifically address the market integrity risk that providing DEA can pose to the participant dealer. The participant dealer must therefore determine, what, if any, training its client requires to ensure that the client understands the applicable marketplace and regulatory requirements and how trading on the marketplace system occurs to help mitigate this risk. We are not proposing any specific type of training to be provided; however, depending on the client and the trading it plans to do, the participant dealer may require it to take the same types of courses as is required for an approved participant under UMIR.

(v) DEA Client Identifiers

In order to allow regulators to identify DEA trading more readily and determine the specific client behind each trade more easily, the Proposed Amendments would require that a participant dealer assign each DEA client a unique identifier that must be associated with every order it sends using DEA.[14] We would expect the participant dealer to work with the various marketplaces to assign these identifiers and ensure that each order entered on a marketplace by a DEA client using DEA includes this identifier. This practice is currently being followed on certain marketplaces and the CSA believe that mandating this practice across all marketplaces would assist the CSA, exchanges conducting their own market regulation, and regulation services providers in carrying out their regulatory functions.

(vi) Trading by DEA Clients

Due to the risks associated with providing DEA, the CSA think that DEA clients should not pass on their DEA access to their clients. Allowing such behaviour would exacerbate the risks DEA poses to the Canadian market and may widen the breadth of market access to participants who do not have any incentive or obligation to comply with the regulatory requirements or any financial, credit or position limits imposed by participant dealers. Therefore, the Proposed Amendments would prohibit a DEA client from providing its DEA to another person or company.[15]

To contain the use of DEA and thereby limit the risks it poses to a marketplace participant and the market as a whole, the Proposed Amendments would generally only allow a DEA client to trade for its own account. However, certain DEA clients, specifically those that are portfolio managers, restricted portfolio managers and any entity that is registered in a category analogous to the portfolio manager or restricted portfolio manager category in a foreign jurisdiction that is a signatory to the IOSCO Multilateral Memorandum of Understanding would be allowed to trade using DEA for the accounts of their clients.[16]

12 Section 4.4 of NI 23-103.
13 Subsection 4.5(1) of NI 23-103.
14 Section 4.6 of NI 23-103.
15 Subsection 4.7(1) of NI 23-103.
16 Subsection 4.7(2) of NI 23-103.

V. SUMMARY OF CHANGES TO THE DEA RELATED PROVISIONS

After considering the comments received and in order to complement the IIROC proposed amendments related to marketplace access, we have made some changes to the DEA related provisions included in the 2011 Proposal. The Proposed Amendments that we are publishing today reflects those changes.

This section describes the key changes made to the proposed DEA related provisions since the 2011 Proposal.

(i) Definition of Direct Electronic Access

We have revised the proposed definition of direct electronic access to more clearly state that it includes the transmission of an order using a person or company's marketplace participant identifier through the person or company's systems for automatic onward transmission to a marketplace or directly to the marketplace without being electronically transmitted through the person or company's systems.

(ii) Application of Requirements Applicable to Participant Dealer Providing Direct Electronic Access

A new proposed provision would not apply the proposed requirements applicable to a participant dealer providing DEA if the participant dealer complies with similar requirements established by a regulation services provider, a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101 or a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces requirements set under subsection 7.3(1) of NI 23-101. **Since the Proposed Amendments cover the trading of all securities and set the minimum requirements that must be complied with by all participant dealers, we request feedback on whether there should be an exemption from Part 2.1 of NI 23-103 provided to a participant dealer if it complies with similar requirements established by a recognized exchange or quotation and trade reporting system that directly monitors the conduct of its members and enforces requirements. Similarly, solely with respect to standardized derivatives, should there be an exemption provided to a participant dealer if it complies with similar requirements established by a regulation services provider or a recognized exchange or quotation and trade reporting system that directly monitors the conduct of its members and enforces requirements?**

(iii) Provision of Direct Electronic Access to Registrants

The 2011 Proposal permitted a participant dealer to provide direct electronic access to registrants that were participant dealers or portfolio managers. In order to complement the proposed IIROC amendments related to marketplace access, the Proposed Amendments would not allow participant dealers to provide DEA to other participant dealers, as this is dealt with under the IIROC amendments. Another change is that the Proposed Amendments would allow participant dealers to provide direct electronic access to restricted portfolio managers. We view the risks of providing DEA to a restricted portfolio manager or a portfolio manager to be similar.

(iv) Written Agreement

The Proposed Amendments include a new provision in the written agreement between a participant dealer providing DEA and its DEA client. This new obligation would require a DEA client to inform the participant dealer, in writing, of all individuals acting on the DEA client's behalf that it has authorized to use the DEA client identifier to the participant dealer and to update this list as necessary.

(v) Form of DEA Client Identifier

The Proposed Amendments would introduce a new requirement related to the DEA client identifier. Specifically, the DEA client identifier would need to be assigned in the form and manner required by a regulation services provider, or a recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its participants.

(vi) Provision of DEA Client Identifier to Marketplaces

As well, the Proposed Amendments would require a participant dealer that assigns a DEA client identifier to immediately provide the DEA client identifier to each marketplace to which the DEA client has direct electronic access through the participant dealer. Added guidance in the CP explains that the CSA do not expect a DEA client's name to be disclosed to a marketplace, merely the DEA client identifier which will allow a marketplace to more readily identify DEA flow.

(vii) Clarification re Maintaining Technology Facilitating Direct Electronic Access in a Secure Manner

We have proposed a clarification in the CP that all reasonable steps required to be taken to prevent unauthorized access to the technology facilitating DEA are to be commensurate with the risks posed by the type of technology and systems that are being used.

(viii) Authorization of Employees Using DEA Client Identifier

We have added proposed guidance to the CP explaining that a DEA client must formally authorize individuals that will be using the DEA client identifier when trading for the DEA client.

(ix) Training of DEA Clients

The Proposed Amendments also include proposed guidance in the CP that explains when, after DEA has been granted, a re-assessment of the DEA client's knowledge of applicable marketplace and regulatory requirements would be considered necessary and what the participant dealer could do to address deficiencies in the DEA client's knowledge.

(x) Use of DEA by Entities Registered as an EMD and as a Portfolio Manager or Restricted Portfolio Manager

The proposed guidance in the CP would include a clarification about an EMD's use of DEA if it is also registered as a portfolio manager or restricted portfolio manager. The guidance also clarifies when a foreign dealer that is also registered as an EMD is eligible for DEA.

V. ANTICIPATED COSTS AND BENEFITS OF THE PROPOSED AMENDMENTS

For the Ontario Securities Commission's cost-benefit analysis of the Proposed Amendments, please see Annex E – *Cost-Benefit Analysis – Proposed Amendments to National Instrument 23-103 Electronic Trading*.

VI. AUTHORITY FOR THE PROPOSED RULE

In those jurisdictions in which the Proposed Amendments are to be adopted, the securities legislation provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Proposed Amendments.

In Ontario, the Proposed Amendments would be made under the following provisions of the *Securities Act* (Ontario) (Act):

- Paragraph 143(1)7 authorizes the Commission to make rules prescribing requirements in respect of the disclosure or furnishing of information to the public to the Commission by registrants.
- Paragraph 143(1)10 authorizes the Commission to make rules prescribing requirements in respect of the books, records and other documents required by subsection 19(1) of the Act to be kept by market participants (as defined in the Act), including the form in which and the period for which the books, records and other documents are to be kept.
- Paragraph 143(1)11 authorizes the Commission to make rules regulating the listing or trading of publicly traded securities including requiring reporting of trades and quotations.
- Paragraph 143(1)12 authorizes the Commission to make rules regulating recognized exchanges, recognized self-regulatory organizations, recognized quotation and trade reporting systems, and ATSs, including prescribing requirements in respect of the review or approval by the Commission of any by-law, rule, regulation, policy, procedure, interpretation or practice.
- Paragraph 143(1)13 authorizes the Commission to make rules regulating trading or advising in securities to prevent trading or advising that it is fraudulent, manipulative, deceptive or unfairly detrimental to investors.
- Paragraph 143(1)39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination, and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents, determined by the regulations or the rules to be ancillary to the documents.

VII. REQUEST FOR COMMENTS

We invite all interested parties to make written submissions with respect to the Proposed Amendments.

Please submit your comments in writing on or before January 23, 2013. If you are not sending your comment by email, send a CD containing the submission (in Microsoft Word format).

Please address your submission to all of the CSA as follows:

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

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other the participating CSA members.

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

and

M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
e-mail: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of written comments received during the comment period.

The text of the Proposed Amendments is being published concurrently with this Notice.

VIII. CONTENTS OF ANNEXES

Annex A – Amending Instrument for NI 23-103
Annex B – Blackline of NI 23-103 indicating the Proposed Amendments
Annex C – Blackline of 23-103CP indicating the Proposed Amendments
Annex D – Passport System Amendments
Annex E – Cost-Benefit Analysis
Annex F – Comment Summary and CSA Responses

IX. QUESTIONS

Please refer your questions to any of the following:

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October 25, 2012

ANNEX A

AMENDING INSTRUMENT FOR NI 23-103

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-103
ELECTRONIC TRADING

1. National Instrument 23-103 Electronic Trading is amended by this Instrument.

2. The title is amended by adding the following at the end of the title "*AND DIRECT ELECTRONIC ACCESS TO MARKETPLACES****".***

3. Part 1 is amended by

(a) adding the following definitions in section 1:

"direct electronic access" means the access provided by a person or company to a client that permits the client to electronically transmit an order relating to a security to a marketplace, using the person or company's marketplace participant identifier,

(a) through the person or company's systems for automatic onward transmission to a marketplace; or

(b) directly to the marketplace without being electronically transmitted through the person or company's systems;

"DEA client" means a client that is granted direct electronic access by a participant dealer;

"DEA client identifier" means a unique client identifier assigned to a DEA client by a participant dealer;

"marketplace participant identifier" means the unique identifier assigned to a marketplace participant to access a marketplace; and

(b) replacing "NI 23-101" **with** "National Instrument 23-101 *Trading Rules"* ***in the definition of "marketplace and regulatory requirements".***

4. Paragraph 3(2)(a) is amended by replacing the comma with a semi-colon.

5. Subparagraph 3(3)(a)(i) is amended by replacing the final comma in the subparagraph with a semi-colon.

6. The following part is added:

PART 2.1

REQUIREMENTS APPLICABLE TO PARTICIPANT DEALERS PROVIDING DIRECT ELECTRONIC ACCESS

Application of this Part

4.1 This Part does not apply to a participant dealer if the participant dealer complies with similar requirements established by

(a) a regulation services provider;

(b) a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101; or

(c) a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces requirements set under subsection 7.3(1) of NI 23-101.

Provision of Direct Electronic Access

4.2 (1) A person or company must not provide direct electronic access unless it is a participant dealer.

(2) A participant dealer must not provide direct electronic access to a registrant unless the registrant is

(a) a portfolio manager; or

(b) a restricted portfolio manager.

Standards for DEA Clients

4.3 (1) A participant dealer must not provide direct electronic access to a client unless it

(a) has established, maintains and applies reasonable standards for direct electronic access; and

(b) assesses and documents whether each client meets the standards established by the participant dealer for direct electronic access.

(2) The standards established by the participant dealer under subsection (1) must include the following:

(a) a client must not have direct electronic access unless the client has sufficient resources to meet any financial obligations that may result from the use of direct electronic access by that client,

(b) a client must not have direct electronic access unless the client has reasonable arrangements in place to ensure that all individuals using direct electronic access on behalf of the client have reasonable knowledge of and proficiency in the use of the order entry system that facilitates the direct electronic access,

(c) a client must not have direct electronic access unless the client has reasonable knowledge of and the ability to comply with all applicable marketplace and regulatory requirements, and

(d) a client must not have direct electronic access unless the client has reasonable arrangements in place to monitor the entry of orders through direct electronic access.

(3) A participant dealer must confirm, at least annually with the DEA client, that the DEA client continues to meet the standards established by the participant dealer, including for greater certainty, those set out in this section.

Written Agreement

4.4 A participant dealer must not provide direct electronic access to a client unless the client has entered into a written agreement with the participant dealer that provides that,

(a) in its capacity as a DEA client,

(i) the client's trading activity will comply with marketplace and regulatory requirements;

(ii) the client's trading activity will comply with the product limits and credit or other financial limits specified by the participant dealer;

(iii) the client will take all reasonable steps to prevent unauthorized access to the technology that facilitates direct electronic access and will not permit any person or company other than those authorized by the participant dealer, to use the direct electronic access provided by the participant dealer;

(iv) the client will fully cooperate with the participant dealer in connection with any investigation or proceeding by any marketplace or regulation services provider with respect to trading conducted pursuant to the direct electronic access provided, including, upon request by the participant dealer, providing access to the information to the marketplace or regulation services provider that is necessary for the purposes of the investigation or proceeding;

(v) the client will immediately inform the participant dealer if it fails or expects not to meet the standards set by the participant dealer;

(vi) when trading for the accounts of its clients, under subsection 4.7(2), the client will take all reasonable steps to ensure that the orders of its clients will flow through the systems of the

client and will be subject to reasonable risk management and supervisory controls, policies and procedures;

(vii) the client will inform the participant dealer in writing of all individuals acting on the client's behalf that it has authorized to use its DEA client identifier and will immediately, in writing, inform the participant dealer if

(A) an additional individual has been granted authority to use the DEA client identifier; or

(B) the authority of an individual to use the DEA client identifier has been removed or the individual has been terminated; and

(b) the participant dealer has the authority to, without prior notice

(i) reject any order;

(ii) vary, correct or cancel any order entered on a marketplace; and

(iii) discontinue accepting orders from the DEA client.

Training of DEA Clients

4.5 (1) A participant dealer must not allow a client to have, or continue to have, direct electronic access unless the participant dealer is satisfied that the client has reasonable knowledge of applicable marketplace and regulatory requirements and the standards established by the participant dealer under section 4.3.

(2) A participant dealer must ensure that a DEA client receives any relevant amendments to applicable marketplace and regulatory requirements or changes or updates to the standards established by the participant dealer under section 4.3.

DEA Client Identifier

4.6 (1) Upon providing direct electronic access to a DEA client, a participant dealer must assign to the client a DEA client identifier in the form and manner required by

(a) a regulation services provider;

(b) a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101; or

(c) a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces requirements set under subsection 7.3(1) of NI 23-101.

(2) A participant dealer that assigns a DEA client identifier under subsection (1) must immediately provide the DEA client identifier to each marketplace to which the DEA client has direct electronic access through the participant dealer.

(3) A participant dealer that assigns a DEA client identifier under subsection (1) must immediately provide the DEA client's name and its associated DEA client identifier to:

(a) all regulation services providers monitoring trading on a marketplace to which the DEA client has access through the participant dealer;

(b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set under subsection 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client has access through the participant dealer; and

(c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces

requirements set under subsection 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client has access through the participant dealer.

(4) A participant dealer must ensure that an order entered by a DEA client using direct electronic access provided by the participant dealer includes the appropriate DEA client identifier.

(5) If a client ceases to be a DEA client, the participant dealer must promptly inform:

(a) all regulation services providers monitoring trading on a marketplace to which the DEA client had access through the participant dealer;

(b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set under section 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client had access through the participant dealer; and

(c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces requirements set under subsection 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client had access through the participant dealer.

Trading by DEA Clients

4.7 (1) A participant dealer must not provide direct electronic access to a DEA client that is trading for the account of another person or company.

(2) Despite subsection (1), when using direct electronic access, the following DEA clients may trade for the accounts of their clients:

(a) a portfolio manager;

(b) a restricted portfolio manager;

(c) a person or company that is registered in a category analogous to the entities referred to in paragraphs (a) or (b) in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

(3) If a DEA client is using direct electronic access to trade for the account of a client, as permitted by subsection (2), the DEA client must ensure that its client's orders flow through the systems of the DEA client before being entered on a marketplace.

(4) A participant dealer must ensure that when a DEA client is trading for the account of its client using direct electronic access, the DEA client has established and maintains reasonable risk management and supervisory controls, policies and procedures.

(5) A DEA client must not provide access to or pass on its direct electronic access to another person or company other than the individuals authorized under paragraph 4.4(a)(vii).

7. Part 4 is amended by adding the following section:

Client Identifiers

9.1 A marketplace must not permit a marketplace participant to provide direct electronic access to a person or company unless the marketplace's systems support the use of DEA client identifiers.

8. *This Instrument comes into force on* *.

Annex B

This Annex, shows by way of blackline, changes to National Instrument 23-103 *Electronic Trading* that are being published for comment.

NATIONAL INSTRUMENT 23-103
ELECTRONIC TRADING AND DIRECT ELECTRONIC ACCESS TO MARKETPLACES

Table of Contents

PART 1

DEFINITIONS AND INTERPRETATION

Definitions

1. In this Instrument,

"automated order system" means a system used to automatically generate or electronically transmit orders on a pre-determined basis;

"direct electronic access" means the access provided by a person or company to a client that permits the client to electronically transmit an order relating to a security to a marketplace, using the person or company's marketplace participant identifier,

(a) through the person or company's systems for automatic onward transmission to a marketplace; or

(b) directly to the marketplace without being electronically transmitted through the person or company's systems;

"DEA client" means a client that is granted direct electronic access by a participant dealer;

"DEA client identifier" means a unique client identifier assigned to a DEA client by a participant dealer;

"marketplace and regulatory requirements" means

(a) the rules, policies, requirements or other similar instruments set by a marketplace respecting the method of trading by marketplace participants, including those related to order entry, the use of automated order systems, order types and features and the execution of trades;

(b) the applicable requirements in securities legislation; and

(c) the applicable requirements set by a recognized exchange, a recognized quotation and trade reporting system or a regulation services provider under section 7.1, 7.3 or 8.2 of National Instrument 23-101 *Trading Rules*;

"marketplace participant identifier" means the unique identifier assigned to a marketplace participant to access a marketplace; and

"participant dealer" means a marketplace participant that is an investment dealer.

Interpretation

2. A term that is defined or interpreted in National Instrument 21-101 *Marketplace Operation,* or National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* has, if used in this Instrument, the meaning ascribed to it in National Instrument 21-101 or National Instrument 31-103.

PART 2

REQUIREMENTS APPLICABLE TO MARKETPLACE PARTICIPANTS

Risk Management and Supervisory Controls, Policies and Procedures

3. (1) A marketplace participant must

(a) establish, maintain and ensure compliance with risk management and supervisory controls, policies and procedures that are reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with marketplace access or providing clients with access to a marketplace; and

(b) record the policies and procedures required under paragraph (a) and maintain a description of the marketplace participant's risk management and supervisory controls in written form.

(2) The risk management and supervisory controls, policies and procedures required under subsection (1) must be reasonably designed to ensure that all orders are monitored and for greater certainty, include

(a) automated pre-trade controls; and

(b) regular post-trade monitoring.

(3) The risk management and supervisory controls, policies and procedures required in subsection (1) must be reasonably designed to

(a) systematically limit the financial exposure of the marketplace participant, including, for greater certainty, preventing

(i) the entry of one or more orders that would result in exceeding pre-determined credit or capital thresholds for the marketplace participant and, if applicable, its client with marketplace access provided by the marketplace participant;

(ii) the entry of one or more orders that exceed pre-determined price or size parameters;

(b) ensure compliance with marketplace and regulatory requirements, including, for greater certainty,

(i) preventing the entry of orders that do not comply with marketplace and regulatory requirements that must be satisfied on a pre-order entry basis;

(ii) limiting the entry of orders to those securities that a marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant, is authorized to trade;

(iii) restricting access to trading on a marketplace to persons authorized by the marketplace participant; and

(iv) ensuring that the compliance staff of the marketplace participant receives immediate order and trade information, including, for greater certainty, execution reports, resulting from orders sent by the marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant;

(c) enable the marketplace participant to immediately stop or cancel one or more orders entered by the marketplace participant or, if applicable, its client with marketplace access provided by the marketplace participant;

(d) enable the marketplace participant to immediately suspend or terminate any access to a marketplace granted to a client with marketplace access provided by the marketplace participant; and

(e) ensure that the entry of orders does not interfere with fair and orderly markets.

(4) A third party that provides risk management and supervisory controls, policies or procedures to a marketplace participant must be independent from each client with marketplace access provided by the marketplace participant, except if the client is an affiliate of the marketplace participant.

(5) A marketplace participant must directly and exclusively set and adjust the risk management and supervisory controls, policies and procedures required under this section, including those provided by third parties.

(6) A marketplace participant must

(a) regularly assess and document the adequacy and effectiveness of its risk management and supervisory controls, policies and procedures; and

(b) document any deficiencies in the adequacy or effectiveness of a risk management or supervisory control, policy or procedure and promptly remedy the deficiency.

(7) If a marketplace participant uses the services of a third party to provide risk management or supervisory controls, policies and procedures, the marketplace participant must

(a) regularly assess and document the adequacy and effectiveness of the third party's relevant risk management and supervisory controls, policies and procedures; and

(b) document any deficiencies in the adequacy or effectiveness of a risk management or supervisory control, policy or procedure and ensure the deficiency is promptly remedied.

Authorization to Set or Adjust Risk Management and Supervisory Controls, Policies and Procedures

4. Despite subsection 3(5), a participant dealer may, on a reasonable basis, authorize an investment dealer to perform, on the participant dealer's behalf, the setting or adjusting of a specific risk management or supervisory control, policy or procedure required under subsection 3(1) if

(a) the participant dealer has a reasonable basis for determining that the investment dealer, based on the investment dealer's relationship with the ultimate client, has better access to information relating to the ultimate client than the participant dealer such that the investment dealer can more effectively set or adjust the control, policy or procedure;

(b) a description of the specific risk management or supervisory control, policy or procedure and the conditions under which the investment dealer is authorized to set or adjust the specific risk management or supervisory control, policy or procedure are set out in a written agreement between the participant dealer and the investment dealer;

(c) before authorizing the investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure, the participant dealer assesses and documents the adequacy and effectiveness of the investment dealer's setting or adjusting of the risk management or supervisory control, policy or procedure;

(d) the participant dealer

(i) regularly assesses the adequacy and effectiveness of the setting or adjusting of the risk management or supervisory control, policy or procedure by the investment dealer, and

(ii) documents any deficiencies in the adequacy or effectiveness of the setting or adjusting of the risk management or supervisory control, policy or procedure and ensures that the deficiencies are promptly remedied, and

(e) the participant dealer provides the investment dealer with the immediate order and trade information of the ultimate client that the participant dealer receives under subparagraph 3(3)(b)(iv).

PART 2.1

REQUIREMENTS APPLICABLE TO PARTICIPANT DEALERS PROVIDING DIRECT ELECTRONIC ACCESS

Application of this Part

4.1 This Part does not apply to a participant dealer if the participant dealer complies with similar requirements established by

(a) a regulation services provider;

(b) a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101; or

(c) a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces requirements set under subsection 7.3(1) of NI 23-101.

Provision of Direct Electronic Access

4.2 (1) A person or company must not provide direct electronic access unless it is a participant dealer.

(2) A participant dealer must not provide direct electronic access to a registrant unless the registrant is

(a) a portfolio manager; or

(b) a restricted portfolio manager.

Standards for DEA Clients

4.3 (1) A participant dealer must not provide direct electronic access to a client unless it

(a) has established, maintains and applies reasonable standards for direct electronic access; and

(b) assesses and documents whether each client meets the standards established by the participant dealer for direct electronic access.

(2) The standards established by the participant dealer under subsection (1) must include the following:

(a) a client must not have direct electronic access unless the client has sufficient resources to meet any financial obligations that may result from the use of direct electronic access by that client,

(b) a client must not have direct electronic access unless the client has reasonable arrangements in place to ensure that all individuals using direct electronic access on behalf of the client have reasonable knowledge of and proficiency in the use of the order entry system that facilitates the direct electronic access,

(c) a client must not have direct electronic access unless the client has reasonable knowledge of and the ability to comply with all applicable marketplace and regulatory requirements, and

(d) a client must not have direct electronic access unless the client has reasonable arrangements in place to monitor the entry of orders through direct electronic access.

(3) A participant dealer must confirm, at least annually with the DEA client, that the DEA client continues to meet the standards established by the participant dealer, including for greater certainty, those set out in this section.

Written Agreement

4.4 A participant dealer must not provide direct electronic access to a client unless the client has entered into a written agreement with the participant dealer that provides that,

(a) in its capacity as a DEA client,

(i) the client's trading activity will comply with marketplace and regulatory requirements;

(ii) the client's trading activity will comply with the product limits and credit or other financial limits specified by the participant dealer;

(iii) the client will take all reasonable steps to prevent unauthorized access to the technology that facilitates direct electronic access and will not permit any person or company other than those authorized by the participant dealer, to use the direct electronic access provided by the participant dealer;

(iv) the client will fully cooperate with the participant dealer in connection with any investigation or proceeding by any marketplace or regulation services provider with respect to trading conducted pursuant to the direct electronic access provided, including, upon request by the participant dealer, providing access to the information to the marketplace or regulation services provider that is necessary for the purposes of the investigation or proceeding;

(v) the client will immediately inform the participant dealer if it fails or expects not to meet the standards set by the participant dealer;

(vi) when trading for the accounts of its clients, under subsection 4.7(2), the client will take all reasonable steps to ensure that the orders of its clients will flow through the systems of the client and will be subject to reasonable risk management and supervisory controls, policies and procedures;

(vii) the client will inform the participant dealer in writing of all individuals acting on the client's behalf that it has authorized to use its DEA client identifier and will immediately, in writing, inform the participant dealer if

(A) an additional individual has been granted authority to use the DEA client identifier; or

(B) the authority of an individual to use the DEA client identifier has been removed or the individual has been terminated; and

(b) the participant dealer has the authority to, without prior notice

(i) reject any order;

(ii) vary, correct or cancel any order entered on a marketplace; and

(iii) discontinue accepting orders from the DEA client.

Training of DEA Clients

4.5 (1) A participant dealer must not allow a client to have, or continue to have, direct electronic access unless the participant dealer is satisfied that the client has reasonable knowledge of applicable marketplace and regulatory requirements and the standards established by the participant dealer under section 4.3.

(2) A participant dealer must ensure that a DEA client receives any relevant amendments to applicable marketplace and regulatory requirements or changes or updates to the standards established by the participant dealer under section 4.3.

DEA Client Identifier

4.6 (1) Upon providing direct electronic access to a DEA client, a participant dealer must assign to the client a DEA client identifier in the form and manner required by

(a) a regulation services provider;

(b) a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101; or

(c) a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces requirements set under subsection 7.3(1) of NI 23-101.

(2) A participant dealer that assigns a DEA client identifier under subsection (1) must immediately provide the DEA client identifier to each marketplace to which the DEA client has direct electronic access through the participant dealer.

(3) A participant dealer that assigns a DEA client identifier under subsection (1) must immediately provide the DEA client's name and its associated DEA client identifier to:

(a) all regulation services providers monitoring trading on a marketplace to which the DEA client has access through the participant dealer;

(b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set under subsection 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client has access through the participant dealer; and

(c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces requirements set under subsection 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client has access through the participant dealer.

(4) A participant dealer must ensure that an order entered by a DEA client using direct electronic access provided by the participant dealer includes the appropriate DEA client identifier.

(5) If a client ceases to be a DEA client, the participant dealer must promptly inform:

(a) all regulation services providers monitoring trading on a marketplace to which the DEA client had access through the participant dealer;

(b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set under section 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client had access through the participant dealer; and

(c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces requirements set under subsection 7.1(1) or 7.3(1) of NI 23-101 and to which the DEA client had access through the participant dealer.

Trading by DEA Clients

4.7 (1) A participant dealer must not provide direct electronic access to a DEA client that is trading for the account of another person or company.

(2) Despite subsection (1), when using direct electronic access, the following DEA clients may trade for the accounts of their clients:

(a) a portfolio manager;

(b) a restricted portfolio manager;

(c) a person or company that is registered in a category analogous to the entities referred to in paragraphs (a) or (b) in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

(3) If a DEA client is using direct electronic access to trade for the account of a client, as permitted by subsection (2), the DEA client must ensure that its client's orders flow through the systems of the DEA client before being entered on a marketplace.

(4) A participant dealer must ensure that when a DEA client is trading for the account of its client using direct electronic access, the DEA client has established and maintains reasonable risk management and supervisory controls, policies and procedures.

(5) A DEA client must not provide access to or pass on its direct electronic access to another person or company other than the individuals authorized under paragraph 4.4(a)(vii).

PART 3

REQUIREMENTS APPLICABLE TO USE OF AUTOMATED ORDER SYSTEMS

Use of Automated Order Systems

5. (1) A marketplace participant must take all reasonable steps to ensure that its use of an automated order system or the use of an automated order system by any client, does not interfere with fair and orderly markets.

(2) A client of a marketplace participant must take all reasonable steps to ensure that its use of an automated order system does not interfere with fair and orderly markets.

(3) For the purpose of the risk management and supervisory controls, policies and procedures required under subsection 3(1), a marketplace participant must

(a) have a level of knowledge and understanding of any automated order system used by the marketplace participant or any client that is sufficient to allow the marketplace participant to identify and manage the risks associated with the use of the automated order system,

(b) ensure that every automated order system used by the marketplace participant or any client is tested in accordance with prudent business practices initially before use and at least annually thereafter, and

(c) have controls in place to immediately

(i) disable an automated order system used by the marketplace participant, and

(ii) prevent orders generated by an automated order system used by the marketplace participant or any client from reaching a marketplace.

PART 4

REQUIREMENTS APPLICABLE TO MARKETPLACES

Availability of Order and Trade Information

6. (1) A marketplace must provide a marketplace participant with access to its order and trade information, including execution reports, on an immediate basis to enable the marketplace participant to effectively implement the risk management and supervisory controls, policies and procedures required under section 3.

(2) A marketplace must provide a marketplace participant access to its order and trade information referenced in subsection (1) on reasonable terms.

Marketplace Controls Relating to Electronic Trading

7. (1) A marketplace must not provide access to a marketplace participant unless it has the ability and authority to terminate all or a portion of the access provided to the marketplace participant.

(2) A marketplace must

(a) regularly assess and document whether the marketplace requires any risk management and supervisory controls, policies and procedures relating to electronic trading, in addition to those controls that a marketplace participant is required to have under subsection 3(1), and ensure that such controls, policies and procedures are implemented in a timely manner;

(b) regularly assess and document the adequacy and effectiveness of any risk management and supervisory controls, policies and procedures implemented under paragraph (a); and

(c) document and promptly remedy any deficiencies in the adequacy or effectiveness of the controls, policies and procedures implemented under paragraph (a).

Marketplace Thresholds

8. (1) A marketplace must not permit the execution of orders for exchange-traded securities to exceed the price and volume thresholds set by

(a) its regulation services provider;

(b) the marketplace, if it is a recognized exchange that directly monitors the conduct of its members and enforces requirements set under subsection 7.1(1) of NI 23-101; or

(c) the marketplace, if it is a recognized quotation and trade reporting system that directly monitors the conduct of its users and enforces the requirements set under subsection 7.3(1) of NI 23-101.

(2) A recognized exchange, recognized quotation and trade reporting system or regulation services provider setting a price threshold for an exchange-traded security under subsection (1) must coordinate its price threshold with all other exchanges, quotation and trade reporting systems and regulation services providers setting a price threshold under subsection (1) for the exchange-traded security or a security underlying the exchange-traded security.

Clearly Erroneous Trades

9. (1) A marketplace must not provide access to a marketplace participant unless it has the ability to cancel, vary or correct a trade executed by the marketplace participant.

(2) If a marketplace has retained a regulation services provider, the marketplace must not cancel, vary or correct a trade executed on the marketplace unless

(a) instructed to do so by its regulation services provider;

(b) the cancellation, variation or correction is requested by a party to the trade, consent is provided by both parties to the trade and notification is provided to the marketplace's regulation services provider; or

(c) the cancellation, variation or correction is necessary to correct an error caused by a system or technological malfunction of the marketplace systems or equipment, or caused by an individual acting on behalf of the marketplace, and the consent to cancel, vary or correct has been obtained from the marketplace's regulation services provider.

(3) A marketplace must establish, maintain and ensure compliance with reasonable policies and procedures that clearly outline the processes and parameters associated with a cancellation, variation or correction and must make such policies and procedures publicly available.

Client Identifiers

9.1 A marketplace must not permit a marketplace participant to provide direct electronic access to a person or company unless the marketplace's systems support the use of DEA client identifiers.

PART 5
EXEMPTION AND EFFECTIVE DATE

Exemption

10. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.

(3) Except in Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

Effective Date

11. This Instrument comes into force on March 1, 2013.

Annex C

This Annex, shows by way of blackline, changes to Companion Policy 23-103CP Electronic Trading that are being published for comment.

COMPANION POLICY 23-103CP

ELECTRONIC TRADING AND DIRECT ELECTRONIC ACCESS TO MARKETPLACES

Table of Contents

PART 1 GENERAL COMMENTS

1.1 Introduction

(1) Purpose of National Instrument 23-103

The purpose of National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103) is to address areas of concern and risks brought about by electronic trading and direct electronic access (DEA). The increased speed and automation of trading on marketplaces give rise to various risks, including credit risk and market integrity risk. To protect marketplace participants from harm and to ensure continuing market integrity, these risks need to be reasonably and effectively controlled and monitored.

In the view of the Canadian Securities Administrators (CSA or we), marketplace participants should bear primary responsibility for ensuring that these risks are reasonably and effectively controlled and monitored. This responsibility applies to orders that are entered electronically by the marketplace participant itself, as well as orders from clients using the participant dealer's marketplace participant identifier.

This responsibility includes both financial and regulatory obligations. This view is premised on the fact that it is the marketplace participant that makes the decision to engage in trading or provide marketplace access to a client. However, the marketplaces also have some responsibilities to manage risks to the market.

NI 23-103 is meant to address risks associated with electronic trading on a marketplace with a key focus on the gatekeeping function of the executing broker. However, a clearing broker also bears financial and regulatory risks associated with providing clearing services. Under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) a dealer must manage the risks associated with its business in accordance with prudent business practices. As part of that obligation, we expect a clearing dealer to have in place effective systems and controls to properly manage its risks.

NI 23-103 also provides a minimum framework for the provision of DEA; however we note that each marketplace has the discretion to determine whether to allow DEA and to impose stricter standards regarding the provision of DEA.

(2) Scope of NI 23-103

NI 23-103 applies to the electronic trading of securities on marketplaces. In Alberta and British Columbia, the term "security" when used in NI 23-103 includes an option that is an exchange contract but does not include a futures contract. In Ontario, the term "security" when used in NI 23-103, does not include a commodity futures contract or a commodity futures option that is not traded on a commodity futures exchange registered with or recognized by the Commission under the Commodity Futures Act or the form of which is not accepted by the Director under the Commodity Futures Act. In Québec, the term "security" when used in NI 23-103, includes a standardized derivative as this notion is defined in the Derivatives Act.

(3) Purpose of Companion Policy

This Companion Policy sets out how the CSA interpret or apply the provisions of NI 23-103 and related securities legislation.

Except for Part 1, the numbering of Parts and sections in this Companion Policy correspond to the numbering in NI 23-103. Any general guidance for a Part appears immediately after the Part name. Any specific guidance on sections in NI 23-103 follows any general guidance. If there is no guidance for a Part or section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

All references in this Companion Policy to Parts and sections are to NI 23-103**,** unless otherwise noted.

1.2 Definitions

Unless defined in NI 23-103**,** terms used in NI 23-103 and in this Companion Policy have the meaning given to them in the securities legislation of each jurisdiction, in National Instrument 14-101 *Definitions*, National Instrument 21-101 *Marketplace Operation* (NI 21-101)*,* or NI 31-103.

(1) Automated order systems

Automated order systems encompass both hardware and software used to generate or electronically transmit orders on a pre-determined basis and would include smart order routers and trading algorithms that are used by marketplace participants, offered by marketplace participants to clients or developed or used by clients.

(2) Direct electronic access

Section 1 defines "direct electronic access" as the access provided by a person or company to a client that permits the client to electronically transmit an order relating to a security to a marketplace, using the person or company's marketplace participant identifier either through the person or company's systems for automatic onward transmission to a marketplace or directly to a marketplace without being electronically transmitted through the person or company's systems.

While the term "person or company" is used in the definition of DEA, under subsection 4.2(1), only a participant dealer may provide DEA.

The CSA view a DEA order as including an order that is generated by an automated order system used by a DEA client if the DEA client determines the specified marketplace to which the order is to be sent and if the order is transmitted using the participant dealer's marketplace participant identifier. We hold this view regardless of whether or not the DEA client is using an automated order system that is offered by the participant dealer. We note that a DEA client's routing decisions may be varied for regulatory purposes by a participant dealer when an order passes through the participant dealer's system, for example to comply with the order protection rule or with the risk management requirements of NI 23-103, but we still consider the order to be a DEA order.

This definition does not capture orders entered using an order execution service or other electronic access arrangements in which a client uses the website of a dealer to enter orders since these services and arrangements do not permit the client to enter orders using a participant dealer's marketplace participant identifier.

(3) DEA client identifier

NI 23-103 requires each DEA client to have a unique identifier in order to track orders originating from that DEA client. A participant dealer is responsible for assigning the DEA client identifier under subsection 4.6(1) and for ensuring that every order entered by a DEA client using DEA includes the appropriate DEA client identifier under subsection 4.6(4). Following current industry practice, we expect the participant dealer will collaborate with the marketplace with respect to determining the necessary identifiers.

(4) Marketplace participant identifier

A marketplace participant identifier is the unique identifier assigned to the marketplace participant for trading purposes. The assignment of this identifier is co-ordinated with a regulation services provider of the marketplace, where applicable. We expect a marketplace participant to use its marketplace participant identifier across all marketplaces of which it is a member, user or subscriber.

PART 2 REQUIREMENTS APPLICABLE TO MARKETPLACE PARTICIPANTS

3. Risk management and supervisory controls, policies and procedures

(1) National Instrument 31-103 requirements

For marketplace participants that are registered firms, section 11.1 of NI 31-103 requires the registered firm to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to: (a) provide reasonable assurance that the registered firm and each individual acting on its behalf complies with securities legislation; and (b) manage the risks associated with its business in accordance with prudent business practices. Section 3 of NI 23-103 builds on the obligations outlined in section 11.1 of NI 31-103. The CSA have included requirements in NI 23-103 for all marketplace participants that conduct trading on a marketplace to have risk management and supervisory controls, policies and procedures that are reasonably designed to manage their risks in accordance with prudent business practices. A marketplace participant must apply its risk management and supervisory controls, policies and procedures to all trading conducted under its marketplace participant identifier including trading conducted by a DEA client.

What would be considered to be "reasonably designed" in this context is tied to the risks associated with electronic trading that the marketplace participant is willing to bear and what is necessary to manage that risk in accordance with prudent business practices.

These requirements provide greater specificity with respect to the expectations surrounding controls, policies and procedures relating to electronic trading. The requirements apply to all marketplace participants, not just those that are registered firms.

(2) Documentation of risk management and supervisory controls, policies and procedures

Paragraph 3(1)(b) requires a marketplace participant to record its policies and procedures and maintain a copy of its risk management and supervisory controls in written form. This includes a narrative description of any electronic controls implemented by the marketplace participant as well as their functions.

We note that the risk management and supervisory controls, policies and procedures related to the trading of unlisted, government and corporate debt may not be the same as those related to the trading of equity securities due to the differences in the nature of trading of these types of securities. Different marketplace models such as a request for quote, negotiation system, or continuous auction market may require different risk management and supervisory controls, policies and procedures in order to appropriately address the varying levels of diverse risks these different marketplace models can pose to our markets.

A registered firm's obligation to maintain its risk management and supervisory controls in written form under paragraph 3(1)(b) includes retaining these documents and builds on a registered firm's obligation in NI 31-103 to retain its books and records. We expect a non-registered marketplace participant to retain these documents as part of its obligation under paragraph 3(1)(b) to maintain a description of its risk management and supervisory controls in written form.

(3) Clients that also maintain risk management controls

We are aware that a client that is not a registered dealer may maintain its own risk management controls. However, part of the intent of NI 23-103's risk management and supervisory controls, policies and procedures is to require a participant dealer to manage its risks associated with electronic trading and to protect the participant dealer under whose marketplace participant identifier an order is being entered. Consequently, a participant dealer must maintain reasonably designed risk management and supervisory controls, policies and procedures regardless of whether its clients maintain their own controls. It is not appropriate for a participant dealer to rely on a client's risk management controls, as the participant dealer would not be able to ensure the sufficiency of the client's controls, nor would the controls be tailored to the particular needs of the participant dealer.

(4) Minimum risk management and supervisory controls, policies and procedures

Subsection 3(2) sets out the minimum elements of the risk management and supervisory controls, policies and procedures that must be addressed and documented by each marketplace participant. Automated pre-trade controls include an examination of the order before it is entered on a marketplace and the monitoring of entered orders whether executed or not. The marketplace participant should assess, document and implement any additional risk management and supervisory controls, policies and procedures that it determines are necessary to manage the marketplace participant's financial exposure and to ensure compliance with applicable marketplace and regulatory requirements.

With respect to regular post-trade monitoring, it is expected that the regularity of this monitoring will be conducted commensurate with the marketplace participant's determination of the order flow it is handling. At a minimum, an end of day check is expected.

(5) Pre-determined credit or capital thresholds

A marketplace participant can establish pre-determined credit thresholds by setting lending limits for a client and establish pre-determined capital thresholds by setting limits on the financial exposure that can be created by orders entered or executed on a marketplace under its marketplace participant identifier. The pre-determined credit or capital thresholds referenced in paragraph 3(3)(a) may be set based on different criteria, such as per order, trade account or other criteria, including overall trading strategy, or using a combination of these factors as required in the circumstances.

For example, a participant dealer that sets a credit limit for a client with marketplace access provided by the participant dealer could impose that credit limit by setting sub-limits applied at each marketplace to which the participant dealer provides access that together equal the total credit limit. A participant dealer may also consider whether to establish credit or capital thresholds based on sector, security or other relevant factors. In order to address the financial exposure that might result from rapid order entry, a participant dealer may also consider measuring compliance with set credit or capital thresholds on the basis of orders entered rather than executions obtained.

We note that different thresholds may be set for the marketplace participant's own order flow (including both proprietary and client order flow) and that of a client with marketplace access provided by the marketplace participant, if appropriate.

(6) Compliance with applicable marketplace and regulatory requirements

The CSA expect marketplace participants to prevent the entry of orders that do not comply with all applicable marketplace and regulatory requirements that must be satisfied on a pre-trade basis where possible. Specifically, marketplace and regulatory requirements that must be satisfied on a pre-order entry basis are those requirements that can effectively be complied with only before an order is entered on a marketplace, including: (i) conditions that must be satisfied under National Instrument 23-101 *Trading Rules* (NI 23-101) before an order can be marked a "directed-action order", (ii) marketplace requirements applicable to particular order types and (iii) compliance with trading halts. This requirement does not impose new substantive regulatory requirements on the marketplace participant. Rather it establishes that marketplace participants must have appropriate mechanisms in place that are reasonably designed to effectively comply with their existing regulatory obligations on a pre-trade basis in an automated, high-speed trading environment.

(7) Order and trade information

Subparagraph 3(3)(b)(iv) requires the risk management and supervisory controls, policies and procedures to be reasonably designed to ensure that the compliance staff of the marketplace participant receives immediate order and trade information. This will require the marketplace participant to ensure that it has the capability to view trading information in real-time or to receive immediate order and trade information from the marketplace, such as through a drop copy.

This requirement will help the marketplace participant fulfill its obligations under subsection 3(1) with respect to establishing and implementing reasonably designed risk management and supervisory controls, policies and procedures that manage its risks associated with access to marketplaces.

This provision does not prescribe that a marketplace participant carry out compliance monitoring in real-time. There are instances however, when automated, real-time monitoring should be considered, such as when an automated order system is used to generate orders. It is up to the marketplace participant to determine, based on the risk that the order flow poses to the marketplace participant, the appropriate timing for compliance monitoring. However, our view is that it is important that a marketplace participant have the necessary tools in place to facilitate order and trade monitoring as part of the marketplace participant's risk management and supervisory controls, policies and procedures.

(8) Direct and exclusive control over setting and adjusting of risk management and supervisory controls, policies and procedures

Subsection 3(5) specifies that a marketplace participant must directly and exclusively set and adjust its risk management and supervisory controls, policies and procedures. With respect to exclusive control, we expect that no person or company, other than the marketplace participant, will be able to set and adjust the controls, policies and procedures. With respect to direct control, a marketplace participant must not rely on a third party in order to perform the actual setting and adjusting of its controls, policies and procedures.

A marketplace participant can use technology of third parties, including that of marketplaces, as long as the marketplace participant, whether a registered dealer or institutional investor, is able to directly and exclusively set and adjust its supervisory and risk management controls, policies and procedures.

Section 4 provides a limited exception to the requirement in subsection 3(5) in that a participant dealer may , on a reasonable basis, and subject to other requirements, authorize an investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure on behalf of the participant dealer.

(*9) **Risk management and supervisory controls, policies and procedures provided by an independent third party***

Under subsection 3(4), a third party providing risk management and supervisory controls, policies or procedures to a marketplace participant must be independent of any client of the marketplace participant. However, an entity affiliated with a participant dealer that is also a client of the participant dealer may provide supervisory and risk management controls to the participant dealer. In all instances, the participant dealer must directly and exclusively set and adjust its supervisory and risk management controls.

Paragraph 3(7)(a) requires that a marketplace participant must regularly assess and document whether the risk management and supervisory controls, policies and procedures of the third party are effective and otherwise consistent with the provisions of NI 23-103 before engaging such services. Reliance on representations of a third party provider is insufficient to meet this assessment requirement. The CSA expect registered firms to be responsible and accountable for all functions that they outsource to a service provider as set out in Part 11 of Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

(10) Regular assessment of risk management controls and supervisory policies and procedures

Subsection 3(6) requires a marketplace participant to regularly assess and document the adequacy and effectiveness of the controls, policies and procedures it is required to establish under subsection 3(1). Under subsection 3(7), the same assessment requirement also applies if a marketplace participant uses the services of a third party to provide risk management or supervisory controls, policies and procedures. A "regular" assessment would constitute, at a minimum, an assessment conducted annually of the controls, policies and procedures and whenever a substantive change is made to the controls, policies and procedures. A marketplace participant should determine whether more frequent assessments are required, depending on the particular circumstances.

A marketplace participant that is a registered firm is expected to retain the documentation of each such assessment as part of its obligation to maintain books and records in NI 31-103.

4. Authorization to set or adjust risk management and supervisory controls, policies and procedures

Section 4 is intended to address introducing (originating) and carrying (executing) arrangements or jitney arrangements that involve multiple dealers. In such arrangements, there may be certain controls that are better directed by the originating dealer, since it is the originating dealer that has knowledge of its client and is responsible for suitability and other "know your client" obligations. The "ultimate client" is expected to be a third party to the originating investment dealer in all instances.

~~However,~~ The executing dealer must also have reasonable controls in place to manage the risks it incurs by executing orders for other dealers.

Therefore, section 4 provides that a participant dealer may, on a reasonable basis, authorize an investment dealer to set or adjust a specific risk management or supervisory control, policy or procedure on the participant dealer's behalf by written contract and after a thorough assessment. Our view is that where the originating investment dealer with the direct relationship with the ultimate client has better access than the participant dealer to information relating to the ultimate client, the originating investment dealer may more effectively assess the ultimate client's financial resources and investment objectives.

We also expect that the participant dealer will maintain a written contract with the investment dealer that sets out a description of the specific risk management or supervisory control, policy or procedure and the conditions under which the investment dealer is authorized to set or adjust the control, policy or procedure as part of its books and records obligations set out in NI 31-103.

Paragraph 4(d) requires a participant dealer to regularly assess the adequacy and effectiveness of the investment dealer's setting or adjusting of the risk management and supervisory controls, policies and procedures that it performs on the participant dealer's behalf. We expect that this will include an assessment of the performance of the investment dealer under the written agreement prescribed in paragraph 4(b). A "regular" assessment would constitute, at a minimum, an assessment conducted annually of the controls, policies and procedures and whenever a substantive change is made to the controls, policies or procedures. A marketplace participant should determine whether more frequent assessments are required, depending on the particular circumstances.

Under paragraph 4(e), the participant dealer must provide the compliance staff of the originating investment dealer with immediate order and trade information of the ultimate client. This is to allow the originating investment dealer to monitor trading more effectively and efficiently.

Authorizing an investment dealer to set or adjust a risk management or supervisory control, policy or procedure does not relieve the participant dealer of its obligations under section 3, including the overall responsibility to establish, document, maintain and ensure compliance with risk management and supervisory controls, policies and procedures reasonably designed to manage, in accordance with prudent business practices, the financial, regulatory and other risks associated with marketplace access.

PART 2.1 REQUIREMENTS APPLICABLE TO PARTICIPANT DEALERS PROVIDING DIRECT ELECTRONIC ACCESS

4.2 Provision of DEA

(1) Registration requirement

Only marketplace participants that meet the definition of "participant dealer" are permitted to provide DEA to clients. NI 23-103 defines a participant dealer as a marketplace participant that is an investment dealer. This is due to the fact that providing DEA to a client triggers the registration requirements under applicable Canadian securities legislation.

(2) Persons or companies not eligible for DEA

Subsection 4.2(2) does not allow DEA to be provided to a registrant other than a portfolio manager or a restricted portfolio manager.

Certain registered dealers, such as exempt market dealers, are not eligible for DEA, because the CSA do not want to facilitate regulatory arbitrage with respect to trading. In our view, if a registered dealer wishes to have direct access to marketplaces, then the registered dealer should be a member of the Investment Industry Regulatory Organization of Canada (IIROC) and subject to IIROC rules including the Universal Market Integrity Rules (UMIR) if accessing equity marketplaces.

We note that an exempt market dealer may still trade, however it cannot use DEA in its capacity as an exempt market dealer. A portfolio manager or restricted portfolio manager that is also registered as an exempt market dealer is eligible for DEA if it only uses DEA when acting in its capacity as a portfolio manager or restricted portfolio manager and not in its capacity as an exempt market dealer. For example, if a dually registered firm uses DEA to place trades through a participant dealer for its managed account clients, then it is using DEA in its capacity as a portfolio manager or restricted portfolio manager. NI 31-103 defines a managed account to mean an account of a client for which a person or company makes the investment decisions if that person or company has discretion to trade in securities for the account without requiring the client's express consent to a transaction. As a further example, if a firm uses DEA to place trades through a participant dealer for accounts of clients that are accredited investors (as defined in National Instrument 45-106 *Prospectus and Registration Exemptions*) but are not managed accounts, then it is using DEA in its capacity as an exempt market dealer, and therefore should not be using DEA for this trading activity.

Similarly, a foreign dealer that is also registered as an exempt market dealer is eligible for DEA if it only uses DEA when acting in its capacity as a foreign dealer and not in its capacity as an exempt market dealer.

(3) Order execution services

The definition of DEA does not include order execution services provided pursuant to IIROC rules. The provision of order execution services is governed by the rules of IIROC.

It is our view that, in general, retail investors should not be using DEA and should be sending orders using order execution services. However, there are some circumstances in which individuals are sophisticated and have access to the necessary technology to use DEA (for example, former registered traders or floor brokers). In these circumstances, we expect that if a participant dealer chooses to offer DEA to an individual, the participant dealer will set standards high enough to ensure that the participant dealer is not exposed to undue risk. It may be appropriate for these standards to be higher than those set for institutional investors. All requirements relating to risk management and supervisory controls, policies and procedures would apply when providing DEA to an individual.

4.3 Standards for DEA clients

(1) Minimum standards

A participant dealer's due diligence with respect to its clients is a key method of managing risks associated with providing DEA and necessitates a thorough vetting of potential DEA clients. As a result, section 4.3 requires the participant dealer to establish, maintain and apply reasonable standards for DEA and to assess and document whether each prospective DEA client meets these standards before providing DEA. A participant dealer's establishment, maintenance and application of reasonable standards for DEA would include evaluating its risks in providing DEA to a specific client. The participant dealer must establish, maintain and apply these standards with respect to all DEA clients. Subsection 4.3(2) sets out the minimum standards that the

CSA consider necessary to ensure that a DEA client has sufficient financial resources to use direct electronic access and reasonable knowledge of both the order entry system and all applicable marketplace and regulatory requirements.

Each participant dealer has a different risk profile and as a result, we have provided flexibility to participant dealers in determining the specific levels of the minimum standards. We view these standards to be the minimum required for the participant dealer to properly manage its risks. The participant dealer should assess and determine what additional standards are reasonable given the particular circumstances of the participant dealer and each prospective DEA client. For example, a participant dealer might need to modify certain standards that it applies to an institutional client when determining whether an individual is suitable for receiving DEA.

Some additional factors a participant dealer could consider when setting such standards for prospective DEA clients include prior sanctions for improper trading activity, evidence of a proven track record of responsible trading, supervisory oversight, and the proposed trading strategy and associated volumes of trading.

(2) Monitoring the entry of orders

The requirement in paragraph 4.3(2)(d) to monitor the entry of orders though DEA is expected to help ensure that orders comply with marketplace and regulatory requirements, meet minimum standards set for managing risk and do not interfere with fair and orderly markets.

(3) Annual confirmation

Subsection 4.3(3) requires a participant dealer to confirm, at least annually, that each DEA client continues to meet the minimum standards established by the participant dealer. It is up to the participant dealer to choose the method of confirmation. Obtaining a written annual certification by the DEA client is one way to meet this requirement. If the participant dealer does not require a written annual certification, the participant dealer should record the steps it has taken to perform the annual confirmation in order to be able to demonstrate compliance with this requirement.

4.4 Written agreement

Section 4.4 sets out the provisions that must be included in a written agreement between a participant dealer and its DEA client. However, the participant dealer may include additional provisions in the agreement.

Paragraph 4.4(a)(iii) requires a DEA client to take all reasonable steps to prevent unauthorized access to the technology that facilitates direct electronic access and to not permit any person or company other than those authorized by the participant dealer, to use the direct electronic access provided by the participant dealer. The steps taken should be commensurate with the risks posed by the type of technology and systems that are being used.

Paragraph 4.4(a)(iv) specifies that when a participant dealer requests information from its DEA client in connection with an investigation or proceeding by any marketplace or regulation services provider with respect to trading conducted pursuant to the DEA provided, the information is required to only be provided to the marketplace or regulation services provider conducting the investigation or proceeding in order to protect the confidentiality of the information.

Paragraph 4.4(a)(vii) specifies that a DEA client will inform the participant dealer, in writing, of all individuals acting on the DEA client's behalf that it has authorized to use its DEA client identifier This requires a DEA client to formally authorize those individuals that will be using the DEA client identifier when trading for the DEA client.

4.5 Training of DEA clients

Pursuant to subsection 4.5(1), before providing DEA to a client, and as necessary after DEA is provided, a participant dealer must satisfy itself that the client has reasonable knowledge of applicable marketplace and regulatory requirements. What constitutes "reasonable knowledge" will depend on the particular client's trading activity and the associated risks presented by each specific client.

The participant dealer must assess the client's knowledge and determine what, if any, training is required in the particular circumstances. The training must, at a minimum, enable the DEA client to understand the applicable marketplace and regulatory requirements and how trading on the marketplace system occurs. For example, it may be appropriate for the participant dealer to require the client to have the same training required of an approved participant under UMIR.

After DEA has been provided, an assessment of the DEA client's knowledge of applicable marketplace and regulatory requirements would be considered necessary if significant changes to these requirements are made or if the participant dealer notices unusual trading activity by the DEA client. If the participant dealer finds the DEA client's knowledge to be deficient after

such an assessment, the participant dealer should require additional training for the DEA client until the DEA client achieves the requisite level of knowledge or discontinue providing DEA to that DEA client.

4.6 DEA client identifier

(1) Assignment of DEA client identifier

The purpose of requiring a unique identifier for each DEA client is to identify orders of clients entered onto a marketplace by way of DEA. NI 23-103 places the responsibility of assigning the DEA client identifier on the participant dealer. However, following current industry practice, the participant dealer will collaborate with the marketplace with respect to determining the necessary identifiers. We note that a DEA client may be assigned one or more DEA client identifiers.

(2) Information to marketplaces

Subsection 4.6(2) requires a participant dealer to provide a DEA client identifier to each marketplace to which the DEA client has direct electronic access through that participant dealer. This provision is to ensure that marketplaces are aware of which trading channels contain DEA flow in order for marketplaces to properly manage their risks. The CSA does not expect that a DEA client's name will be disclosed to a marketplace. Instead, a participant dealer would need to provide only the DEA client identifier to a marketplace to enable the marketplace to more readily identify DEA flow.

4.7 Trading by DEA clients

Client orders passing through the systems of the DEA client

The CSA are of the view that DEA clients should not provide their DEA to their clients. Subsection 4.7(3) requires that if a DEA client is using DEA and trading for the account of a client, the client's orders must flow through the systems of the DEA client before being entered on a marketplace. This should be done regardless if the orders are sent directly or indirectly through a participant dealer.

This is meant to allow for those arrangements that the CSA are comfortable with, such as a DEA client acting as a "hub" and aggregating the orders of its affiliates before sending the orders to the participant dealer. Requiring orders to flow through the systems of the DEA client allows the DEA client to impose any controls it deems necessary or is required to impose under any requirements to manage its risks. Although the participant dealer is also required to have controls to manage its risks that arise from providing DEA to clients, including automatic pre-trade filters, it is the DEA client that has knowledge of the ultimate client. As a result, the DEA client is likely in a better position to determine the appropriate controls and parameters of those controls that are specific to each particular client. The participant dealer is responsible for ensuring that the DEA client has adequate controls in place to monitor the orders entering the DEA client's systems.

PART 3 REQUIREMENTS APPLICABLE TO THE USE OF AUTOMATED ORDER SYSTEMS

5. Use of automated order systems

Section 5 stipulates that a marketplace participant or any client must take all reasonable steps to ensure that its use of automated order systems does not interfere with fair and orderly markets. A marketplace participant must also take all reasonable steps to ensure that the use of an automated order system by a client does not interfere with fair and orderly markets. This includes both the fair and orderly trading on a marketplace or the market as a whole and the proper functioning of a marketplace. For example, the sending of a continuous stream of orders that negatively impacts the price of a security or that overloads the systems of a marketplace may be considered as interfering with fair and orderly markets.

Paragraph 5(3)(a) requires a marketplace participant to have a level of knowledge and understanding of any automated order systems used by either the marketplace participant or the marketplace participant's clients that is sufficient to allow the marketplace participant to identify and manage the risks associated with the use of the automated order system. We understand that detailed information of automated order systems may be treated as proprietary information by some clients or third party service providers; however, the CSA expect that the marketplace participant will be able to obtain sufficient information in order to properly identify and manage its own risks.

Paragraph 5(3)(b) requires that each automated order system is tested in accordance with prudent business practices. A participating dealer does not necessarily have to conduct tests on each automated order system used by its clients but must satisfy itself that these automated order systems have been appropriately tested. Testing an automated order system in accordance with prudent business practices includes testing it before its initial use and at least annually thereafter. We would also expect that testing would also occur after any significant change to the automated order system is made.

PART 4 REQUIREMENTS APPLICABLE TO MARKETPLACES

6. Availability of order and trade information

(1) Reasonable access

Subsection 6(1) is designed to ensure that a marketplace participant has immediate access to the marketplace participant's order and trade information when needed. Subsection 6(2) will help ensure that the marketplace does not have any rules, polices, procedures, fees or practices that would unreasonably create barriers to the marketplace participant in accessing this information.

This obligation is distinct from the requirement for marketplaces to disseminate order and trade information through an information processor under Parts 7 and 8 of NI 21-101. The information to be provided pursuant to section 6 would need to include the private information included on each order and trade in addition to the public information disseminated through an information processor.

(2) Immediate order and trade information

For the purposes of providing access to order and trade information on an immediate basis, we consider a marketplace's provision of this information by a drop copy to be acceptable.

7. Marketplace controls relating to electronic trading

(1) Termination of marketplace access

Subsection 7(1) requires a marketplace to have the ability and authority to terminate all or a portion of the access provided to a marketplace participant before providing access to that marketplace participant. This requirement also includes the authority of a marketplace to terminate access provided to a client that is using a participant dealer's marketplace participant identifier to access the marketplace. We expect a marketplace to act when it identifies trading behaviour that interferes with the fair and orderly functioning of its market.

(2) Assessments to be conducted

Paragraph 7(2)(a) requires a marketplace to regularly assess and document whether the marketplace requires any risk management and supervisory controls, policies and procedures relating to electronic trading, in addition to the risk management and supervisory controls, policies and procedures that marketplace participants are required to have under subsection 3(1), and ensure that such controls, policies and procedures are implemented in a timely manner. As well, a marketplace must regularly assess and document the adequacy and effectiveness of any risk management and supervisory controls, policies and procedures put in place under paragraph 7(2)(a). A marketplace is expected to document any conclusions reached as a result of its assessment and any deficiencies noted. It must also promptly remedy any identified deficiencies.

It is important that a marketplace take steps to ensure it does not engage in activity that interferes with fair and orderly markets. Part 12 of NI 21-101 requires marketplaces to establish systems-related risk management controls. It is therefore expected that a marketplace will be generally aware of the risk management and supervisory controls, policies and procedures of its marketplace participants and assess whether it needs to implement additional controls, policies and procedures to eliminate any risk management gaps and ensure the integrity of trading on its market.

(3) Timing of assessments

A "regular" assessment would constitute, at a minimum, an assessment conducted annually and whenever a substantive change is made to a marketplace's operations, rules, controls, policies or procedures that relate to methods of electronic trading. A marketplace should determine whether more frequent assessments are required depending on the particular circumstances of the marketplace, for example when the number of orders or trades is increasing very rapidly or when new types of clients or trading activities are identified. A marketplace should document and preserve a copy of each such assessment as part of its books and records obligation in NI 21-101.

(4) Implementing controls, policies and procedures in a timely manner

A "timely manner" will depend on the particular circumstances, including the degree of potential risk of financial harm to marketplace participants and their clients or harm to the integrity of the marketplace and to the market as a whole. The marketplace must ensure the timely implementation of any necessary risk management and supervisory controls, policies and procedures.

8. Marketplace thresholds

Section 8 requires that each marketplace must not permit the execution of orders of exchange-traded securities exceeding price and volume thresholds set by its regulation services provider, or by the marketplace if it is a recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces certain requirements set under NI 23-101.

These price and volume thresholds are expected to reduce erroneous orders and price volatility by preventing the execution of orders that could interfere with a fair and orderly market.

There are a variety of methods that may be used to prevent the execution of these orders. However, the setting of the price threshold is to be coordinated among all regulation services providers, recognized exchanges and recognized quotation and trade reporting systems that set the threshold under subsection 8(1).

The coordination requirement also applies when setting a price threshold for securities that have underlying interests in an exchange-traded security. We note that there may be differences in the actual price thresholds set for an exchange-traded security and a security that has underlying interests in that exchange-traded security.

9. Clearly erroneous trades

(1) Application of section 9

Section 9 provides that a marketplace cannot provide access to a marketplace participant unless it has the ability to cancel, vary or correct a trade executed by that marketplace participant. This requirement would apply in the instance where the marketplace decides to cancel, vary or correct a trade or is instructed to do so by a regulation services provider.

Before cancelling, varying or correcting a trade, paragraph 9 (2)(a) requires that a marketplace receive instructions from its regulation services provider, if it has retained one. We note that this would not apply in the case of a recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101.

(2) Cancellation, variation or correction where necessary to correct a system or technological malfunction or error made by the marketplace systems or equipment

Under paragraph 9(2)(c) a marketplace may cancel, vary or correct a trade where necessary to correct an error caused by a system or technological malfunction of the marketplace's systems or equipment or an individual acting on behalf of the marketplace. If a marketplace has retained a regulation services provider, it must not cancel, vary or correct a trade unless it has obtained permission from its regulation services provider to do so.

Examples of errors caused by a system or technological malfunction include where the system executes a trade on terms that are inconsistent with the explicit conditions placed on the order by the marketplace participant, or allocates fills for orders at the same price level in a manner or sequence that is inconsistent with the stated manner or sequence in which such fills are to occur on the marketplace. Another example includes where the trade price was calculated by a marketplace's systems or equipment based on some stated reference price, but it was calculated incorrectly.

(3) Policies and procedures

For policies and procedures established by the marketplace in accordance with the requirements of subsection 9(3) to be "reasonable", they should be clear and understandable to all marketplace participants.

The policies and procedures should also provide for consistent application. For example, if a marketplace decides that it will consider requests for cancellation, variation or correction of trades in accordance with paragraph 9(2)(b), it should consider all requests received regardless of the identity of the counterparty. If a marketplace chooses to establish parameters only within which it might be willing to consider such requests, it should apply these parameters consistently to each request, and should not exercise its discretion to refuse a cancellation or amendment when the request falls within the stated parameters and the consent of the affected parties has been provided.

When establishing any policies and procedures in accordance with subsection 9(3), a marketplace should also consider what additional policies and procedures might be appropriate to address any conflicts of interest that might arise.

ANNEX D

PASSPORT SYSTEM AMENDMENTS

Amending Instrument for
Multilateral Instrument 11-102 *Passport System*

1. Multilateral Instrument 11-102 Passport System is amended by this Instrument.

2. Appendix D is amended by repealing the row that contains "Electronic trading" ***in the Provision column and replacing it with the following row:***

Electronic trading and direct electronic access to marketplaces	NI 23-103 (only sections 3(1), 3(2), 3(3)(a) to 3(3)(d), 3(4) to 3(7), 4, 4.2, 4.3, 4.4(a)(ii), 4.4(a)(iii), 4.4(a)(v) to 4.4(a)(vii), 4.4(b), 4.5, 4.7 and 5(3))

3. The provisions of this Instrument come into force on *.

ANNEX E

COST-BENEFIT ANALYSIS

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 23-103 *ELECTRONIC TRADING*

I. Overview

Electronic trading on Canadian marketplaces is not new, however the Canadian market has evolved substantially in recent years. Technological advancements have increased the complexity of the market and the methods by which market participants access multiple marketplaces. Electronic access to marketplaces has been broadly extended with marketplace participants providing direct electronic access (DEA). DEA refers to the access provided by a person or company to a client that permits the client to electronically transmit an order relating to a security to a marketplace using the person or company's marketplace participant identifier either through the person or company's systems for automatic onward transmission to a marketplace or directly to the marketplace without being electronically transmitted through the person or company's systems.

Such rapid and complex technological change has resulted in many new risks to the Canadian market. In our view, the regulatory framework for providing DEA must reflect these changes and address these risks. The proposed amendments to National Instrument 23-103 *Electronic Trading* (Proposed Amendments) are designed to align regulatory requirements with the current DEA environment to ensure effective regulation and mitigation of these risks.

II. Costs and Benefits

Benefits

The Proposed Amendments should benefit all market participants including investors, as well as the market as a whole. The Proposed Amendments should promote fairness by establishing a standard set of rules applicable to all market participants providing DEA, regardless of the marketplace accessed. Additionally, given that no consistent rule framework is currently applied specifically to DEA trading, establishing the Proposed Amendments would improve both the integrity and confidence in the market by levelling the playing field and standardizing the obligations related to DEA so that there are minimum requirements in place applicable to all, no matter where orders are entered.

Costs

(i) Technology and maintenance costs

We recognize that for some participants, the Proposed Amendments would likely introduce costs associated with the development and implementation of policies and procedures related to the provision of DEA. These costs will vary depending on the nature of the business of the participant dealer as well as the business models and strategies of any DEA clients. The costs may involve initial outlays as well as ongoing expenses.

Although we acknowledge these costs, we believe that they are proportionate to the benefits provided to the market as a whole as discussed above. The protection of the integrity of the market, the reduction in both participant dealer and systemic risks, and the increase in the confidence of individual investors make these costs justifiable.

(ii) Compliance Costs

Under the Proposed Amendments, participant dealers would be required to ensure ongoing compliance with the responsibilities imposed. Although some new costs are likely, we expect that many of the compliance requirements would already be in place. As an example, we note that currently all registrants are required under National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) to manage the risks to their business[17], and we would expect that they would have established policies and procedures related to direct electronic access. Any additional costs of compliance would vary depending on the nature of the business or services provided by the individual participant dealer.

DEA clients would need to bear minimal costs associated with entering into the proposed written agreement with the participant dealer before being provided DEA.

With respect to DEA, we acknowledge there may be increased costs associated with establishing, maintaining and applying appropriate standards before providing DEA to a client. We believe these costs are justifiable given the protections afforded to the market as a whole through the implementation of the Proposed Amendments. Participant dealers who choose to provide

[17] NI 31-103 paragraph 11.1(b) states that "A registered firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with its business in accordance with prudent business practices."

DEA to clients should be appropriately vetting potential clients and ensuring standards are met on a continuing basis not only to mitigate financial risk to themselves, but also the risks to the market associated with the activities of their clients.

(iii) Costs to Marketplaces

The Proposed Amendments would require all marketplaces to not permit a marketplace participant to provide DEA unless the marketplace's systems support the use of DEA client identifiers. Certain marketplaces currently support the use of DEA client identifiers and we do not expect marketplaces to bear a significant cost in complying with this requirement.

Conclusion

We acknowledge the increase in costs for some participant dealers associated with the Proposed Amendments. However, in our opinion, the benefits associated with the Proposed Amendments are proportionate to these costs. In establishing the Proposed Amendments, appropriate controls will be implemented to manage the financial, regulatory and other risks with providing DEA to ensure the integrity of the participant dealer, the marketplaces and the financial system.

ANNEX F
Comment Summary and CSA Responses

ICE Futures Canada, Inc.
CanDeal
CIBC
TMX Group
ExpoWorld Ltd.
Chi-X ATS
TD Securities
Jitneytrade Inc.
Simon Romano & Terrence Doherty
Penson Financial Services Canada
TriAct
Flextrade Systems Inc.
PMAC
Akimbo Capital LP
Heaps Capital Ltd.
Newedge Canada Inc.
LiquidNet Canada Inc.
Softek
Alpha ATS
Scotia Capital
IRESS
Ross McKee
CNSX Markets Inc.
Optima Capital Canada
EMDA
Mark DesLauriers
GETCO
SIFMA
IIAC

Please note that a summary of comments relating to proposed requirements included in the 2011 Proposal, other than those related to direct electronic access, was published on June 28, 2012.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
Definitions	**Definition of "Direct Electronic Access"** A number of commenters requested further clarity as to what is intended by "additional order management" by a participating dealer in the definition of direct electronic access. Certain commenters queried whether the use of a participant dealer's risk controls or smart order router would constitute "additional order management".	The Proposed Amendments include a revised definition of direct electronic access that does not include the phrase "additional order management". The Proposed Amendments would further clarify in the Companion Policy that an order generated by an automated order system used by a DEA client and transmitted using the participant dealer's marketplace participant identifier would be considered to be a DEA order. We would still consider it to be a DEA order, even if the participant dealer's filters vary the destination of the order for regulatory purposes.
6. Provision of Direct Electronic Access (1) Only a participant dealer may provide direct electronic access. (2) A participant dealer may not provide direct electronic access to a registrant, unless the registrant is: (a) a participant dealer; or (b) a portfolio manager.	**Section 6(2)** Prohibition on EMDs to use DEA The majority view was not supportive of the proposal to limit the use of DEA by registrants to only participant dealers or portfolio managers. These commenters expressed the view that exempt market dealers (EMDs) should also be able to use DEA and asked the CSA to reconsider this provision. One commenter noted that it seemed inconsistent to allow unregistered firms or	We continue to be of the view that EMDs conducting brokerage activities that are similar to the activity of investment dealers should be subject to UMIR in order to lessen the incentive for regulatory arbitrage. Due to this overarching concern, we do not think it is appropriate to allow EMDs to trade using DEA. CSA registration staff are also examining policy issues

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
	individuals to use DEA but not an EMD and that if the CSA wishes to take the position that UMIR rules must directly apply, then the CSA must exclude all non-IIROC firms or individuals as DEA clients – not just EMDs. Another commenter explained that this requirement could be circumvented by an EMD establishing an unregistered affiliate to whom access could be granted or by simply establishing an electronic link which does not fall within the definition of direct electronic access. It was also cited that the scope of the regulation should be specifically confined to certain circumstances where regulatory arbitrage is a concern, as broader application will curtail legitimate and important transactions. Commenters stated that prohibiting EMDs from using DEA could result in: • forcing EMDs to submit orders using non-DEA methods which would create added latency risk and less liquidity in Canadian marketplaces; • EMDs using a foreign broker that is not registered as an EMD or use other investment dealer firms; • restricting Canadian institutional customers' access to various other types of services, including EMD services; • increased disharmony between requirements for EMDs and non-EMDs; • increased confusion and a negative impact on Canada's equity markets; • an unintended consequence of denying Canadian institutional investors access to the prime brokerage platforms of foreign broker-dealers. Commenters pointed out that many U.S. broker-dealers are registered in Canada as EMDs in order to facilitate part of their business in Canada and that the Proposed Instrument would prevent such U.S. broker-dealers from being DEA clients. A	related to firms that are registered as EMDs (See CSA Staff Notice 31-331 and IIROC Notice 12-0217). CSA registration staff are also examining policy issues related to firms that are registered as EMDs. The Proposed Amendments would clarify in the Companion Policy that a foreign dealer that is also registered as an exempt market dealer is eligible for DEA provided that it only uses DEA when acting in

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
	commenter also mentioned that the resources needed for a U.S. broker-dealer to institute a Canadian subsidiary and acquire IIROC membership to become an investment dealer would be significant and may outweigh the benefits of doing so.	its capacity as a foreign dealer and not in its capacity as an exempt market dealer.
	With respect to section 6(2), one commenter suggested the use of a broader term than "portfolio manager" would be beneficial as other categories of buy-side registrants may be created in the future.	We are of the view that using a defined term such as "portfolio manager" provides specificity and clarity. If new registration categories are created in the future, we will consider whether it would be appropriate to add these new categories to NI 23-103.
	Another commenter noted that use of the term "registrant" may be problematic in that the term is defined to include a "person or company registered or required to be registered" and creates ambiguity as to whether a person or company that is relying upon a registration exemption is intended to be caught when the term "registrant" is used.	We are of the view that a person or company that is required to be registered would be caught by the use of the term "registrant" and would not be able to use DEA unless it is registered as a portfolio manager or restricted portfolio manager. If such an entity wishes to use DEA, it may apply for an exemption from this proposed requirement.
	Dual Registration of PM and EMD Certain commenters noted that section 6(2) would result in an odd situation for an entity registered both as a portfolio manager and EMD since it would be able to trade as a discretionary adviser but would not be able to use DEA when it acts as an EMD.	We have proposed clarification in the Companion Policy that a portfolio manager or a restricted portfolio manager that is also registered as an EMD may continue to use DEA in its capacity as a portfolio manager or a restricted portfolio manager but not in its capacity as an EMD.
	Individual Investors Using DEA The majority view of commenters is that individuals should be permitted to use DEA when they have adequate knowledge, experience and financial resources and that it should be left to participating dealers to determine whether or not an individual should be granted DEA. One commenter was of the view that while standards applicable to individual DEA clients may need to be higher in certain regards, the language in the instrument and companion policy seems to imply that the standards may need to be higher in all regards which would unduly disadvantage	The Companion Policy would state that there are circumstances where individuals are sophisticated and have access to the necessary technology to use DEA. In these cases, it is up to the participant dealer offering DEA to determine the appropriate standards required to ensure it is not exposed to undue risk in providing DEA to an individual.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
	individual clients in favour of institutional clients. One other commenter was not supportive of providing DEA to individuals. Its view was that this would further complicate the regulatory process around the provision of DEA and would open the possibility of currently registered individuals, such as "pro-traders", relinquishing their registration status in favour of DEA in an attempt to transfer ultimate regulatory responsibility to the dealer providing DEA and away from themselves.	
7. Standards for DEA Clients (1) Before granting direct electronic access to a client, a participant dealer must: (a) establish, maintain and apply appropriate standards for direct electronic access; and (b) assess and document whether each client meets the standards established by the participant dealer for direct electronic access. (2) The standards established by the participant dealer pursuant to subsection (1) must include that: (a) the client has appropriate resources to meet any financial obligations that may result from the use of direct electronic access by that client; (b) the client has appropriate arrangements in place to ensure that all personnel using direct electronic access on behalf of the client have knowledge of and proficiency in the use of the order entry system that the client will use; (c) the client has knowledge of and has the ability to comply with all applicable marketplace and regulatory requirements; and (d) the client has in place adequate arrangements to monitor the entry of orders through direct electronic access.	Commenters expressed support for using the proposed standards rather than using an eligible client list. One commenter noted however that there may be confusion for investors who use more than one dealer with different standards and that there may be pressure on dealers to adopt the lowest standards used by other participant dealers.	We agree that the proposed standards, which are in line with global standards, are the most appropriate for the Canadian markets.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
A participant dealer must confirm with the DEA client, at least annually, that the DEA client continues to meet the standards established by the participant dealer, including those set out in subsection (2).		
8. Written Agreement Prior to granting direct electronic access to a client, a participant dealer must enter into a written agreement with the client that provides that as a DEA client: (a) the DEA client's trading activity will comply with marketplace and regulatory requirements; (b) the DEA client's trading activity will comply with the product limits or credit or other financial limits specified by the participant dealer; (c) the DEA client will maintain all technology facilitating direct electronic access in an electronically and physically secure manner and will prohibit personnel, other than those authorized by the participant dealer, to use the direct electronic access granted;	In general, commenters agreed with the proposal for a written agreement however one commenter suggested that the prescriptive elements be moved to the Companion Policy as guidance. One commenter asked the CSA to reconsider if a written agreement is essential as incorporating new provisions into current agreements would be burdensome.	The CSA are of the view that the prescriptive elements of the written agreement are important in assisting a participant dealer to address its risks associated with providing electronic access. As a result these elements continue to be included in the Proposed Amendments.
(d) the DEA client will fully cooperate with the participant dealer in connection with any investigation or proceeding by any marketplace, regulation services provider, securities regulatory authority or law enforcement agency with respect to trading conducted pursuant to the direct electronic access granted, including, upon request by the participant dealer, providing access to such information to the marketplace, regulation services provider, securities regulatory authority or law enforcement agency that is necessary for the purposes of any such investigation or proceeding;	**Section 8(d)** A couple of commenters noted that providing access to information deemed necessary for an investigation may create breaches in privacy law and breaches of foreign laws.	Our research indicates that this provision does not create breaches in privacy law and is very unlikely to breach foreign law.
(e) the DEA client acknowledges that the participant dealer may (i) reject an order; (ii) vary, correct or cancel an order entered on a	**Section 8(e)** One commenter expressed concern with allowing a participant dealer to vary or cancel any trade made by the client for any reason and suggested that changes to orders not be a required term of the agreement but rather be optional and	DEA providers are currently able to cancel or vary any trade made by their clients under the written agreement prescribed under TSX Policy 2-502 and other marketplaces

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
marketplace; and (iii) discontinue accepting orders from the DEA client; (f) the DEA client will immediately inform the participant dealer if it fails or reasonably expects not to meet the standards set by the participant dealer; (g) when trading for the accounts of its clients, pursuant to subsection 11(2), the DEA client will ensure that the orders of its clients will flow through the systems of the DEA client and will be subject to appropriate risk management and supervisory controls, policies and procedures; (h) the DEA client will not trade for the accounts of its clients, pursuant to subsection 11(2), unless (i) such clients meet the standards established by the participant dealer pursuant to section 7; and (ii) a written agreement is in place between the DEA client and its clients that sets out the terms of the access provided.	subject to negotiation between the parties. **Section 8(g)** One commenter suggested that the standard to "ensure" that the orders of its clients will flow through the systems of the DEA client and will be subject to appropriate risk management and supervisory controls, policies and procedures should be changed to a "reasonability" standard. **Addition of other provisions** Some commenters suggested including additional provisions in the proposed written agreement including: • the client is to provide a list of employees who are authorized to use the DEA identifier and update	have adopted similar provisions. We are of the view that under certain circumstances it may be necessary for a participant dealer to cancel or vary an order to ensure that it is able to manage the risks to its business. As a result, we have maintained this requirement in the Proposed Amendments. The proposed provision now states that the client will "take all reasonable steps to ensure that the orders of its clients will flow through the systems of the client and will be subject to reasonable risk management and supervisory controls, policies and procedures". We have included an additional provision in the written agreement that requires the DEA client to inform the participant dealer in writing of all individuals acting on the client's behalf that it has

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
	this list as necessary • an undertaking by the DEA client that the DEA client identifier will be used exclusively by the DEA client and its authorized employees. Another commenter suggested that an agreement among the DEA client, participating dealer and marketplace be required to clearly set out the roles and responsibilities of each party in the sponsored client relationship and formalize the commitments in place from the client to the dealer and the dealer to the marketplace.	authorized to use its DEA client identifier to the participant dealer and to update this list as necessary. We note that a participant dealer is also able to introduce additional requirements or provisions in the written agreement it feels are necessary to manage its specific risks. We are of the view that a marketplace may require such a tri-party agreement under subsection 7(2) of the Instrument if it deems this to be necessary to manage the risks of DEA trading on its platform.
9. Training of DEA Clients (1) Prior to granting direct electronic access to a client, and as necessary after direct electronic access is granted, a participant dealer must satisfy itself that the client has adequate knowledge of applicable marketplace and regulatory requirements and the standards established pursuant to section 7. (2) If a participant dealer concludes that a client does not have adequate knowledge with respect to applicable marketplace and regulatory requirements, or standards established pursuant to section 7, the participant dealer must ensure the necessary training is provided to the client prior to granting direct electronic access to the client. (3) A participant dealer must ensure that the DEA client receives any relevant changes and updates to applicable marketplace and regulatory requirements or standards established pursuant to section 7.	One commenter requested clarification on the CSA's expectations for establishing if a DEA client's knowledge is adequate and the type of training to be provided to DEA clients. This commenter also asked the CSA to reconsider a statement in the Companion Policy that asserts that dealers may need to "require clients to have the same training required of marketplace participants" given the filtering of the DEA client's trading.	The Companion Policy would clarify that what constitutes "reasonable knowledge" will depend on the particular client's trading activity and the resulting risks presented by each specific client. The training, must at a minimum, enable the client to understand the applicable marketplace and regulatory requirements and how trading on the marketplace system occurs. The Proposed Amendments do not impose a requirement that DEA clients have the same training as marketplace participants, but we are of the view that the participant dealer, in managing its risks with respect to providing DEA, may determine this level of knowledge is needed for its DEA clients.
10. DEA Client Identifier (1) Upon granting direct electronic access to a client, a participant dealer must assign to the client a DEA client identifier. (2) A participant dealer that assigns a	Many commenters expressed concern with respect to disclosing client identifiers to marketplaces. Another commenter suggested that the CSA require participant dealers to disclose trader IDs for DEA clients to marketplaces but not disclose the identity of the DEA	Proposed subsection 4.6(2) of the Instrument would require that a DEA client identifier be provided to each marketplace to which the DEA client has direct electronic access through the participant dealer but would only require the

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
DEA client identifier pursuant to subsection (1) must immediately provide the DEA client identifier and the associated client name to: (a) all regulation services providers monitoring trading; (b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client has access; and (c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client has access.	client.	names of DEA clients associated with a DEA client identifier to be disclosed to regulation services providers and marketplaces that conduct their own market regulation under proposed subsection 4.6(3) of the Instrument. We consider it necessary for a participant dealer to produce such information to a marketplace so that the marketplace can better identify DEA flow on its marketplace to better identify its risks.
(3) A participant dealer must ensure that each order entered by a DEA client using direct electronic access provided by that participant dealer includes the appropriate DEA client identifier. (4) If a client ceases to be a DEA client, the participant dealer must promptly inform: (a) all regulation services providers monitoring trading; (b) any recognized exchange or recognized quotation and trade reporting system that directly monitors the conduct of its members or users and enforces requirements set pursuant to section 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client had access; and (c) any exchange or quotation and trade reporting system that is recognized for the purposes of this Instrument and that directly monitors the conduct of its members or users and enforces	One commenter requested clarification if the proposal is something other than a participant dealer assigning each of its DEA clients an ID that would be unique among all of its DEA clients.	It is proposed that the DEA client identifier be in the form and manner required by a regulation services provider, or recognized exchange or quotation and trade reporting system that directly monitors the conduct of its members or users. The current practice of a participant dealer assigning a unique ID to each of its DEA clients would be considered to be an acceptable form.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
requirements set pursuant to subsection 7.1(1) or 7.3(1) respectively of NI 23-101 and to which the DEA client had access.		
11. Trading by DEA Clients (1) Except as provided in subsection (2), a participant dealer must only provide direct electronic access to a client that is trading for its own account. (2) When using direct electronic access, the following DEA clients may trade for their own account or for the accounts of their clients: (a) a participant dealer; (b) a portfolio manager; and (c) an entity that is authorized in a category analogous to the entities referred to in paragraphs (a) and (b) in a foreign jurisdiction that is a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding. (3) Where a DEA client is using direct electronic access to trade for the accounts of its clients, pursuant to subsection (2), the clients' orders must flow through the systems of the DEA client before being entered on a marketplace directly or indirectly through a participant dealer. (4) A participant dealer must ensure that where a DEA client is trading for the accounts of its clients, the DEA client has established and maintains appropriate risk management and supervisory controls, policies and procedures. (5) A DEA client must not provide access to or pass on its direct electronic access to another person or company.	**11(2)** Some commenters expressed the view that this section is too limiting. Another commenter urged the CSA to have discussions with marketplace participants that have established global affiliate networks to ensure that existing systems with adequate risk management controls are not unintentionally excluded in this proposed section	We think that the restriction proposed in this section is necessary in order to manage the risks that DEA trading may pose.
13. DEA Client Identifiers A marketplace must not permit a marketplace participant to provide direct electronic access unless the marketplace's systems support the use of DEA client identifiers.	One commenter pointed out that the language in this section may go beyond current practices and therefore may be more than a codification of current marketplace practices. Specifically, this commenter noted that there is no existing order marker or tag used to identify DMA clients, rather the participants of the TSX	This requirement would codify the current practice of assigning a unique ID to a DEA client and providing this unique identifier to the regulation services provider or marketplace conducting its own market regulation.

Text of Proposed Provisions	Summary of Comments	CSA Response to Comment
	and TSXV provide these exchanges with a list of trader IDs through which direct market access clients send order flow.	

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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	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
08/29/2012	2	Accutrac Capital Solutions Inc. - Preferred Shares	50,000.00	50.00
09/07/2012	2	Acheson Commercial Corner LP - Limited Partnership Units	250,000.00	50.00
09/30/2012	74	ACM Commercial Mortgage Fund - Units	4,391,910.15	38,704.11
09/25/2012	1	ADS Waste Escrow Corp. C/O ADS Holdings, Inc. - Notes	1,954,000.00	2,000.00
09/18/2012	1	AstraZeneca PLC - Notes	700,554.23	1.00
09/07/2012	15	Athena China Limited - Common Shares	391,120,000.00	25,806,451.61
09/19/2012	1	Axela Inc. - Debentures	550,000.00	1.00
10/01/2012	4	Banks Island Gold Ltd. - Flow-Through Shares	500,000.00	574,712.00
10/02/2012	2	Biomet, Inc. - Notes	10,320,450.00	2.00
10/02/2012	1	Biomet, Inc. - Notes	14,743,500.00	1.00
05/07/2012 to 05/11/2012	2	Bison Income Trust II - Trust Units	102,000.00	10,200.00
06/22/2012 to 06/29/2012	3	Bison Income Trust II - Trust Units	305,500.00	30,550.00
06/04/2012 to 06/13/2012	13	Bison Income Trust II - Trust Units	383,550.00	38,355.00
06/14/2012 to 06/20/2012	19	Bison Income Trust II - Trust Units	2,692,300.00	269,230.00
06/13/2012 to 06/22/2012	4	Bison Income Trust II - Trust Units	210,459.02	31,045.90
05/09/2012 to 05/15/2012	2	Bison Income Trust II - Trust Units	150,623.00	15,062.30
05/02/2012 to 05/11/2012	11	Bison Income Trust II - Trust Units	1,471,750.00	147,115.00
03/13/2012 to 03/15/2012	2	Bison Income Trust II - Units	202,876.71	20,287.67
08/23/2012	4	Buchans Minerals Corporation - Warrants	390,000.00	40,000.00
08/23/2012 to 09/06/2012	13	Buena Vista Gold Inc. - Units	376,600.00	3,138,334.00
09/20/2012	4	Caledonian Royalty Corporation - Units	575,000.00	57,500.00
09/24/2012	1	Canadian Imperial Venture Corp - Common Shares	300,000.00	6,000,000.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
08/07/2012	39	CanAm Coal Corp. - Debentures	13,143,400.00	13,143,400.00
08/31/2012	146	Centurion Apartment Real Estate Investment Trust - Units	7,220,194.13	643,587.91
09/28/2012	142	Centurion Apartment Real Estate Investment Trust - Units	6,390,490.71	569,460.96
07/31/2012	2	Clearframe Solutions Corp. - Common Shares	56,250.00	375,000.00
07/30/2012 to 08/03/2012	8	Colwood City Centre Limited Partnership - Notes	450,834.00	450,834.00
10/03/2012	1	Continental Airlines Pass Through Trust 2012-2A c/o Wilmington Trust, National Association, as Trustee - Certificates	7,092,400.00	1.00
09/24/2012	4	Continental Rubber of America, Corp. - Notes	10,713,150.00	4.00
09/24/2012	2	Ctrip.com International, Ltd. - Notes	8,820,900.00	2.00
09/14/2012	2	Daymak Inc. - Common Shares	200,000.00	5.00
09/12/2012	4	Delavaco Real Estate Opportunities Corp. - Notes	8,537,375.00	4.00
09/14/2012	17	Delta Gold Inc. - Units	618,000.00	618,000.00
09/18/2012	4	DNI Metals Inc. - Flow-Through Shares	525,600.00	1,752,000.00
08/09/2012 to 08/13/2012	11	Equity Solar Inc. - Preferred Shares	365,808.00	295,000.00
09/01/2012	2	Ford Auto Securitization Trust - Notes	641,000,000.00	2.00
09/24/2012	7	Franklin Resources, Inc. - Notes	10,727,261.88	7.00
10/01/2012	4	Frontier Communications Corporation - Notes	1,803,501.13	4.00
09/24/2012	1	Gray Television, Inc. - Notes	980,100.00	1,007.39
10/01/2012	5	Grupo Financiero Santander Mexico S.A.B. de C.V. - American Depository Shares	83,339,736.00	N/A
09/05/2012	132	Harbour First Mortgage Investment Trust - Trust Units	10,097,500.00	100,975.00
10/02/2012	1	Hovnanian Enterprises - Notes	1,470,000.00	1.00
05/08/2012	8	IMMY INC. (Amended) - Notes	335,899.20	16.00
09/19/2012	56	Kanosak Capital Venture Corporation - Common Shares	773,618.10	3,078,727.00
09/14/2012	57	Kindersley Hospitality Endeavors LP - Limited Partnership Units	4,055,000.00	4,055.00
09/17/2012	1	MBMI Resources Inc. - Units	90,000.00	1,800,000.00
09/21/2012	17	Medifocus Inc. - Units	3,329,518.95	22,196,795.00
10/04/2012	10	Medwell Capital Corp. - Common Shares	4,351,400.00	2,719,625.00
09/13/2012	1	Midstates Petroleum Company, Inc. and Midstates Petroleum Company LLC - Notes	1,755,400.00	18,000.00
09/17/2012	1	Milton Hydro Distribution Inc. - Debentures	2,550,000.00	1.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
10/05/2012	1	Montpelier Re Holdings Ltd. - Notes	2,930,650.80	1.00
09/17/2012	8	Network Media Group Inc. - Debentures	150,000.00	3.00
09/27/2012 to 10/06/2012	9	Newport Balanced Fund - Trust Units	396,689.19	N/A
09/17/2012 to 09/26/2012	8	Newport Canadian Equity Fund - Trust Units	962,902.40	N/A
09/27/2012 to 10/06/2012	6	Newport Canadian Equity Fund - Trust Units	277,000.00	N/A
09/27/2012 to 10/06/2012	6	Newport Fixed Income Fund - Trust Units	369,210.00	N/A
09/17/2012 to 09/26/2012	14	Newport Global Equity Fund - Trust Units	814,493.38	N/A
09/27/2012 to 10/06/2012	2	Newport Global Equity Fund - Trust Units	100,000.00	N/A
09/27/2012 to 10/06/2012	22	Newport Strategic Yield Fund - Trust Units	1,655,965.00	N/A
09/27/2012 to 10/06/2012	12	Newport Yield Fund - Trust Units	807,100.00	N/A
08/08/2012	24	Open Gold Corp - Common Shares	308,150.00	6,163,000.00
10/01/2012 to 10/09/2012	3	Oremex Silver Inc. - Debentures	727,500.00	72.75
10/01/2012 to 10/09/2012	8	Oremex Silver Inc. - Units	750,000.00	13,636,364.00
09/14/2012	33	PetroFrontier Corp. - Units	5,143,848.45	7,913,613.00
10/03/2012	2	Qualys, Inc. - Common Shares	1,302,400.00	7,575,000.00
09/27/2012	1	Regency Energy Partners LP - Notes	981,400.00	1.00
09/28/2012	8	Reynolds Group Issuer LLC/Reynolds Group Issuer Inc./Reynolds Group Issuer (Luxembourg)S.A. - Notes	87,465,000.00	8.00
07/25/2012	38	Rogue Iron Ore Corp. - Units	445,220.00	3,710,167.00
07/25/2012	2	Rogue Iron Ore Corp. - Units	535,624.40	3,570,829.00
09/27/2012	1	Ryerson Inc. and Joseph T. Ryerson & Son, Inc. - Notes	98,140.00	100.00
08/20/2012 to 08/27/2012	23	SecureCare Investments Inc. - Bonds	754,000.00	N/A
10/01/2012 to 10/10/2012	27	SIF Capital Canada Inc. - Debentures	2,062,000.00	2,062.00
09/21/2012	14	Silver Sun Resource Corp. - Units	177,000.00	1,475,000.00
08/09/2012	6	Sprint Nextel Corporation - Notes	92,789,400.00	93,500.00
09/12/2012	10	Sprott Physical Gold Trust - Trust Units	22,037,628.54	1,522,000.00
09/21/2012	4	St. Clair Holdings, Inc. - Notes	102,789,000.00	4.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
09/17/2012 to 09/26/2012	8	The Newport Fixed Income Fund - Trust Units	1,289,959.40	N/A
09/17/2012 to 09/26/2012	19	The Newport Yield Fund - Trust Units	2,024,530.97	N/A
09/21/2012	4	The Ryland Group, Inc. - Notes	2,682,350.00	4.00
10/04/2012	281	Torc Oil & Gas Ltd. - Receipts	120,101,000.00	43,710,000.00
08/29/2012 to 08/30/2012	2	Trez Capital Limited Partnership - Mortgage	1,101,674.42	1,101,674.42
10/02/2012	2	tw telecom holdings, inc. - Notes	3,920,000.00	2.00
09/10/2012 to 09/14/2012	17	UBS AG, Jersey Branch - Certificates	4,089,971.77	17.00
09/04/2012 to 09/07/2012	27	UBS AG, Jersey Branch - Certificates	8,617,511.59	27.00
09/06/2012	2	UBS AG, Zurich - Certificates	342,346.69	2.00
08/22/2012	12	UMC Financial Management Inc. - Units	1,050,000.00	1,050,000.00
08/22/2012	7	Uragold Bay Resources Inc. - Units	116,200.00	1,936,667.00
09/30/2012	34	Vertex Fund - Trust Units	2,659,075.58	N/A
09/06/2012	8	Walton Alliston Development IC - Common Shares	188,200.00	18,820.00
10/04/2012	10	Walton Alliston Development IC - Common Shares	231,090.00	23,109.00
08/16/2012	21	Walton Alliston Development IC - Non Flow-Through Shares	639,840.00	63,984.00
08/16/2012	24	Walton Alliston Development LP - Units	2,149,840.00	214,984.00
08/23/2012	13	Walton MD Gardner Woods Investment Corporation - Common Shares	420,900.00	42,090.00
09/06/2012	8	Walton MD Gardner Woods Investment Corporation - Common Shares	398,830.00	39,883.00
08/23/2012	3	Walton MD Gardner Woods LP - Units	455,191.20	45,840.00
09/06/2012	32	Walton NC Concord Investment Corporation - Common Shares	635,270.00	109,808.00
10/04/2012	25	Walton NC Concord Investment Corporation - Common Shares	436,820.00	43,682.00
08/23/2012	35	Walton NC Concord Investment Corporation - Common Shares	1,098,080.00	109,808.00
10/04/2012	4	Walton NC Concord LP - Units	618,896.64	62,896.00
08/23/2012	10	Walton NC Concord LP - Units	1,361,333.49	137,093.00
10/04/2012	16	Walton NC Westlake Investment Corporation - Common Shares	362,300.00	36,230.00
10/04/2012	6	Walton NC Westlake LP - Units	480,408.48	48,822.00

Transaction Date	# of Purchasers	Issuer/Security	Total Purchase Price ($)	# of Securities Distributed
10/03/2012	19	Walton Suburban DC Land Investment Corporation - Common Shares	503,680.00	50,368.00
08/10/2012	7	Wave Accounting Inc. - Common Shares	95,000.00	31,825.00
06/25/2012	6	Waymar Resources Ltd. - Common Shares	0.00	1,000,000.00
08/20/2012	4	White Tiger Mining Corp. - Common Shares	1,291,200.00	1,800,000.00
08/31/2012	11	Woulfe Mining Corp. - Units	5,230,000.00	31,250,000.00
09/27/2012	1	Yava Technologies Inc. - Units	84,000.00	600.00

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Brompton Split Banc Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 17, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
$* (Maximum) * Preferred shares and * Class A Share
Price: $* per Preferred Share and $ * per Class A Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
GMP SECURITIES L.P.
MACQUARIE PRIVATE WEALTH INC.
RAYMOND JAMES LTD.
CANACCORD GENUITY CORP.
DESJARDINS SECURITIES INC.
MACKIE RESEARCH CAPITAL CORPORATION
Promoter(s):
Brompton Funds Limited
Project #1970496

Issuer Name:
Central Fund of Canada Limited
Principal Regulator - Alberta
Type and Date:
Preliminary Base Shelf Prospectus dated October 18, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
US$1,000,000,000.00 - Class A non-voting, fully participating Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1970803

Issuer Name:
ENTREC Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated October 16, 2012
NP 11-202 Receipt dated October 16, 2012
Offering Price and Description:
$22,000,000.00 -7.00% Convertible Unsecured Subordinated Debentures Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
GMP SECURITIES L.P.
Promoter(s):
-
Project #1969948

Issuer Name:
Hudson's Bay Company
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form PREP Prospectus dated October 16, 2012
NP 11-202 Receipt dated October 17, 2012
Offering Price and Description:
$ * - * Common Shares Price: $ * per Common Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC
CIBC WORLD MARKETS INC.
MERRILL LYNCH CANADA INC.
J.P. MORGAN SECURITIES CANADA INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
UBS SECURITIES CANADA INC.
CREDIT SUISSE SECURITIES (CANADA), INC.
NATIONAL BANK FINANCIAL INC.
Promoter(s):
Hudson’s Bay Company (Luxembourg) S. `a r. l.
Project #1969956

Issuer Name:
Manulife Balanced Equity Private Pool
Manulife Balanced Income Private Pool
Manulife Balanced Private Pool
Manulife Canadian Balanced Private Pool
Manulife Canadian Equity Private Pool
Manulife Canadian Fixed Income Private Pool
Manulife Canadian Fixed Income Private Trust
Manulife Corporate Fixed Income Private Pool
Manulife Corporate Fixed Income Private Trust
Manulife Dividend Income Private Pool
Manulife Global Equity Private Pool
Manulife Global Fixed Income Private Pool
Manulife Global Fixed Income Private Trust
Manulife Money Market Private Trust
Manulife U.S. Equity Private Pool
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated October 19, 2012
NP 11-202 Receipt dated October 19, 2012
Offering Price and Description:
Advisor Series, Series F, Series FT6, Series C, Series CT6, Series L, Series LT6 and Series T6 Securities
Underwriter(s) or Distributor(s):
Manulife Asset Management Limited
Promoter(s):
Manulife Asset Management Limited
Project #1971066

Issuer Name:
Midway Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated October 17, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
US$90,000,000.00
Common Shares
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1970409

Issuer Name:
Morguard Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 18, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
$150,000,000 - 4.85% Convertible Unsecured Subordinated Debentures due October 31, 2017
Price: $1,000.00 per Debenture
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
HSBC SECURITIES (CANADA) INC.
NATIONAL BANK FINANCIAL INC.
Promoter(s):
-
Project #1970693

Issuer Name:
NexGen U.S. Dividend Registered Fund
NexGen U.S. Dividend Tax Managed Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated October 19, 2012
NP 11-202 Receipt dated October 22, 2012
Offering Price and Description:
Units of Regular, Regular F, High Net Worth, High Net Worth F, Ultra High Net Worth and Institutional Front End Load, Deferred Load and Low Load Series (collectively the 'Series') and Shares of the Series of Capital Gains Class, Return of Capital 40 Class, Dividend Tax Credit 40 Class and Compound Growth Class* Series
Underwriter(s) or Distributor(s):
NexGen Financial Limited Partnership
Promoter(s):
NexGen Financial Limited Partnership
Project #1971021

Issuer Name:
Pepcap Ventures Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated October 17, 2012
NP 11-202 Receipt dated October 19, 2012
Offering Price and Description:
Minimum Offering: $200,000.00 (2,000,000 Common Shares); Maximum Offering: $500,000.00 (5,000,000 Common Shares) Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
MACQUARIE PRIVATE WEALTH INC.
Promoter(s):
Clark Swanson
Project #1970816

Issuer Name:
Pilot Gold Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated October 17, 2012
NP 11-202 Receipt dated October 17, 2012
Offering Price and Description:
$25,575,000.00 - 15,500,000 UNITS Price $1.65 per Unit
Underwriter(s) or Distributor(s):
NATIONAL BANK FINANCIAL INC.
CANACCORD GENUITY CORP.
CIBC WORLD MARKETS INC.
HAYWOOD SECURITIES INC.
SCOTIA CAPITAL INC.
Promoter(s):
Mark O'Dea
Sean Tetzlaff
John Dorward
Matthew Lennox-King
Project #1970399

Issuer Name:
Premium Income Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 19, 2012
NP 11-202 Receipt dated October 22, 2012
Offering Price and Description:
Rights to Subscribe for up to * Units (each Unit consisting of one Class A Share and one Preferred Share)
at a Subscription Price of $ *
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1971181

Issuer Name:
ROI Private Placement Fund
Type and Date:
Preliminary Long Form Non-Offering Prospectus dated October 17, 2012
Receipted on October 18, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
RETURN ON INNOVATION ADVISORS LTD.
Project #1970711

Issuer Name:
ROI Strategic Private Placement Fund
Type and Date:
Preliminary Long Form Non-Offering Prospectus dated October 17, 2012
Receipted on October 18, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
RETURN ON INNOVATION ADVISORS LTD.
Project #1970714

Issuer Name:
Scotia Canadian Equity Blend Class
Scotia Fixed Income Blend Class
Scotia International Equity Blend Class
Scotia U.S. Equity Blend Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated October 19, 2012
NP 11-202 Receipt dated October 22, 2012
Offering Price and Description:
Series A Shares
Underwriter(s) or Distributor(s):
Scotia Securities Inc.
Promoter(s):
Scotia Asset Management L.P.
Project #1971545

Issuer Name:
Tourmaline Oil Corp.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated October 16, 2012
NP 11-202 Receipt dated October 16, 2012
Offering Price and Description:
$36,900,000.00 -1,000,000 Flow-Through Common Shares
Price: $36.90 per Flow-Through Share
Underwriter(s) or Distributor(s):
Peters & Co. Limited
Scotia Capital Inc.
FirstEnergy Capital Corp.
National Bank Financial Inc.
Stifel Nicolaus Canada Inc.
CIBC World Markets Inc.
TD Securities Inc.
Cormark Securities Inc.
Promoter(s):
-
Project #1969932

Issuer Name:
Veris Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated October 18, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
CDN$60,000,000.00:
Common Shares
Debt Securities
Subscription Receipts
Units
Warrants to Purchase Common Shares
Warrants to Purchase Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1970806

Issuer Name:
Altamira Prefered Equity Fund
Westwood Global Dividend Fund
Westwood Global Equity Fund
Principal Regulator - Quebec
Type and Date:
Final Simplified Prospectuses dated October 12, 2012
NP 11-202 Receipt dated October 16, 2012
Offering Price and Description:
Advisor Series, F Series and O Series
Underwriter(s) or Distributor(s):
National Bank Securities Inc.
Promoter(s):
National Bank Securities Inc
Project #1950791

Issuer Name:
Argent Energy Trust
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 16, 2012
NP 11-202 Receipt dated October 16, 2012
Offering Price and Description:
$110,000,000.00 - 11,000,000 Units Price $10.00 per Unit
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
TD SECURITIES INC.
NATIONAL BANKFINANCIAL INC.
CANACCORD GENUITY CORP.
FIRSTENERGY CAPITAL CORP.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
CORMARK SECURITIES INC.
DUNDEE SECURITIES LTD.
GMP SECURITIES L.P.
Promoter(s):
ASTON HILL FINANCIAL INC.
Project #1968085

Issuer Name:
BMO S&P 500 Hedged to CAD Index ETF
BMO Aggregate Bond Index ETF
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated October 12, 2012 to the Long Form Prospectus dated January 27, 2012
NP 11-202 Receipt dated October 17, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
BMO ASSET MANAGEMENT INC.
Project #1842929

Issuer Name:
[CORRECTED COPY]
BMO Global Equity Class
(Series A and I)
BMO Global Monthly Income Fund
(Series A, I and R)
BMO U.S. Dollar Monthly Income Fund
(Series A, I and R)
BMO Diversified Income Portfolio
(Series A, I and R)
BMO Monthly Income Fund
(Series A, I, BMO Guardian Monthly Income Fund Series F and R)
Principal Regulator - Ontario
Type and Date:
Amendment No. 5 dated October 9, 2012 (amendment no. 5) 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 October 18, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO Investments Inc.
Promoter(s):
BMO Investments Inc.
Project #1862292

Issuer Name:
BMO Guardian Floating Rate Income Fund
(F Class Units and I Class Units)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated October 9, 2012 to the Simplified Prospectus and Annual Information Form dated June 14, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
PRINCIPAL DISTRIBUTOR BMO INVESTMENTS INC.
Guardian Group of Funds Ltd.
BMO Investments Inc.
Promoter(s):
BMO INVESTMENTS INC.
Project #1906529

Issuer Name:
C2C Industrial Properties Inc. (formerly Sargasso Capital Corporation)
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 17, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
$17,500,000.00 - 6.75% Convertible Unsecured Subordinated Debentures
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
DESJARDINS SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
DUNDEE SECURITIES LTD.
Promoter(s):
David Wright
Brian Spence
Richard McGraw
Stathallen Capital Corp.
Project #1968390

Issuer Name:
Catch the Wind Ltd.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 12, 2012
NP 11-202 Receipt dated October 16, 2012
Offering Price and Description:
$3,064,869.24: (1) 51,081,154 Special Warrant Shares and 51,081,154 Warrants on exercise of 51,081,154 Special Warrants 3,064,870 Compensation Options on exercise of 3,064,870 Compensation Warrants; (2) 5,108,115 Special Warrant Shares and 5,108,115 Warrants on exercise of 5,108,115 Special Warrants that may be issued as Penalty Securities ; (3) 306,487 Compensation Options on exercise of 306,487 Compensation Warrants that may be issued as Compensation Penalty Securities
Underwriter(s) or Distributor(s):
Stifel Nicolaus Canada Inc.
Fraser Mackenzie Limited
Promoter(s):
-
Project #1960602

Issuer Name:
Counsel Fixed Income
(Series A, D, E, F and I Units)
Counsel Money Market
(Series A, C, D and I Units)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated October 11, 2012 to the Simplified Prospectus and Annual Information Form dated October 21, 2011
NP 11-202 Receipt dated October 17, 2012
Offering Price and Description:
Series A, D, E, F and I @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
COUNSEL PORTFOLIO SERVICES INC.
Project #1801658

Issuer Name:
Exall Energy Corporation
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 15, 2012
NP 11-202 Receipt dated October 16, 2012
Offering Price and Description:
$10,000,000.00: UP TO $3,000,005.00 - 3,157,900 CDE Flow-Through Shares; and UP TO $6,999,995.00 - 6,999,995 CEE Flow-Through Shares Price: $0.95 per CDE Flow-Through Share $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):
-
Project #1963552

Issuer Name:
First Asset Diversified Convertible Debenture Fund
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 16, 2012
NP 11-202 Receipt dated October 17, 2012
Offering Price and Description:
Maximum $50,000,010.00 (2,837,685 Units) $17.62 per Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Raymond James Ltd.
Macquarie Private Wealth Inc.
Promoter(s):
First Asset Investment Management Inc.
Project #1967555

Issuer Name:
First Capital Realty Inc.
Principal Regulator - Ontario
Type and Date:
Final Base Shelf Prospectus dated October 17, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
$500,000,000.00 - Common Shares, Warrants to Purchase Common Shares, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1968172

Issuer Name:
Gibson Energy Inc.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 22, 2012
NP 11-202 Receipt dated October 22, 2012
Offering Price and Description:
$350,064,000.00 - 15,840,000 Subscription Receipts each representing the right to receive one Common Share Price: $22.10 per Subscription Receipt
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
FIRST ENERGY CAPITAL CORP.
J.P. MORGAN SECURITIES CANADA INC.
MACQUARIE CAPITAL MARKETS CANADA LTD.
NATIONAL BANK FINANCIAL INC.
UBS SECURITIES CANADA INC.
Promoter(s):
-
Project #1969678

Issuer Name:
Harvest Banks & Buildings Income Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated October 18, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
Series A, Series F and Series R Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1961501

Issuer Name:
Ivanplats Limited
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated October 16, 2012
NP 11-202 Receipt dated October 16, 2012
Offering Price and Description:
C$300,803,250.00 - 63,327,000 COMMON SHARES C$4.75 PER COMMON SHARE
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
MORGAN STANLEY CANADA LIMITED
MACQUARIE CAPITAL MARKETS CANADA LTD.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
CITIGROUP GLOBAL MARKETS CANADA INC.
UBS SECURITIES CANADA INC.
Promoter(s):
-
Project #1959806

Issuer Name:
Karnalyte Resources Inc.
Principal Regulator - Alberta
Type and Date:
Final Base Shelf Prospectus dated October 19, 2012
NP 11-202 Receipt dated October 22, 2012
Offering Price and Description:
$350,000,000.00:
Common Shares
Units
Preferred Shares
Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #1959152

Issuer Name:
Maple Leaf 2012-II Energy Income Limited Partnership
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated October 19, 2012
NP 11-202 Receipt dated October 22, 2012
Offering Price and Description:
Maximum Offering: $30,000,000.00 (300,000 Units); Minimum Offering: $5,000,000.00 (50,000 Units) - Price: $100 per Unit Minimum Purchase: $5,000 (50 Units)
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
NATIONAL BANK FINANCIAL INC.
BMO NESBITT BURNS INC.
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
MACQUARIE PRIVATE WEALTH INC.
MANULIFE SECURITIES INCORPORATED
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
DUNDEE SECURITIES LTD.
MACKIE RESEARCH CAPITAL CORPORATION
SPROTT PRIVATE WEALTH LP
UNION SECURITIES LTD.
Promoter(s):
MAPLE LEAF ENERGY INCOME HOLDINGS CORP.
CADO BANCORP LTD.
TOSCANA ENERGY CORPORATION
Project #1957608

Issuer Name:
Newalta Corporation
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 19, 2012
NP 11-202 Receipt dated October 19, 2012
Offering Price and Description:
$70,000,000.00 - 5,000,000 Common Shares Price: $14.00 per Offered Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
CANACCORD GENUITY CORP.
NATIONAL BANK FINANCIAL INC.
BMO NESBITT BURNS INC.
Promoter(s):
-
Project #1969171

Issuer Name:
Petrowest Corporation
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated October 18, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
15,000,000 Class A Common Shares for gross proceeds of $7,500,000.00 $0.50 per Offered Share
Underwriter(s) or Distributor(s):
BEACON SECURITIES LIMITED
PARADIGM CAPITAL INC.
Promoter(s):
-
Project #1968328

Issuer Name:
RBC Short Term Income Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O shares)
RBC Bond Capital Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O shares)
Phillips, Hager & North Total Return Bond Capital Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O shares)
RBC High Yield Bond Capital Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O shares)
Balanced Funds and Portfolio Solutions
(Series A, Series T5, Advisor Series, Advisor T5 Series, Series H, Series D, Series F, Series FT5, Series I and Series O mutual fund shares)
Phillips, Hager & North Monthly Income Class
(Series A, Series T5, Advisor Series, Advisor T5 Series, Series H, Series D, Series F, Series FT5, Series I and Series O shares)
RBC Select Very Conservative Class
(Series A, Advisor Series, Series F and Series O shares)
RBC Select Conservative Class
(Series A, Advisor Series, Series F and Series O shares)
RBC Select Balanced Class
(Series A, Advisor Series, Series F and Series O shares)
RBC Select Growth Class
(Series A, Advisor Series, Series F and Series O shares)
RBC Select Aggressive Growth Class
(Series A, Advisor Series, Series F and Series O shares)
RBC Canadian Dividend Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O only)
RBC Canadian Equity Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O only)
RBC Canadian Equity Income Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O only)
RBC Canadian Mid Cap Equity Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O only)
RBC North American Value Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O only)
RBC U.S. Dividend Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O only)
RBC U.S. Equity Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O only)
Phillips, Hager & North U.S. Multi-Style All-Cap Equity Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O only)
Phillips, Hager & North Overseas Equity Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O only)
RBC Emerging Markets Equity Class
(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O only)
RBC Global Resources Class

(Series A, Advisor Series, Series H, Series D, Series F, Series I and Series O only)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated October 17, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
Series A, Series T5, Advisor Series, Advisor T5 Series, Series H, Series D, Series F, Series FT5, Series I and Series O mutual fund shares
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
RBC Direct Investing Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #1960957

Issuer Name:
Premier Gold Mines Limited
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 15, 2012
NP 11-202 Receipt dated October 16, 2012
Offering Price and Description:
$58,506,440.00 - 6,580,000 Common Shares 2,613,000 Flow-Through Common Shares PRICE:
$6.08 per Offered Share $7.08 per Flow-Through Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
CANACCORD GENUITY CORP.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
CANTOR FITZGERALD CANADA CORPORATION
STONECAP SECURITIES INC.
LAURENTIAN BANK SECURITIES INC.
OCTAGON CAPITAL CORPORATION
Promoter(s):
-
Project #1967640

Issuer Name:
RBC Bond LP
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated October 18, 2012
NP 11-202 Receipt dated October 19, 2012
Offering Price and Description:
Series O Units @ Net Asset Value
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #1960959

Issuer Name:
RBC Bond Trust
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated October 17, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
Series O Units @ Net Asset Value
Underwriter(s) or Distributor(s):
RBC Global Asset Management Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #1960962

Issuer Name:
Redknee Solutions Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 16, 2012
NP 11-202 Receipt dated October 16, 2012
Offering Price and Description:
$17,550,000.00 - 13,000,000 Common Shares Price: $1.35 per Common Share
Underwriter(s) or Distributor(s):
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
TD SECURITIES INC.
Promoter(s):
-
Project #1967309

Issuer Name:
The Children's Educational Foundation of Canada
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated October 9, 2012
NP 11-202 Receipt dated October 18, 2012
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
CHILDREN'S EDUCATION FUNDS INC.
Promoter(s):
CHILDREN'S EDUCATION FUNDS INC.
Project #1956659

Issuer Name:
Timbercreek U.S. Multi-Residential Opportunity Fund #1
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated October 17, 2012 to the Long Form Prospectus dated September 28, 2012
NP 11-202 Receipt dated October 19, 2012
Offering Price and Description:
Minimum: C$15,000,000.00 of Class A Units and/or Class B Units
(Minimum 1,500,000 Class A Units and/or Class B Units)
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)
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

Issuer Name:
Torex Gold Resources Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated October 16, 2012
NP 11-202 Receipt dated October 16, 2012
Offering Price and Description:
$350,000,000.00 - 175,000,000 Units Price: $2.00 per Unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Dundee Securities Ltd.
Macquarie Capital Markets Canada Ltd.
GMP Securities L.P.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Stifel Nicolaus Canada Inc.
Promoter(s):
-
Project #1967573

Issuer Name:
Vanguard MSCI Canada Index ETF
Vanguard FTSE Canadian High Dividend Yield Index ETF
Vanguard FTSE Canadian Capped REIT Index ETF
Vanguard Canadian Aggregate Bond Index ETF
Vanguard Canadian Short-Term Bond Index ETF
Vanguard Canadian Short-Term Corporate Bond Index ETF
Vanguard S&P 500 Index ETF
Vanguard S&P 500 Index ETF (CAD-hedged)
Vanguard MSCI U.S. Broad Market Index ETF (CAD-hedged)
Vanguard MSCI EAFE Index ETF (CAD-hedged)
Vanguard MSCI Emerging Markets Index ETF
(Units)
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated October 15, 2012
NP 11-202 Receipt dated October 16, 2012
Offering Price and Description:
Mutual Fund Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Vanguard Investments Canada Inc.
Project #1957989

Issuer Name:
AlphaNorth Technology and Life Sciences Fund
Principal Jurisdiction - Ontario
Type and Date:
Preliminary Simplified Prospectus dated July 23, 2012
Withdrawn on October 22, 2012
Offering Price and Description:
Series A and F Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
AlphaNorth Mutual Funds Limited
Project #1934621

Issuer Name:
Frontier Acquisition Corp.
Principal Jurisdiction - Alberta
Type and Date:
Preliminary Long Form Prospectus dated September 12, 2012
Withdrawn on October 18, 2012
Offering Price and Description:
$90,000,000.00 - 200,000,0000 Subscription Receipts
Price: $0.45 per Subscription Receipt
Underwriter(s) or Distributor(s):
RAYMOND JAMES LTD.
CIBC WORLD MARKETS INC.
GMP SECURITIES L.P.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
STIFEL NICOLAUS CANADA INC.
Promoter(s):
John R. Jacobs
Brad N. Creswell
Project #1960162

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: Delavaco Securities Inc. To: Harbour Securities Inc.	Exempt Market Dealer	October 15, 2012
Change in Registration Category	PFSL Investments Canada Ltd.	From: Investment Fund Manager and Mutual Fund Dealer To: Mutual Fund Dealer	October 16, 2012
Change in Registration Category	Noumena Capital Partners Ltd.	From: Investment Fund Manager, Exempt Market Dealer and Portfolio Manager To: Portfolio Manager	October 17, 2012
Consent to Suspension (Pending Surrender)	Hutton Investment Counsel Inc.	Portfolio Manager	October 18, 2012
Consent to Suspension (Pending Surrender)	Wellington West Total Wealth Management Inc.	Portfolio Manager	October 18, 2012

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Chapter 13

SROs, Marketplaces and Clearing Agencies

13.1 SROs

13.1.1 OSC Staff Notice of Approval – MFDA Proposed Amendments to Section 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1

OSC STAFF NOTICE OF COMMISSION APPROVAL

MUTUAL FUNDS DEALERS ASSOCIATION OF CANADA

MFDA AMENDMENTS TO SECTION 1 (DEFINITIONS) AND 3 (DIRECTORS) OF MFDA BY-LAW NO. 1

The Ontario Securities Commission approved the MFDA's amendments to Section 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1. The Alberta Securities Commission, Saskatchewan Financial Services Commission, Manitoba Securities Commission, Nova Scotia Securities Commission and New Brunswick Securities Commission have approved the amendments, and the British Columbia Securities Commission did not object to the MFDA's amendment.

Summary of Material Rule

The MFDA made two changes to its current By-law No. 1:

- broadening the category of persons who can serve as Public Director; and
- increasing Industry Director participation on the Audit Committee.

The amendments align the MFDA governance standards with current SRO practices and increase the number of qualified individuals who meet the requirements to act as Public Directors. The increase of Industry Directors on the Audit Committee will permit the Committee to be more aware of mutual fund dealer industry issues and regulatory requirements.

Summary of Public Comments

The OSC published the amendments for comment on November 4, 2011 at (2011) 34 OSCB 11249 for a 90-day comment period. The MFDA received four public comment letters. We attach the MFDA's summary of public comments received and responses as Attachment A. We also attach a blacklined copy of the proposed amendments showing changes made to the version published for comment as Attachment B.

Attachment A

Summary of Public Comments Respecting Proposed Amendments to Sections 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1 and Responses of the MFDA

On November 4, 2011, the British Columbia Securities Commission published proposed amendments to Sections 1 (Definitions) and 3 (Directors) of MFDA By-law No. 1 (the "**Proposed Amendments**") for a 90-day public comment period that expired on February 2, 2012.

Four submissions were received during the public comment period:

1. Canadian Foundation for Advancement of Investor Rights ("FAIR")
2. Independent Financial Brokers of Canada ("IFB")
3. IGM Financial Inc. ("IGM")
4. Kenmar Associates ("Kenmar")

Copies of the comment submissions may be viewed on the MFDA website at http://www.mfda.ca/regulation/comments.html#Sec1_3.

The following is a summary of the comments received, together with the MFDA's responses.

1. General Comments

Three commenters did not support eliminating many of the restrictions on individuals that qualify as Public Directors. These commenters expressed the view that the restrictions on who can become a Public Director are not unduly restrictive and are still warranted today.

FAIR expressed the opinion that the current definition of "Public Director" does not appear to overly narrow the field of potential candidates, but properly restricts persons associated with, involved in, or representing the interests of the investment industry rather than investors. FAIR expressed the view that allowing currently disqualified individuals to act as Public Directors will not further the MFDA's public interest mandate, enhance the reputation of the MFDA, or increase stakeholder confidence in the Board's ability to discharge its oversight responsibilities.

One commenter expressed support for the key underlying goals of the Proposed Amendments regarding the relaxation of the restrictions on persons eligible to act as Public Directors.

MFDA Response

In the experience of the MFDA and its Governance Committee, the definition of Public Director, which was adopted back in 2003, is too prescriptive and restrictive and has not served its intended purpose. It is not possible to discuss particular candidates in a public forum but, as an example, the MFDA has in the past identified potential candidates who were entirely appropriate and could act without any real or perceived conflict of interest, but who were disqualified as a result of being technically a Crown employee or having a family relationship with other ineligible persons. The Proposed Amendments are intended to permit a better balance of prescribed restrictions and appropriate flexibility, which will allow the Governance Committee to identify and recommend as Public Directors a wider range of persons. In the case of all selections of Public Directors, the Governance Committee, the Board and, ultimately, the Members have the opportunity to assess the circumstances of each individual and exercise discretion to ensure that appropriate selections are made.

The MFDA also believes that it is in order that there be some consistency in the Director qualification standards for Canadian self-regulatory organizations ("SROs") and other industry organizations and, therefore, adopting criteria similar to those of the Investment Industry Regulatory Organization of Canada ("IIROC") is in the public interest.

2. Proposed Removal of Restrictions for Candidates for Public Directors

(a) Restrictions for Employees of Government or Crown Agency

FAIR expressed the view that removal of the current prohibitions regarding employees of a federal, provincial, or territorial government or Crown agency from the definition of "Public Director" would not compromise the interests of investors, as there is little potential for conflicts of interest for such individuals, provided they are not associated with or involved in the financial services sector.

MFDA Response

We acknowledge the comment.

(b) Restrictions for Individuals Associated with IFIC

FAIR, IFB and Kenmar expressed the view that the proposed removal of restrictions relating to persons associated with the Investment Funds Institute of Canada ("IFIC") for consideration for Public Director positions is not appropriate. In Kenmar's opinion, IFIC is the primary reason that certain mutual fund investor protection initiatives have been delayed or otherwise adversely impacted. IFB expressed the opinion that adding a person from IFIC to the MFDA Board of Directors would duplicate the representation of major financial institutions, such as the banks, on the Board.

FAIR expressed the view that, while the Governance Committee of the Board of Directors, using principles-based criteria as to who would qualify as a Public Director, would likely exclude persons associated with IFIC from being a Public Director, the current general prohibition is preferable. FAIR expressed the opinion that removing this prohibition would leave the door open for the argument that there may be circumstances where a person from or associated with IFIC could be put forth as a Public Director by the Governance Committee.

MFDA Response

The current reference to persons associated with either IFIC or the Investment Dealers Association of Canada (now IIROC) being ineligible as Public Directors of the MFDA is historical and is now irrelevant. The only reason why such prohibitions were included in MFDA's By-laws originally related to the role such organizations had in the establishment of the MFDA in 2001. The MFDA Board representation rights for IFIC (and IIROC) were eliminated in 2003 pursuant to the requirements of the MFDA's Recognizing Regulators. The MFDA is now well established as an independent SRO without influence from either IFIC or IIROC and reference to such organizations – or any other industry organizations – is unnecessary and inappropriate. In the activities of the Governance Committee to date, the Committee is aware of and has developed views on how to assess the suitability of Board candidates who may be seen as representative of organizations whose interests may not coincide with those of the MFDA.

(c) Restrictions for Family Members

FAIR expressed the view that an objective prohibition regarding immediate family increases confidence in the governance of the MFDA and is preferable to allowing the MFDA Governance Committee to assess in each instance whether a particular family relationship gives rise to a conflict. As an alternative, FAIR recommended a more robust definition of "immediate family member" to provide transparency and objectivity, while not disqualifying "remote" family members who would not have a potential or actual conflict of interest. Kenmar also expressed opposition to narrowing the restriction on family members and expressed the view that this will lead to conflicts of interest.

MFDA Response

The MFDA proposes to replace its specific reference to candidates being members of the immediate family of ineligible persons with the prohibition for "associates", which is used in most Canadian securities legislation. The practical result of the "immediate family" exclusion is very broad, having regard to: the nature of the ownership in the mutual fund industry, which includes many large integrated financial groups across Canada, and the current work and social environment where many families include two spouses working in different or related businesses. The adoption of the standard exclusion in securities legislation in respect of "associated" family members is a better and more consistent test.

As noted above, the removal of the particular restrictions on qualification would not prevent the Governance Committee from applying any such restrictions in appropriate cases.

(d) Cooling-off Period

IFB, Kenmar and FAIR expressed opposition to the proposed removal of the two-year cooling-off period for currently unqualified applicants. FAIR expressed the view that an objective two-year cooling-off period would be preferable to the proposed one-year cooling-off period with flexibility being provided to the Governance Committee to extend the period in some cases.

MFDA Response

The MFDA believes that the existence or perception of conflicts of interest is most likely to arise in respect of persons directly involved with MFDA Members, their associates and affiliates, and regulators. The MFDA has amended the terms of reference of the Governance Committee to refer to a general one-year cooling-off period with flexibility, in some cases, to extend the period. Having regard to the objectives of the Proposed Amendments, the MFDA is of the view that this is a balanced and

appropriate way to address actual or perceived conflicts.

3. Investor Representation

IFB, FAIR and Kenmar recommended that there be more investor representation on the MFDA Board.

Noting the success of the Investor Advisory Panel of the Ontario Securities Commission, Kenmar recommended that the MFDA establish a similar panel in order to assist the MFDA in focusing attention on the most pressing investor issues.

MFDA Response

The MFDA is an SRO that conducts its activities in the public interest. All Directors (Industry and Public) must assess both the public interest and the interests of MFDA Members, but, in the final analysis, the public interest is paramount. We note that the Proposed Amendments permit and do not preclude participation by investors as Public Directors.

With respect to soliciting and obtaining investor views, the MFDA seeks input from all stakeholders through our public comment process and has received submissions from individual investors and investor associations on proposed policy instruments. In addition, MFDA staff meets with investor associations to obtain input and comment on specific concerns and will continue to do so.

4. Advisor Representation

IFB expressed the view that the majority of the MFDA Board members represent large, bank-owned dealers and fund manufacturers, rather than the smaller financial services firms, which results in the MFDA Board lacking representation from the advisor community and investors. IFB recommended direct representation on the MFDA Board of Directors for all those under its authority, including IFB members, many of whom are independent mutual fund advisors or Approved Persons. IFB commented that Approved Persons have no voice other than through their dealer, which may not always share the same perspective. IFB also expressed the view that, since advisors deal directly with clients, they are aware of current customer concerns and how MFDA Board and management decisions will directly affect them.

MFDA Response

The MFDA is the SRO for mutual fund dealers in Canada and, as noted, is required, under its Recognition Orders, to ensure that the diversity of its membership is reflected on the MFDA Board. Individual advisors are not Members of the MFDA but are subject to its jurisdiction. The interests of advisors are served through their Members and their own industry organizations.

5. Evergreen List of Candidates

FAIR recommended that the MFDA develop and maintain a pool of potential candidates that meet or could meet its Director eligibility criteria in the short run (an “evergreen list”), as recommended by the British Columbia Securities Commission in the CSA’s Oversight Review of the MFDA: Corporate Governance Report issued on July 4, 2011.

MFDA Response

The MFDA agrees it is necessary to fill Board vacancies promptly. However, it does not believe that a formal pool or "evergreen list" of candidates is practical in view of continuously changing circumstances and required Director competencies. The Governance Committee and individual Directors are mindful, on an ongoing basis, of identifying potential candidates, and previously considered candidates are included. In addition, the MFDA has had recourse to professional search firms who have potential candidate lists at hand.

6. Specific Comments

IGM recommended defining “substantial beneficial interest” used in paragraph (c) of the definition of “Associate” in a manner similar to “Significant Interest”, with the threshold being 10% or more of the beneficial interest in trust. IGM also suggested that the term “relative” be defined and that paragraphs (d) and (e) of the definition of “Associate” be combined if “relative” is defined to include a spouse.

IGM recommended that paragraph (c) of the definition of “Public Director” be amended to insert the word “or” in front of the words “the holder of a Significant Interest in”.

MFDA Response

The definition of “associate” in the MFDA By-law is the same definition used in the *Securities Act* (Ontario) and other provincial securities legislation and the MFDA does not wish to introduce variations in the definition.

We have amended paragraph (c) to correct the typographical error and included the word “or” in front of the words “the holder of a Significant Interest in”.

Attachment B

MUTUAL FUND DEALERS ASSOCIATION OF CANADA

PROPOSED AMENDMENTS TO SECTIONS 1 (DEFINITIONS) AND 3 (DIRECTORS) OF MFDA BY-LAW NO. 1

Blackline Showing Changes from the Version Published for Comment on November 4, 2011

1. DEFINITIONS

"aAssociate", where used to indicate a relationship with any person, means:

(a) any corporation of which such person beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the corporation for the time being outstanding;

(b) a partner of that person ;

(c) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity;

(d) any relative of such person who resides in the same home as that person;

(e) any person who resides in the same home as the person and to whom that person is married, or with whom that person is living in a conjugal relationship outside of marriage; or

(f) any relative of a person mentioned in clause (e) above who has the same home as such person;

"**Public Director**" means a dDirector who is not:

(a) an officer (other than the Chair or a Vice-Chair) or an employee of the Corporation;

(b) a current partner, director, officer, employee or person acting in a similar capacity of, or the holder of a Significant Interest in:

(i) a Member;

(ii) an aAssociate of a Member; or

(iii) an affiliate of a Member; or

(c) an aAssociate of a partner, director, officer, employee or person acting in a similar capacity of, or the holder of a Significant Interest in, a Member.

"Significant Interest" means in respect of any person the holding, directly or indirectly, of the securities of such person carrying in aggregate 10% or more of the voting rights attached to all of the person's outstanding voting securities.

3. DIRECTORS

3.2 Composition of the Board of Directors

The Board of Directors shall be composed of 6 Public Directors, 6 Industry Directors and the President and Chief Executive Officer. The members of the Board of Directors (other than the President and Chief Executive Officer) shall collectively and over time be nominated and elected on the basis that there will be timely and appropriate regional representation on the Board of Directors of Members of the Corporation across Canada, provided that at any time (subject to the occurrence of vacancies) not less than 4 of the directors shall represent regions other than the Provinces of Ontario and Quebec. In addition, at any time (subject to the occurrence of vacancies) five of the Industry Directors shall be officers or employees of a Member of the Corporation or of an affiliate or corporation which is an aAssociate of a Member. No Member, affiliate or corporation which is an aAssociate of a Member shall have more than 1 director, officer, employee or other representative on the Board of Directors and, if such event should occur, the Board of Directors in its discretion may request the resignation of or remove as a director, any director or directors in order that the requirements of this section are satisfied. Each director shall be at least 18 years of age.

3.6 Committees

3.6.1 *Governance Committee*

The Board of Directors shall establish a Governance Committee composed of 2 Public Directors and 2 Industry Directors. The 2 Industry Director members of the Governance Committee shall be officers or employees of a Member of the Corporation or of an affiliate or corporation which is an a~~A~~ssociate of a Member. The Chair of the Governance Committee shall be 1 of the 2 Public Directors as selected by the Board of Directors. The Governance Committee shall be responsible for identifying and recommending to the Board of Directors Public and Industry Directors for election to the Board of Directors in accordance with the By-laws and the terms of reference adopted for the Governance Committee by the Board of Directors. In addition, the Governance Committee shall perform such other duties as the Board of Directors may delegate or direct from time to time. 1 Public Director and 1 Industry Director shall constitute a quorum of the Governance Committee.

3.6.2 *Audit Committee*

The Board of Directors shall establish an Audit Committee composed of 3 Public Directors and 2 Industry Directors. The Chair of the Audit Committee shall be 1 of the 3 Public Directors as selected by the Board of Directors. The Audit Committee shall review and report to the Board of Directors on the annual financial statements of the Corporation and shall perform such other duties as the Board of Directors may delegate or direct from time to time. 2 Public Directors and 1 Industry Director shall constitute a quorum of the Audit Committee.

13.1.2 IIROC Rules Notice – Request for Comment – Proposed Amendments Respecting Third-Party Electronic Access to Marketplaces

IIROC RULES NOTICE – REQUEST FOR COMMENT
PROPOSED AMENDMENTS RESPECTING THIRD-PARTY ELECTRONIC ACCESS TO MARKETPLACES

The Commission is publishing for comment IIROC's proposed amendments to its Dealer Member Rules and the Universal Market Integrity Rules (UMIR). The Proposed Amendments align UMIR with the requirements set out in proposed amendments to National Instrument 23-103 *Electronic Trading* and introduce a regulatory framework for electronic access to marketplaces for IIROC Participants and Access Persons. The proposed amendments and IIROC's Rule Notice can be found at www.osc.gov.on.ca. Comments on the proposed amendments should be in writing and submitted by January 23, 2013.

Chapter 25

Other Information

25.1 Approvals

25.1.1 Meadowbank Capital Inc. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

October 17, 2012

Wildeboer Dellelce LLP
Suite 800, Wildeboer Dellelce Place
365 Bay Street
Toronto, Ontario M5H 2V1

Attention: Geoffrey Cher

Dear Sirs/Medames:

Re: MEADOWBANK CAPITAL INC. (the "Applicant")

Application under section 213(3)(b) of the *Loan and Trust Corporations Act* (ON) dated September 18, 2012

File No. 2012/0602

Further to your application dated September 18, 2012 (the "Application") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of LMIG Trust and any other future mutual fund trusts that the Applicant may establish and manage from time to time will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or an affiliate of such bank or trust company, the Ontario Securities Commission (the "Commission") makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of LMIG Trust and any other future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Edward P. Kerwin"

"James Turner"

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